

International Public Policy and Management

**Policy Learning Beyond Regional,
Cultural, and Political Boundaries**

edited by

David Levi-Faur

Eran Vigoda-Gadot

International Public Policy and Management

PUBLIC ADMINISTRATION AND PUBLIC POLICY

A Comprehensive Publication Program

Executive Editor

JACK RABIN

Professor of Public Administration and Public Policy
School of Public Affairs
The Capital College
The Pennsylvania State University—Harrisburg
Middletown, Pennsylvania

1. *Public Administration as a Developing Discipline (in two parts)*, Robert T. Golembiewski
2. *Comparative National Policies on Health Care*, Milton I. Roemer, M.D.
3. *Exclusionary Injustice: The Problem of Illegally Obtained Evidence*, Steven R. Schlesinger
4. *Personnel Management in Government: Politics and Process*, Jay M. Shafritz, Walter L. Balk, Albert C. Hyde, and David H. Rosenbloom
5. *Organization Development in Public Administration (in two parts)*, edited by Robert T. Golembiewski and William B. Eddy
6. *Public Administration: A Comparative Perspective, Second Edition, Revised and Expanded*, Ferrel Heady
7. *Approaches to Planned Change (in two parts)*, Robert T. Golembiewski
8. *Program Evaluation at HEW (in three parts)*, edited by James G. Abert
9. *The States and the Metropolis*, Patricia S. Florestano and Vincent L. Marando
10. *Personnel Management in Government: Politics and Process, Second Edition, Revised and Expanded*, Jay M. Shafritz, Albert C. Hyde, and David H. Rosenbloom
11. *Changing Bureaucracies: Understanding the Organization Before Selecting the Approach*, William A. Medina
12. *Handbook on Public Budgeting and Financial Management*, edited by Jack Rabin and Thomas D. Lynch
13. *Encyclopedia of Policy Studies*, edited by Stuart S. Nagel

14. *Public Administration and Law: Bench versus Bureau in the United States*, David H. Rosenbloom
15. *Handbook on Public Personnel Administration and Labor Relations*, edited by Jack Rabin, Thomas Vocino, W. Bartley Hildreth, and Gerald J. Miller
16. *Public Budgeting and Finance: Behavioral, Theoretical, and Technical Perspectives, Third Edition*, edited by Robert T. Golembiewski and Jack Rabin
17. *Organizational Behavior and Public Management*, Debra W. Stewart and G. David Garson
18. *The Politics of Terrorism: Second Edition, Revised and Expanded*, edited by Michael Stohl
19. *Handbook of Organization Management*, edited by William B. Eddy
20. *Organization Theory and Management*, edited by Thomas D. Lynch
21. *Labor Relations in the Public Sector*, Richard C. Kearney
22. *Politics and Administration: Woodrow Wilson and American Public Administration*, edited by Jack Rabin and James S. Bowman
23. *Making and Managing Policy: Formulation, Analysis, Evaluation*, edited by G. Ronald Gilbert
24. *Public Administration: A Comparative Perspective, Third Edition, Revised*, Ferrel Heady
25. *Decision Making in the Public Sector*, edited by Lloyd G. Nigro
26. *Managing Administration*, edited by Jack Rabin, Samuel Humes, and Brian S. Morgan
27. *Public Personnel Update*, edited by Michael Cohen and Robert T. Golembiewski
28. *State and Local Government Administration*, edited by Jack Rabin and Don Dodd
29. *Public Administration: A Bibliographic Guide to the Literature*, Howard E. McCurdy
30. *Personnel Management in Government: Politics and Process, Third Edition, Revised and Expanded*, Jay M. Shafritz, Albert C. Hyde, and David H. Rosenbloom
31. *Handbook of Information Resource Management*, edited by Jack Rabin and Edward M. Jackowski
32. *Public Administration in Developed Democracies: A Comparative Study*, edited by Donald C. Rowat
33. *The Politics of Terrorism: Third Edition, Revised and Expanded*, edited by Michael Stohl
34. *Handbook on Human Services Administration*, edited by Jack Rabin and Marcia B. Steinhauer

35. *Handbook of Public Administration*, edited by Jack Rabin, W. Bartley Hildreth, and Gerald J. Miller
36. *Ethics for Bureaucrats: An Essay on Law and Values, Second Edition, Revised and Expanded*, John A. Rohr
37. *The Guide to the Foundations of Public Administration*, Daniel W. Martin
38. *Handbook of Strategic Management*, edited by Jack Rabin, Gerald J. Miller, and W. Bartley Hildreth
39. *Terrorism and Emergency Management: Policy and Administration*, William L. Waugh, Jr.
40. *Organizational Behavior and Public Management: Second Edition, Revised and Expanded*, Michael L. Vasu, Debra W. Stewart, and G. David Garson
41. *Handbook of Comparative and Development Public Administration*, edited by Ali Farazmand
42. *Public Administration: A Comparative Perspective, Fourth Edition*, Ferrel Heady
43. *Government Financial Management Theory*, Gerald J. Miller
44. *Personnel Management in Government: Politics and Process, Fourth Edition, Revised and Expanded*, Jay M. Shafritz, Norma M. Riccucci, David H. Rosenbloom, and Albert C. Hyde
45. *Public Productivity Handbook*, edited by Marc Holzer
46. *Handbook of Public Budgeting*, edited by Jack Rabin
47. *Labor Relations in the Public Sector: Second Edition, Revised and Expanded*, Richard C. Kearney
48. *Handbook of Organizational Consultation*, edited by Robert T. Golembiewski
49. *Handbook of Court Administration and Management*, edited by Steven W. Hays and Cole Blease Graham, Jr.
50. *Handbook of Comparative Public Budgeting and Financial Management*, edited by Thomas D. Lynch and Lawrence L. Martin
51. *Handbook of Organizational Behavior*, edited by Robert T. Golembiewski
52. *Handbook of Administrative Ethics*, edited by Terry L. Cooper
53. *Encyclopedia of Policy Studies: Second Edition, Revised and Expanded*, edited by Stuart S. Nagel
54. *Handbook of Regulation and Administrative Law*, edited by David H. Rosenbloom and Richard D. Schwartz
55. *Handbook of Bureaucracy*, edited by Ali Farazmand
56. *Handbook of Public Sector Labor Relations*, edited by Jack Rabin, Thomas Vocino, W. Bartley Hildreth, and Gerald J. Miller
57. *Practical Public Management*, Robert T. Golembiewski

58. *Handbook of Public Personnel Administration*, edited by Jack Rabin, Thomas Vocino, W. Bartley Hildreth, and Gerald J. Miller
59. *Public Administration: A Comparative Perspective, Fifth Edition*, Ferrel Heady
60. *Handbook of Debt Management*, edited by Gerald J. Miller
61. *Public Administration and Law: Second Edition*, David H. Rosenbloom and Rosemary O'Leary
62. *Handbook of Local Government Administration*, edited by John J. Gargan
63. *Handbook of Administrative Communication*, edited by James L. Garnett and Alexander Kouzmin
64. *Public Budgeting and Finance: Fourth Edition, Revised and Expanded*, edited by Robert T. Golembiewski and Jack Rabin
65. *Handbook of Public Administration: Second Edition*, edited by Jack Rabin, W. Bartley Hildreth, and Gerald J. Miller
66. *Handbook of Organization Theory and Management: The Philosophical Approach*, edited by Thomas D. Lynch and Todd J. Dicker
67. *Handbook of Public Finance*, edited by Fred Thompson and Mark T. Green
68. *Organizational Behavior and Public Management: Third Edition, Revised and Expanded*, Michael L. Vasu, Debra W. Stewart, and G. David Garson
69. *Handbook of Economic Development*, edited by Kuotsai Tom Liou
70. *Handbook of Health Administration and Policy*, edited by Anne Osborne Kilpatrick and James A. Johnson
71. *Handbook of Research Methods in Public Administration*, edited by Gerald J. Miller and Marcia L. Whicker
72. *Handbook on Taxation*, edited by W. Bartley Hildreth and James A. Richardson
73. *Handbook of Comparative Public Administration in the Asia-Pacific Basin*, edited by Hoi-kwok Wong and Hon S. Chan
74. *Handbook of Global Environmental Policy and Administration*, edited by Dennis L. Soden and Brent S. Steel
75. *Handbook of State Government Administration*, edited by John J. Gargan
76. *Handbook of Global Legal Policy*, edited by Stuart S. Nagel
77. *Handbook of Public Information Systems*, edited by G. David Garson
78. *Handbook of Global Economic Policy*, edited by Stuart S. Nagel

79. *Handbook of Strategic Management: Second Edition, Revised and Expanded*, edited by Jack Rabin, Gerald J. Miller, and W. Bartley Hildreth
80. *Handbook of Global International Policy*, edited by Stuart S. Nagel
81. *Handbook of Organizational Consultation: Second Edition, Revised and Expanded*, edited by Robert T. Golembiewski
82. *Handbook of Global Political Policy*, edited by Stuart S. Nagel
83. *Handbook of Global Technology Policy*, edited by Stuart S. Nagel
84. *Handbook of Criminal Justice Administration*, edited by M. A. DuPont-Morales, Michael K. Hooper, and Judy H. Schmidt
85. *Labor Relations in the Public Sector: Third Edition*, edited by Richard C. Kearney
86. *Handbook of Administrative Ethics: Second Edition, Revised and Expanded*, edited by Terry L. Cooper
87. *Handbook of Organizational Behavior: Second Edition, Revised and Expanded*, edited by Robert T. Golembiewski
88. *Handbook of Global Social Policy*, edited by Stuart S. Nagel and Amy Robb
89. *Public Administration: A Comparative Perspective, Sixth Edition*, Ferrel Heady
90. *Handbook of Public Quality Management*, edited by Ronald J. Stupak and Peter M. Leitner
91. *Handbook of Public Management Practice and Reform*, edited by Kuotsai Tom Liou
92. *Personnel Management in Government: Politics and Process, Fifth Edition*, Jay M. Shafritz, Norma M. Riccucci, David H. Rosenbloom, Katherine C. Naff, and Albert C. Hyde
93. *Handbook of Crisis and Emergency Management*, edited by Ali Farazmand
94. *Handbook of Comparative and Development Public Administration: Second Edition, Revised and Expanded*, edited by Ali Farazmand
95. *Financial Planning and Management in Public Organizations*, Alan Walter Steiss and 'Emeka O. Cyprian Nwagwu
96. *Handbook of International Health Care Systems*, edited by Khi V. Thai, Edward T. Wimberley, and Sharon M. McManus
97. *Handbook of Monetary Policy*, edited by Jack Rabin and Glenn L. Stevens
98. *Handbook of Fiscal Policy*, edited by Jack Rabin and Glenn L. Stevens
99. *Public Administration: An Interdisciplinary Critical Analysis*, edited by Eran Vigoda

100. *Ironies in Organizational Development: Second Edition, Revised and Expanded*, edited by Robert T. Golembiewski
101. *Science and Technology of Terrorism and Counterterrorism*, edited by Tushar K. Ghosh, Mark A. Prelas, Dabir S. Viswanath, and Sudarshan K. Loyalka
102. *Strategic Management for Public and Nonprofit Organizations*, Alan Walter Steiss
103. *Case Studies in Public Budgeting and Financial Management: Second Edition, Revised and Expanded*, edited by Aman Khan and W. Bartley Hildreth

Additional Volumes in Preparation

Principles and Practices of Public Administration, edited by Jack Rabin, Robert F. Munzenrider, and Sherrie M. Bartell

Handbook of Developmental Policy Studies,
edited by Stuart S. Nagel

Handbook of Conflict Management, edited by
William J. Pammer, Jr. and Jerri Killian

ANNALS OF PUBLIC ADMINISTRATION

1. *Public Administration: History and Theory in Contemporary Perspective*, edited by Joseph A. Uveges, Jr.
2. *Public Administration Education in Transition*, edited by Thomas Vocino and Richard Heimovics
3. *Centenary Issues of the Pendleton Act of 1883*, edited by David H. Rosenbloom with the assistance of Mark A. Emmert
4. *Intergovernmental Relations in the 1980s*, edited by Richard H. Leach
5. *Criminal Justice Administration: Linking Practice and Research*, edited by William A. Jones, Jr.

International Public Policy and Management

**Policy Learning Beyond Regional,
Cultural, and Political Boundaries**

edited by

David Levi-Faur

*Research School of the Social Science
Australian National University, Canberra, Australia*

Eran Vigoda-Gadot

*Center for the Study of Organizations and Human Resource Management
University of Haifa, Israel*



MARCEL DEKKER

NEW YORK

Although great care has been taken to provide accurate and current information, neither the author(s) nor the publisher, nor anyone else associated with this publication, shall be liable for any loss, damage, or liability directly or indirectly caused or alleged to be caused by this book. The material contained herein is not intended to provide specific advice or recommendations for any specific situation.

Trademark notice: Product or corporate names may be trademarks or registered trademarks and are used only for identification and explanation without intent to infringe.

Library of Congress Cataloging-in-Publication Data

A catalog record for this book is available from the Library of Congress.

ISBN: 0-8247-5338-0

This book is printed on acid-free paper.

Headquarters

Marcel Dekker, 270 Madison Avenue, New York, NY 10016, U.S.A.
tel: 212-696-9000; fax: 212-685-4540

Distribution and Customer Service

Marcel Dekker, Cimarron Road, Monticello, New York 12701, U.S.A.
tel: 800-228-1160; fax: 845-796-1772

World Wide Web

<http://www.dekker.com>

The publisher offers discounts on this book when ordered in bulk quantities. For more information, write to Special Sales/Professional Marketing at the headquarters address above.

Copyright © 2004 by Marcel Dekker. All Rights Reserved.

Neither this book nor any part may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, microfilming, and recording, or by any information storage and retrieval system, without permission in writing from the publisher.

Current printing (last digit):

10 9 8 7 6 5 4 3 2 1

PRINTED IN THE UNITED STATES OF AMERICA

Dedicated to our parents:

Yehudit and the late Nissim Levi
Eliezer and Jacqueline Vigoda

Preface

University libraries are brimming with books and essays on globalization and its impact on world economy, social structures, and political dynamics. *International Public Policy and Management* is not meant to be just one more addition to this already crowded field. Instead, it is focused on the potential value of worldwide collaboration and partnership among policy makers, policy implementers, politicians, and public managers. It explores how policy and public managerial expertise in one corner of the world affects, and is being affected by in return, similar developments in other nations and societies. Most importantly, this book is an attempt to track the movement of knowledge, ideas, innovations, and experiences in policy arenas at the social, national, and international level.

The book maps our globalizing world from the viewpoint of the policy maker, the policy implementer, and the public manager. Sociologists will focus on the meaning of a globalizing knowledge society and its impact on citizens' daily lives, norms, and values. The cultural bank of knowledge on state bureaucracies presented here may lead to the exploration and implementation of better strategic management policies. Economists may find that the powerful market forces described in this book determine the path by which a nation finds its place and status in the world economy. In addition, political scientists and public administration experts may find support in this book for the notion that political and administrative power is one of the most influential factors that promote or prevent reforms and organizational change in modern societies.

It is possible, however, that these views and approaches are *all* relevant and timely. Moreover, we trust that each professional, scholar, or policy

maker can benefit from the views and experiences presented here. Nonetheless, we recommend our book as one more aid in the struggle to understand our constantly changing public-sector environment. The collection of essays on the experience of various nations in emerging policy fields brings no ultimate solutions to policy dilemmas in such fields as telecommunications, healthcare, commerce, or urban affairs. Instead, it raises serious questions about the course of planned change and possible future developments in the fields of public policy and public management. All of these developments are affected by technology, the transition of knowledge, and collaborative political arrangements that are created in our rapidly changing communities. The answers to these questions are, after all, less important.

Hence, this book is about our lives as citizens in modern societies of the third millennium. The reality we are facing is formed by both top-down policies and grass-roots change. The players in all of the essays in our book are governments, politicians, and policy designers in many places across the globe, as well as citizens acting individually or collectively as parts of groups and movements. The book also explores the new patterns of the global integration of policies that result when regulations, norms, experiences, and knowledge flow from one place to another faster than ever.

Finally, while this book reflects a certain level of professional uncertainty in these times of global policy change, it is also an impressive analysis of the movement of many nations and societies toward higher levels of learning, emulation, enhancement of knowledge and experience, and the deep, comprehensive understanding of the potential of international collaboration. In the emerging global village *International Public Policy and Management: Policy Learning Beyond Regional, Cultural, and Political Boundaries* offers a cluster of up-to date theories, ideas, practices, and innovations for both scholars and practitioners. It is our pleasure to list some of the scholars who encouraged and helped us with this project. We would like to thank the following people whose comments on particular aspects of the project were solicited and were generously given: Ian Bartle (University of Bath) John Braithwaite (Australian National University), Peter Humphreys (University of Manchester), and Jack Rabin (Pennsylvania State University at Harrisburg).

David Levi-Faur
Eran Vigoda-Gadot

Contents

<i>Preface</i>	v
<i>Contributors</i>	<i>xi</i>
1. The International Transfer and Diffusion of Policy and Management Innovations: Some Characteristics of a New Order in the Making <i>David Levi-Faur and Eran Vigoda-Gadot</i>	1
PART I: STATE AND NON-STATE ACTORS IN THE AGE OF GOVERNANCE	
2. Bring Back the States: Correcting for the Omissions of Globalization <i>David P. Dolowitz</i>	25
3. International Nongovernmental Organizations: Globalization, Policy Learning, and the Nation-State <i>Robert K. Christensen</i>	45
	vii

PART II: LEARNING TO DEAL WITH REGULATORY CHANGE

4. State Regulation of the Banking Sector in the Era of Globalization: Divergence or Convergence? 67
Andreas Busch
5. Globalization, Regulatory Competition, and EU Policy Transfer in the Telecoms and Broadcasting Sectors 91
Peter Humphreys
6. Explaining Policy Transfer Mechanisms in Small European Countries: The Case of Telecommunication Reform 121
Silja Häusermann, André Mach, and Yannis Papadopoulos
7. Toward a Latin American Regulatory State?: The Diffusion of Autonomous Regulatory Agencies across Countries and Sectors 155
Jacint Jordana and David Levi-Faur

PART III: LEARNING TO DEAL WITH SOCIAL CHANGE

8. Tobacco-Control Policy Instruments in a Shrinking World: How Much Policy Learning? 189
Donley T. Studlar
9. Children's Disability Policy in a Global World: A Question of Convergence 221
Dana Lee Baker
10. Urban Policy in the Global Era 249
Arie Hershcovich
11. Solidarity, Territoriality, and Healthcare: Cross-National Policy Learning in Europe 267
Hans Volland

PART IV: LEARNING TO DEAL WITH ADMINISTRATIVE CHANGE

- 12. Administrative Reforms in a Globalized World:
 Human Resource Management in Latin America’s
 Public Administration 297
Carles Ramió and Miquel Salvador
- 13. The Globalization of Anticorruption Policies:
 The Diffusion of Best Practices and the Role
 of Knowledge Management 325
Bryane Michael
- 14. The Rise of Adversarial Legalism in the European
 Union: Beyond Policy Learning and Regulatory
 Competition 351
R. Daniel Kelemen

PART V: LEARNING TO DEAL WITH DEMANDS FOR PARTICIPATION

- 15. Public Policy and Public Participation in the Knowledge
 Society: Prospects for Decision Making in Science
 and Technology Policies 369
Séamus Ó Tuama
- 16. Translating Public Participation into Planning
 Policy— The Israeli Experience 395
Deborah F. Shmueli and Pnina O. Plaut
- 17. Political Participation and Market Citizenship in a
 Global Economy: The European Union
 in Comparative Perspective 423
Ian Bartle

Index 447

Contributors

Dana Lee Baker University of Missouri-Columbia, Columbia, Missouri, U.S.A.

Ian Bartle University of Bath, Bath, UK

Andreas Busch University of Oxford, Oxford, UK

Robert K. Christensen School of Public and Environmental Affairs, Indiana University, Bloomington, Indiana, U.S.A.

David P. Dolowitz School of Politics and Communication Studies, University of Liverpool, Liverpool, UK

Silja Häusermann Université de Lausanne, Lausanne, Switzerland

Arie Hershovich Yezreel Valley College, The Yezreel Valley, Israel

Peter Humphreys Department of Government, University of Manchester, Manchester, UK

Jacint Jordana Universitat Pompeu Fabra, Barcelona, Spain

R. Daniel Kelemen Lincoln College, University of Oxford, Oxford, UK

David Levi-Faur Australian National University, Canberra, Australia and University of Haifa, Haifa, Israel

André Mach Université de Lausanne, Lausanne, Switzerland

Bryane Michael Linacre College, Oxford, UK

Yannis Papadopoulos Université de Lausanne, Lausanne, Switzerland

Pnina O. Plaut Technion Israel Institute of Technology, Haifa, Israel

Carles Ramió Universitat Pompeu Fabra, Barcelona, Spain

Miquel Salvador Universitat Pompeu Fabra, Barcelona, Spain

Deborah F. Shmueli University of Haifa, Haifa, Israel

Donley T. Studlar West Virginia University, Morgantown, West Virginia,
U.S.A.

Séamus Ó Tuama University College Cork, Cork, Ireland

Eran Vigoda-Gadot The University of Haifa, Haifa, Israel

Hans Vollaard Leiden University, Leiden, The Netherlands

1

The International Transfer and Diffusion of Policy and Management Innovations: Some Characteristics of a New Order in the Making

David Levi-Faur

*Australian National University, Canberra, Australia
and University of Haifa, Haifa, Israel*

Eran Vigoda-Gadot

The University of Haifa, Haifa, Israel

I. INTRODUCTION

Modern societies are going global and, in this process, are redefining the boundaries between the domestic and the external. In a “shrinking world,” policy lessons are increasingly drawn on a cross-national basis, rather than on specific national experience, and are less and less constrained by cultural and geopolitical boundaries. The know-how of other nations is increasingly conceived as essential and relevant for the economic competitiveness of nations and for the welfare of their citizens. Epistemic communities, international organizations, and policy entrepreneurs thus transfer this “know-how” to the domestic economic, political, and social settings that are often radically different from the original. The benefits, costs, and implications of these policy transfers are the subject of this book. Specialists in public policy, public administration, and public management have joined together to explore the role of policy transfers in the promotion of more reflective and efficient public policies across the world. In doing so, they aim to advance our knowledge on the new conditions of management, administration, and policy in a global world.

What we are trying to capture in this volume is only partially new. Globalization of knowledge and international policy transfers were discussed

in early political science literature. Take, for example, Barker's classic study of state expansion in Europe between 1660 and 1930. Barker's (1944, p. 93) major attention was concentrated on the particular history of different countries, but he was well aware of their interdependence and existence as a "social community":

When we consider the history of the Modern State... we cannot but recognize the debt which all States owe to one another. Each country has developed according to its own genius; and each has produced its own fruit. But each has produced some institution, or some method of public service, which has served as an example to others; and each, in turn, has borrowed from each. There has been a rivalry of methods, but it has not been unfriendly; one country has studied, adopted, or tried to improve the methods of another; and all have combined, however unconsciously, to promote the growth of a common Europe standard of administration and public service.

So policy transfers are an old phenomenon; yet, what makes our era unique is the downsizing of geographical distance, in general, and national borders, in particular—hence the increase in the quantity and, arguably, the quality of these policy transfers. We are more exposed, and therefore arguably may learn more and might be able to go through the learning process with a somewhat better grip on the difficulties of innovating on others' experience. The issues at stake are increasingly documented and reflected in the literature of the social sciences at large and of organizational studies, law, politics, sociology, social psychology, and economics, in particular (Vigoda, 2002, 2003a). In all these disciplines, the issues discussed in this book are subject to extensive scholarly debate. At one side stand proponents of globalization, who advocate cross-national policy learning (and convergence) and perceive it as a great promise for the advancement of management techniques, administrative controls, and policy effectiveness. At the other side are globalization critics, who identify emulation, manipulation, and coercion as the major forces behind the changes that are widely evident across countries and policy spheres.

This debate, then, touches first on the meaning and origins of policy learning, on the necessary and sufficient conditions that propel it, on the autonomy and motives of the agents that promote it, and on the institutional and other constraints on the implementation of imported ideas in different contexts. At a second level, we face the question of the effects of transfer, and here we explore the suggestion that the dramatic expansion of policy transfers documented in this volume and in numerous others shapes a "new public policy." Perhaps the clearest statement to that effect was made by Majone (1996), who suggested that far-reaching ideological, political, and economic changes begun in the late 1970s brought about "*the transformations of the*

process and substance of policy making” (p. 611, our italics). We hope that this volume, which looks at public policy beyond the nation-state (although not without it), will add new insights to future work that tries to characterize this new public policy.

We start this chapter by setting out the common conceptual grounds for a discussion of the nature of cross-national and cross-cultural interaction with the help of two paradigms: policy transfer and policy diffusion. We then move in the second part to a presentation of some of the major insights and issues that the authors of this book offer.

II. PUBLIC AND MANAGEMENT IN A GLOBAL WORLD: DIFFUSION AND POLICY TRANSFER

Our point of departure is the supposition that cross-cultural and cross-national policy transfers and diffusion are reshaping the way public policy is formulated, expressed, and implemented.¹ Although these processes are not new, they seem to be on the increase to the extent that they remold the ways public policy is shaped, consolidated, and implemented. Social scientists often rely on two different paradigms to capture this process of change: the policy transfer and the policy diffusion paradigms (see Table 1). Although the first is prevalent among political scientists and is methodologically oriented toward case analysis, the second is prevalent among sociologists and enjoys a rich tradition of quantitative research. We find both paradigms fruitful and, to some extent, complementary, and therefore we embark on a discussion that aims to clarify some of their strengths and weakness. Let us start with definitions. Policy transfers are concerned with “the process by which knowledge about how policies, administrative arrangements, institutions, and ideas in one political setting (past or present) is used in the development of policies, administrative arrangements, institutions, and ideas in another political setting” (Dolowitz and Marsh, 2000, p. 5). Diffusion is commonly defined as “the process by which an innovation is communicated through certain channels over time among members of social system. It is a special type of communication in that the messages are concerned with new ideas” (Rogers, 1995, p. 5). What differentiates these definitions is mainly the sociological emphasis of the diffusion paradigm. All other differences, including the methodological orientation, are marginal by comparison and there is no reason to believe that these two research traditions *cannot* be brought together. In fact, it might well be that in the future, the major differences as to central issues, such as their rationality and autonomy of actors, will be within each of these paradigms rather than between them.

Table 1 Policy Transfer and Diffusion Perspectives on Policy Change

Paradigm	Policy transfer	Diffusion
Definition	“Policy transfer, emulation, and lesson drawing all refer to the process by which knowledge about how policies, administrative arrangements, institutions, and ideas in one political setting (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political setting” (Dolowitz and Marsh, 2000, p. 5)	“The process by which an innovation is communicated through certain channels over time among members of social system. It is a special type of communication in that the messages are concerned with new ideas” (Rogers, 1995, p. 5)
Dominance	Among political scientists and analysts of public policy and public management	Among sociologists, but increasingly utilized by political scientists
Methodological orientation	Case studies and comparative analysis	Quantitative
Major terms and concepts	Policy learning, lesson drawing, and Bayesian learning	Contagion, bandwagoning, herding, and isomorphism
Major assumption	The process of change is political in the sense that policy learning is filtered by political institutions.	The process of change occurs in social networks
Mechanisms of policy change	Varies between coercive and voluntary (e.g., emulation, elite network, harmonization through international regime, and penetration by external actors and interests) (Bennett, 1991)	Isomorphism, culture, international norms, and best practices
Outcomes	Bias towards convergence	Strong bias towards convergence
Focus in regard to the policy process	Comprehensive: focus on policy goals, content, instruments, outcome, and styles	Selective: focus on policy goals and content

The paradigm of diffusion, especially formulations grounded in sociological institutionalism, has three advantages. First, sociology has an impressive tradition of diffusion analysis at the national (Rogers, 1995) and international levels (Meyer et al., 1997), which does not have any equivalence in political science and the policy transfer literature.² Second, the emphasis on transfer among “members of social system” in the diffusion literature seems to allow us to look at the process outside the hierarchies of the top-down and bottom-up approaches to change. It figures clearly in the literature on policy networks (Rhodes and Marsh, 1992; van Waarden, 1992) and on governance (Rhodes, 1997), which emphasizes the fragmentation of political structures and the volatility of power. It connects naturally to the notions of epistemic communities (Haas, 1992), webs of influence (Braithwaite and Drahos, 2000), and transnational policy communities (Stone, 2003) as “channels of policy transfer” across nations.

Finally, we see some value in the “contagious” aspect of the diffusion perspective (i.e., in the willingness of scholars within this research tradition to look beyond the structural aspects of the process to its internal dynamics).³ Contagious-focused research examines how prior adoption of a trait, policy, institution, or practice in a population alters the probability of adoption for any remaining nonadopters (Strang, 1991, p. 325). Diffusion scholars often treat the process as organic and evoke the idea of contagion as major source of change. Causality is not external but internal to the population in question. Unlike structuralists, who look at “independent observations” and treat interdependency as a problem of control (the Galton problem), diffusion studies perceive the evidence of interdependence as a major theoretical focus of study. This distinction between structural and contagious causes has notable implications for the way we conceive causality in the social and political system. It may suggest that variations and similarities are explained not by structural factors, such as the configuration of actors’ interests and relative power, but by the solutions and models that are shaped by former events:

Hence, in Australia, we have laws criminalizing rape not because of any titanic struggle between a women’s movement (or some other actor) which demanded rape laws and others who resisted them; rather, we acquired them without debate from British criminal law. Having occurred, it is now nearly impossible for any actors with any amount of political power to argue for a way of dealing with rape that disposes of the criminal-law model in favor of a radically different strategy. (Braithwaite and Drahos, 2000, p. 582)

Although the “policy transfer” approach is open to the idea that “emulation” or “copying” might be a distinct and independent source of

change, there is no effort to look at it as a contagious, dynamic process of change. The policy transfer literature is essentially structuralist in its causal imagination. As against these two advantages of the diffusion perspective, it is often criticized as being politically neutral or uninformed. As diffusion analysis often focuses on broad historical, spatial, and socioeconomic causes for a pattern of policy adoption, it neglects the political dynamics involved (Stone, 2003, p. 4; Peters, 1997, p. 76; Jacoby, 2000, p. 8). Here the policy transfer literature that distinguishes between coercive and voluntary mechanisms of transfer seems to have the upper hand. Power in the “sociological–institutional” diffusion perspective is confined almost solely to the power of ideas, norms, and symbols. Yet these “ideational” forms of power are hardly coercive and interest driven, and frequently are not the major focus of diffusion analysts.

Policy analysis is to be enriched from both perspectives, and it is possible to demonstrate how these two approaches may inform each other. This is evident in the work of Stone, who suggests that global policy networks make a major impact on the way policy is shaped on the global as well as national level. She distinguishes three models that combine the assertions about the power of ideas and knowledge with network approach: the epistemic community approach, the embedded knowledge networks framework, and the transnational discourse community approach (Stone, 2003). She then places her “knowledge actors” in a framework of analysis that combines the policy network approach and the policy transfer literature, and, in doing so, opens a new frontier for policy analysts. The move to the global level raises repeatedly the question about the centrality of the state vis-à-vis international organizations, nongovernmental organizations, corporations, and cities in these networks of power. As will be discussed shortly, our contributors diverge on this point as do the two paradigms of diffusion and policy transfer. In general, policy transfer seems to reflect the dominance of the state in political science, whereas the diffusion perspective reflects the notion that states are recipients of a normative order that is created outside them, and they are therefore secondary in importance to international norms.

One major issue in the policy transfer and diffusion literature touches on the degrees and types of rationality that are involved in the process of change. Some versions of the policy transfer literature, such as lesson drawing (Rose, 1993) and social learning (Hall, 1993), seem to perceive the process of transfer as a learning process. In this literature, the emphasis is on cognition and the redefinition of interests on the basis of new knowledge that affects the fundamental beliefs and ideas behind the policy. In some way related, although more demanding, are models of Bayesian learning (Meseguer, 2003). By contrast, sociological interpretations of the process of change emphasize a group’s norms rather than individual rationality. See, for

example, Finnemore's (1996, pp. 2–3) argument about the notion of “state interests”:

State interests are defined in the context of internationally held norms and understandings about what is good and appropriate. That normative context also changes over time, and as internationally held norms and values change, they create coordinated shifts in state interests and behavior across the system. . . states' redefinitions of interest are often not the result of external threats or demands by domestic groups. Rather they are shaped by internally shared norms and values that structure and give meaning to international political life.

This emphasis on the normative side of supposedly rational action suggests that emulation may be of some importance as a mechanism of policy change. It also necessitates a distinction between “learning” and “emulation” as major features of the process of policy transfer. The distinction between the two may be based on the scope of information involved in the decision-making process. Policy learning is defined as the redefinition of one's interest and behavior on the basis of newly acquired knowledge, after watching the *actions* of others and the *outcomes* of these actions. Policy emulation, by contrast, is the redefinition of one's interest and behavior on the basis of newly acquired knowledge and after watching only the actions of others (Jordana and Levi-Faur, 2003). We distinguish between the learners and the emulators by the extent to which adaptation to new behavior involves information not only about the actions of others but also about the consequences of those actions. The crucial difference is that the learner processes a greater amount of information than the emulator and is therefore less dependent and more autonomous.

Finally, the outcomes of policy transfers and diffusion are often presented through the expectation of convergence. Convergence theories postulate that growing international integration will have direct (e.g., a change in the domestic distribution of political power) and indirect (e.g., influence on government policy) implications for domestic policy that will lead to similar policies and institutions (Busch, this volume). This is usually contrasted with divergence theories, which suggest that the growing international integration will not deflect states from their historically rooted trajectories, so that not convergence, but constant and perhaps even increasing variations, will be the result for policies and institutions (Busch, this volume). The expectation of convergence in diffusion theory reflects a scholarly bias that is not necessarily implied and embedded in the theories of transfer and diffusion (cf. Jacoby, 2000, p. 8). Indeed, Gabriel Tarde (1903), one of the founding fathers of sociology and author of the *Laws of Imitation*, describes the process of diffusion as one in which agents simultaneously converge on a

fashion and distinguish themselves from others.⁴ The process of change may involve convergences and divergences at the same time. The bias inherent in some of the diffusion and policy transfer literature toward a sort of “convergence” might be best balanced by a notion of change that takes both convergence and divergence as important dimensions.

III. THE INTERNATIONALIZATION OF PUBLIC POLICY AND PUBLIC MANAGEMENT

One of the most important debates in the social sciences in the last decade has focused on the “future of the nation-state” (Weiss, 2003; Marsh and Smith, 2004). Various scholars argue from different points of view that the power of the state is expected to decline and that new types of actors and political organizations are gradually taking over responsibilities and policy capacities that were once the exclusive domain of the nation-state (O'hame, 1995; Strange, 1996). A forceful argument to that effect was made recently by Braithwaite and Drahos (2000, pp. 3–4) who argue that most states outside Europe and the United States “have become rule-takers rather than rule-makers”:

The extent to which states have become rule-takers rather than rule-makers is greater than most citizens think, largely because when governments announce new regulatory laws, they are somewhat embarrassed to disclose that the national legislature voted for those laws without having any say in shaping them. . . for years, some of Australia's air safety standards have been written by the Boeing Corporation in Seattle, or, if not by that corporation, by the U.S. Federal Aviation Administration in Washington. Australia's ship safety laws have been written by the International Maritime Organization in London, its motor vehicle safety standards by Working Party 29 of the Economic Commission for Europe. and its food standards by the Codex Alimentarius Commission in Rome. Many of Australia's pharmaceuticals standards have been set by a joint collaboration of the Japanese, European, and U.S. industries and their regulators, called the International Conference on Harmonization. Its telecommunications standards have been substantially set in Geneva by the ITU. The Chair (and often the Vice Chair) of most of the expert committees that effectively set those standards in Geneva are Americans. . .

Dolowitz, in his chapter on the state and the process of globalization, takes issue with the arguments on the decline of the state, and suggests that the growth of policy transfers opens, and not only constrains, the policy options of the state. Dolowitz, one of the pioneers of the policy transfer literature

(Dolowitz and Marsh, 1996, 2000; but see also Rose, 1993), suggests that there are at least three good reasons why we should take the state seriously when we examine the role of policy transfers in the context of globalization. First, it is clear that the nation-state has continued to be an important, if not the predominant, entity in international governance. Second, few within the globalization debate acknowledge, let alone discuss, the importance of the state for the very development and survival of “globalization.” Finally, few have discussed the processes inherent in globalization in light of the fact that any state can utilize these processes to strengthen its own position in relation to domestic and international governance. Globalization in this formulation is an opportunity to learn from other political systems. States can learn from each other in order to 1) enhance or reduce the international effects of globalization; 2) expand or reduce the impact of globalization on individual political systems; 3) use the rhetoric of globalization to justify actions based on “foreign” actions and ideas; 4) utilize institutions such as the European Union (EU) to harness the forces of globalization to their advantage; and 5) use international governing bodies (e.g., the EU) to weaken the impact of globalization. To restrict policy transfer, Dolowitz suggests, is to restrict globalization. To facilitate policy transfer is to facilitate globalization. What we should place on the research agenda are questions of how to govern transfer so as to maximize the social benefits. Embedded in Dolowitz’s analysis is the supposition that the policy process is governed, or at least can be governed, and that states, at least some of them, are the most important actors in this process.

A somewhat different perspective is offered by Robker K. Christensen’s (this volume), who focuses on international nongovernmental organizations (INGOs). Although not sovereign entities, INGOs possess a vast potential to influence international, national, and local policy, and they have demonstrated that potential in many instances. The most recent decades have witnessed remarkable growth in the numbers of these organizations, with nearly one-sixth of today’s approximately 37,000 INGOs being formed in the 1990s. Possibly more significant than the expanding number of these organizations, he presents a datum that indicates that where nongovernmental organizations handled \$1 billion in world development funds in 1970; by 1997, these organizations were handling more than \$7 billion. The proliferation of these organizations, he suggests, raises the question of whether they are most appropriately placed inside or outside the traditional worldview that recognizes nation-states as the primary and legitimate institutions of global policy making (the “Westphalia paradigm,” in his terminology). As an alternative to this dominant paradigm, he suggests that of “global society” (or “transnational society” or “world community”). This emerging paradigm refers to “a society of state actors and non-state actors like NGOs, multinational

corporations, and individuals on a global scale, which is characterized by a multitude of decentralized lawmaking processes in various sectors, independent of nation-states” (Nowrot, 1999, p. 641). Christensen moves on to suggest some ways in which the two paradigms can be evaluated. Although he differs from Dolowitz in his focus on INGOs, and although he contends that the “state’s policy-making ability is being redefined by nonsovereign entities,” he does not go as far as to dismiss the importance of state actors in policy transfer. What both he and Dolowitz share is a recognition that both actors are important, and even more notably that policy transfers by both state and nonstate actors are important enough to become a major focus for students of social, political, and economic change.

Although the first two chapters of **Part I** highlight the debate on the agents of change and their role in policy transfers, the next four chapters of **Part II** deal with various issues of regulatory change. Andreas Busch’s chapter on regulation of the banking sector raises the subject of the convergence of policies, politics, and institutions. He frames his analysis between the contradictory predictions about greater convergence, on one hand, and constant or even increasing divergence, on the other hand. These different predictions are subject to extensive empirical analysis in the arena of banking regulation. In that area, institutions that are grounded in countries’ particular histories exist, but the pressures of globalization are highly concentrated. The regulatory systems of four countries—the United States, the UK, Germany, and Switzerland—are then discussed. Despite the existence of strong international institutions and strong norms of banking, and despite the nature of “finance” as a global sector, President Bush does not find support for the strong version of convergence. Although substantial convergence is found in terms of regulatory content and policy, there is none in terms of the political processes and the institutional dimension. He finds that the policy discourse is, only to a small degree, characterized by the *frame* of international competitiveness, whereas more often, national specific issues dominate the day-to-day legislative debates. Examples of such issues are: in the Swiss case, money laundering; in the UK, several high-profile banking failures, each of which triggered changes in banking legislation; and in Germany, universal access to banking services. This does not suggest that firm versions of the divergence theories are better. Instead, he suggests that in the process of change and policy transfers, national institutions functioned as “filters.” They dealt with similar or even the same problems in their own specific ways, thereby producing different policy outcomes and dynamics in the various countries. Results in terms of what was adopted vary among “active political design,” “path-dependent development,” and “blockade.”

Chapter 5 by Peter Humphreys moves the discussion of the effects and nature of policy transfers from banking to telecommunications and broad-

casting. Although Dolowitz and Busch focus on states as actors, and although Christensen's focus is on INGOs, Humphreys examines the EU in this process of change. The supranational institutions of the EU have mediated this process of change, deploying policy transfer and learning mechanisms that range from coercive to voluntary. They do so in the attempt to achieve a harmonized European response to these pressures of globalization, technological change, and international regulatory competition, and in this way perhaps to increase the legitimacy of the EU as a political institution. In Humphreys' analytical framework, the EU falls between the "global" and the "national" (i.e., the member states) and can reinforce or moderate globalization pressures. Globalization induces regulatory competition where states have had to develop "competitive" policies on a whole range of fronts: tax regimes, employment and social legislation, regulatory policy in a host of economic sectors, and more. The purpose is to attract or retain investment, and thus to be able to compete in the global economy. A creative and dynamic process of policy learning is therefore necessary for success. Europeanization does not *cause* policy transfer or regulatory competition; rather, Humphreys regards EU action as an intervening variable—*coordinating*, *synchronizing*, and *mediating* a joint European response. This suggestion is then examined against the "social" and "domestic" characteristics of the broadcasting sector and against the "economic" and more "international" characteristics of telecommunications. He points that, in both sectors, globalization pressures, technological change, and regulatory competition have driven a process of a paradigmatic change of regulatory policy from state monopoly to a liberal, procompetitive regulatory order. Still, EU regulatory harmonization has advanced considerably farther in the "technocratic" sector of telecommunications than in the much more "politically sensitive" sector of broadcasting, where the promotion of socio-cultural goals has been a factor for continuing national divergence. This conclusion seems to draw some of the limits of the EU as a political institution, and of policy transfer in general. When policy transfers are perceived as problematic from the national point of view, they are less likely to be adopted even if they represent a better model of regulation.

Telecommunications is also the subject of Chapter 6 by Silja Häusermann, André Mach, and Yannis Papadopoulos. Like finance, telecommunications is one of the "critical cases" where major suggestions as to the extent, scope, and impact of globalization, convergence, and policy transfer have been examined. Not by chance is it discussed again in this book. Nor is it by chance that the EU appears again. The EU is one of the most, if not the most, intriguing international organizations. Together with the INGOs that were discussed by Christensen, it represents many of the most interesting features of global policy change. What these authors set out to examine is the process of liberalization, in general, and regulatory change, in particular, within the

EU (The Netherlands and Austria) and outside it (Switzerland). These three corporatist countries with large government coalitions have embarked on reforms of their telecommunications sectors, which have similar institutional configurations. Yet despite similar results in the content of the reforms in the three countries, they evince important differences in the mechanisms of change that cannot be explained by EU (non)membership. Rather, the policy transfer mechanisms and the “learning capacity” of each country in the context of profound external changes are thus largely dependent on the domestic economic and political structures.

In the liberal countries (The Netherlands and Switzerland), they argue, adaptation to EU regulations can mainly be explained by domestic pressure emanating from economic actors who were in favor of telecom liberalization and by the emergence of new norm entrepreneurs in the national administration. In these countries, economic, political, and administrative elites were much more receptive to telecommunications liberalization, an issue placed on the political agenda as early as the first half of the 1980s, quite independently of the European evolution. Moreover, the national operators in both countries developed an international strategy in the early 1990s through their participation in Unisource (an alliance of different national telecom companies) to expand their activities abroad. Similarly, the national administrations were involved in different formal and informal international bodies active on telecom issues, which contributed to their role as policy entrepreneurs at the domestic level. Nevertheless, the extensive EU legislation, as well as the EU agenda, played a central role mostly in the timing of the reforms of telecommunication legislation in both countries. By contrast, in Austria, representing a social version of democratic corporatism, the relative closedness of the national economy and the tight relations between the political authorities and the national telecom operator prevented the early start of a “learning process.” Only with the adoption of the European Economic Area Treaty and by joining the EU in 1994 did telecom liberalization in Austria become a major issue. Hence, because of the lack of domestic support for liberalization, “external coercion” was much more important, and the European Commission came to play a decisive role in the reform process.

Jacint Jordana and David Levi-Faur’s chapter on the rise of the regulatory state in Latin America looks at the policy transfer of “one particular institution”: autonomous regulatory agencies in 19 Latin American countries and 12 different sectors between 1920 and 2003. The chapter, which is based on the authors’ unique database, reveals the explosive growth of regulatory agencies across different sectors and nations in Latin America. From a paltry 43 agencies in 1979 (mostly in the financial sectors), the overall number tripled to 133 by the end of 2002. Although in 1979 only 21 of the

agencies were nominally autonomous, the total number of nominally autonomous agencies has multiplied almost sixfold to 119 agencies by the end of 2002. Although this number represents only about 60% of the total potential adoptions in these countries and sectors, and although in only 53% of the potential cases is there nominal commitment to autonomy, this is still a sweeping success for the idea of governance through regulatory authorities. A particular institutional design of regulatory governance via autonomous agencies of the state that was confined for a long time to the United States (at the country level) and to central banking (at the sectoral level) is well on the way from “best practice” to a hegemonic institution grounded in a new convention on the best way to govern the economy (Levi-Faur, 2002). In fact, not one sector studied here, and not one country in the region, including Cuba, has remained untouched by the process. Yet countries and sectors vary in their reception of the reforms, and the chapter uses these variations to shed some light on the process of globalization as a diffusion process.

One of the important contributions of Jordana and Levi-Faur’s chapter is the emphasis on the multidimensional characteristics of the processes of policy transfer, in general, and policy learning, in particular. Instead of the common design of examining the transfer across nations, they distinguish sectoral from national patterns of diffusion. This distinction is further grounded in a distinction between the National Pattern Approach and the Policy Sector Approach for comparative analysis (Levi-Faur, 2004). It is common practice in the study of politics, in general, and of diffusion processes, in particular, to treat the nation as the major or even the exclusive unit of analysis. The majority of these studies focus on decisions relating to a single sector (or issue) and are oblivious to the presence of significant sectoral variations. Jordana and Levi-Faur emphasize sectoral variations in the creation of regulatory agencies and therefore facilitate a more refined account of the process of regulatory reform. They believe in the need for this approach as in an earlier study; after controlling for a battery of variables, they found that sectoral diffusion was as strong as, or stronger than, country-level diffusion. Their chapter provides empirical support for the use of compound research designs, in general, and for combining the analysis of *sectoral* and *national* variations and similarities, in particular (Jordana and Levi-Faur, 2003). Using a qualitative comparative approach in the current chapter, they were able to point to the increasing importance of national patterns of diffusion in the 1990s compared with 1920–1978. They could also indicate the importance of the sectoral dimension in the study of the origins of policy change and policy transfers.

Part III of the book moves the discussion to social issues. Four different issues are discussed: tobacco control, children’s disability policy, urban policy, and healthcare. Donley Studlar’s chapter examines the extent of

policy learning in tobacco control instruments. Before the mid-1980s, only in a handful of countries was tobacco control policy the subject of government legislation and regulation, rather than voluntary agreements between the tobacco industry and the government, or sometimes only among tobacco companies themselves. This situation has changed dramatically in the past quarter century, especially in advanced industrial democracies. There has been an increase in political advocacy by antitobacco groups, including professional and voluntary health organizations. Governments have become more willing to take regulatory action to limit tobacco consumption, including taxation and litigation as well as education, sales, advertising measures, and restriction of smoking areas. The specific policies, as well as their degree of enforcement, vary by country, as does the amount of antitobacco activity conducted by NGOs. But governmental tobacco control activities have become so pervasive that they are now the subject of international initiatives and agreements, including air travel treaties, European Union directives, World Bank reports, United Nations conferences, and, most recently, the Framework Convention on Tobacco Control of the World Health Organization. Studlar's chapter discusses patterns of similarity and difference in adoption and impact of tobacco control instruments over time, utilizing three theoretical orientations: convergence, emulation, and globalization, applied to the adoption and impact of tobacco control policies since 1960 in 14 advanced industrial democracies.

There was a small flurry of activity in a few countries in the mid to late 1960s; more activity in the 1970s, especially in European countries; and a marked increase since the mid-1980s across most countries. The last coincided with the rise of antitobacco groups and political concern about the effects of second-hand smoke. The findings attest to a great deal of convergence in the instruments used for tobacco control, especially since the mid-1980s, but less in outcomes. Nevertheless, even among advanced industrial countries, considerable differences remain in the instruments employed to try to reduce tobacco use. Heretofore, the major agents of convergence were cross-border policy learning and emulation, including transmission of scientific information, epistemic communities, government-to-government contacts, and non-governmental organizations. The availability of the Internet and e-mail communication, of periodic meetings such as the World Conference on Tobacco or Health (held 12 times since 1967), and of the international journal *Tobacco Control* has facilitated international communication of "best practices" on this issue. Increased activity by the EU and the advent of the Framework Convention on Tobacco Control by the World Health Organization in 2003 indicate that these globalized antitobacco forces may now be better able to harmonize policies and counter the influence of the still-powerful transnational tobacco companies. In addition, these developments

indicate the potential for even greater policy learning in tobacco control among these countries.

Dana Lee Baker's chapter discusses the extent of convergence of children's disability policy among the United States, Canada, and Mexico. The political landscape of this policy arena seems to have characteristics similar to those of other policies studied in this book, namely, internationalization of policy activity and formalization and consolidation of new international norms. At the end of the 20th century, thousands of international organizations focused on problems of disability. Their goals vary, with a marked divide between organizations of the disabled (which tend to be rights-based and constructivist in approach) and organizations for the disabled (which tend to be older organizations that are not generally led by individuals with disabilities). The most common goals of these organizations include the promotion of disability rights, civic education about disability, social networking for individuals with disabilities and their families, and promotion and advocacy of disability services. This activity may well lead to the creation of global norms about what is disability and how governments should deal with it. One indication of this process is an expression of intent by 92 governments in 1994 to improve opportunities for children and youth with disabilities through inclusive education. This intention was formalized in the United Nations Salamanca Statement on the Education of All Disabled Children.

Although the concept of disability has become relatively transcendent and universal, the person described as disabled varies greatly across national and social contexts. Still, it is possible to identify a "paradigm shift" in this regard, and with it, new demands are placed on the social and political agenda of governments all over the world. The new paradigms tell governments how to deal with this constituency of disabilities as well, and at the same time inform the organizations for the disabled and of the disabled how to best define their interest, goals, and strategies. Baker examines the change and its limits through a study of three cases: Mexico and the United States, where the issue is dealt with at the federal level, and Canada, where it is under the authority of the provinces. In all three cases, she identifies convergence of national perceptions as to what disability means and how this change in meaning reflects on policies on disabled children. At one level, there are good reasons for optimism. Material prosperity and advanced technological capabilities have dramatically decreased the percentage of jobs that cannot be adapted to accommodate disability. At another level, different degrees of prosperity and various measures of awareness of the problems of disabled children limit the pace of policy transfers.

Arie Hershovich's chapter on urban policy concludes the social part of the book by looking at the challenges for urban policy makers. If the

key actors in the process of policy learning and policy transfer so far have been governments, international organizations, and nongovernmental organization, Hershcovich introduces another dimension into the analysis. In his formulation, the process should be understood from the viewpoint of urban policy makers, and more generally by the existence of an “urban policy regime.” Cities are key players in the globalization process because they are the “gateways” through which the worldwide exchange of goods, capital, information, and people actually occurs. Some cities have become “global cities”—nodes of wealth and control with a global reach in the emerging global system. In others, globalization has brought profound changes in their economic and social structures. Although some observers claim that, before the tide of globalization, a city’s fate is determined by forces beyond the reach of local politics, Hershcovich suggests that the city’s ability to cope largely depends on its urban regime. This consists of a set of official and unofficial arrangements whereby public and private organizations initiate and shape policies that determine the extent of adaptation to, or learn, the changing conditions of globalization. The footloose nature of global capital has caused policy makers to try to enhance their city’s competitiveness with an increasingly entrepreneurial pattern of policy formation, in order to create a more “business-friendly” environment. Globalization has induced changes that now challenge the democratic nature of urban regimes: a growing number of underprivileged immigrant communities, on one hand, and elitist-gated communities, on the other hand, have formed separate frameworks for the provision of local social services. These communities withdraw from political participation and threaten either to render obsolete the traditional institutions of representation and accountability or to have them taken hostage by a “growth coalition” of politicians, real estate developers, and businessmen. The urban regimes are increasingly embedded in global regimes and increasingly open to policies and ideas from other parts of the world. Large cities, whether global or “going global,” are becoming ever more a part of the global network of international organizations, supranational alliances, multinational companies, financial institutions, and so on. In this way, a city’s wealth depends increasingly on the flow of people, goods, capital, and ideas through this network, and less on state policy. Local governments are becoming part of the global network; they are no longer satisfied with the role of national government subcontractor, and this diminishes the role of the state, to some extent.

This part of the book concludes with Hans Vollaard’s chapter on healthcare and territoriality in an era of globalization. Vollaard examines the conditions that challenge the current regime of health provision and the reaction of the established actors to these challenges in one EU member state, The Netherlands. The current healthcare regime is based on solidarity. This

can only be sustained in closed national communities that restrict entry and exit. Without restrictions on entry or exit, no one could be coerced to contribute to cover the costs of the benefits and services distributed, or be restrained from consuming them. Free movement within the EU, especially the enlarged EU, will challenge the financial sustainability and the efficient planning and provision of welfare. For example, healthcare systems may face the departure of affluent contributors as well as protests by those left behind against further cuts to health services, and an increasing inflow of health users who are not nationals. Notwithstanding these risks, European states have experimented with cross-border healthcare within the framework of European integration. Policy learning is taking place in the setting of this new situation. Experiments involving the more efficient use of health facilities were introduced in border areas to learn about cross-border patient mobility. Instances of these experiments along The Netherlands' borders show that the Dutch health authorities have adopted a cautious approach to prevent any disturbance of their system's financial sustainability and organization, despite limited patient mobility. Dutch health authorities and private actors involved have sought to control cross-border healthcare by extending the contracting system between health providers and insurers across the borders. With the continuation of dissatisfaction about waiting lists, and growth of familiarity with a foreign healthcare system—the main motives for seeking cross-border healthcare, the Dutch healthcare state still faces challenges to its sustainability.

Patient mobility, namely uncontrolled entry and exit, may eventually result in the restructuring of the territorial healthcare states and in another surge of extensive policy learning across the EU member states. The problem, however, goes beyond functional requirement of more effective healthcare provisions. Citizens' dissatisfaction poses a direct challenge to states' legitimacy. The solution might be through keeping exit and voice at bay by fostering national loyalty, or by avoiding further loss of legitimacy by devolving responsibility to the market, Europe, or regions. States have to cope with the destabilizing effects of cross-border healthcare themselves by restricting exits again or sharing the financial burden on the European level. So far, few voices have been heard favoring European cooperation between healthcare states as patient mobility is still fairly limited and heavily supervised by states' health authorities. Depending on health users' familiarity and dissatisfaction with other systems, EU-imposed exits may initially loosen the congruence of states' territories, health consumption, and healthcare systems within the EU territory. Nevertheless, stimulation of regional or national loyalty to restrict exit and voice, and cross-border and cross-level coordination among subnational, national, and European health authorities to sustain and improve healthcare provision, may keep the territorial principle in the EU area alive.

Part IV of the book examines policy transfers across national administration centering on three issues: human resource management in Latin America, anticorruption policies led by international organizations, and the diffusion of adversarial legalism from the United States to Europe. Carles Ramió and Miquel Salvador's chapter on human resource management in Latin America's public administration offers an account of the impact of new best practices in public management and the difficulties faced by countries dealing with it (characterized by a low degree of institutionalization). These authors show how certain modernization paradigms and operative instruments impede countries from taking advantage of their potential to improve public management by failing to consider prevailing institutions. Conceiving of the civil service as an institution, with its integrated and self-reinforcing components, the administrative reform initiatives could be defined as waves created by international pressures, with different degrees of compatibility with the countries' civil service systems. Important similarities have been detected also in the content of modernization programs and the strategies followed by governments. Both are good examples of the institutional dissemination processes, through isomorphism dynamics (mainly mimetic and coercive), and both show the formal impact of globalization dynamics and the influence of certain actors, such as international agencies.

Yet despite some success in downsizing the civil service, the continuity of internal civil service dynamics must be interpreted as the institution's capacity to resist and absorb pressures to reform. The instability of Latin American political and administrative systems, as a major feature of the prevailing civil service institution, makes it easy to introduce new "rules of the game" into human resource management policies and practices, but makes it very difficult to consolidate them. With these institutions, Latin American civil service systems become relatively open to globalization processes in terms of incorporating new management practices and instruments; the hard part is to consolidate these exogenous and out-of-context contributions in order to change the rules of the game. Globalization has created a multinational space occupied by a host of agents that promote certain institutions. This multinational space should theoretically have the virtue of generating rich learning systems that will encourage institutional development in countries in regions such as Latin America. In practice, the result is the exact opposite: a closed technocratic learning system that feeds on itself outside the context of the countries' political, social, and economic realities. There is no real institutional learning dynamics, but a process of reaffirmation of a particular orientation that is conceptually armor-plated and gradually distances itself from the institutional realities it sets out to improve or resolve. But if the globalization of public management is not capable of coexisting with the specific political and social instruments of the region, it is unlikely to

generate institutional learning mechanisms that combine the global and local dimensions, which are the keys to fostering these countries' institutional development.

Bryane Michael's chapter on the globalization of anticorruption policies identifies the emergence by the late 1990s of global anticorruption policies and practices. Although much has been written, he argues, on the diffusion of policy lessons, the role of such diffusion on particular projects holds particular interest. The diffusion of anticorruption policy and practices highlights concretely the mechanisms and agencies responsible for cross-national policy learning and implementation. He suggests that theories of policy diffusion fall into roughly two groups: organization-led and institution-led perspectives. In the organization-led view, key organizations—such as the International Monetary Fund, the World Trade Organization, the Organization for Economic Cooperation and Development, or the World Bank—are responsible for the transfer of policy. The institution-led view of policy diffusion focuses more on the systemic dynamics of the policy diffusion process—with policy knowledge existing “out there” as norms, cultural institutions, or “mental models” that determine how agents propagate and respond to policies. Both views of policy knowledge ignore the intrinsic and useful value of policy knowledge. If policy has some intrinsic value (it is used more or less effectively for some purpose), it can and should be managed. Policy diffusion represents a contribution to a stock of knowledge, with each lesson building on the previous one. A policy knowledge management perspective offers a “mesolevel” between organization-led and institution-led perspectives by showing how such policies are “operationalized” with concrete projects by concrete project managers.

In the “first wave” of anticorruption activity (starting in the early 1990s), anticorruption policies and projects focused on “awareness raising” through action plans and guidelines that were narrow in focus—representing the simple organizational and institutional views of policy diffusion. In the second wave, anticorruption policy increased based on knowledge management. The goal for anticorruption in this second stage is to move beyond copied codified knowledge to build-up institutions for knowledge pooling and the creation of tacit knowledge. Two questions need to be addressed in organizing for optimal anticorruption knowledge creation. First, does the project use codified or tacit knowledge? Second, is the knowledge applicable at the global or local level? Depending on the answers, anticorruption policy diffusion can (and should) consist of principles or discipline-based models, discipline-specific know-how (technical applied knowledge), best practices, and “local knowledge” or personalized training. To illustrate the issues, applications to anticorruption network design, investigative journalism training, and parliamentarian training are discussed in the chapter.

R. Daniel Kelemen's chapter on the diffusion of adversarial legalism discusses one of the neglected dimensions of policy transfers. Keleman argues that the Europeanization of policy making encourages a shift in regulatory style across EU member states toward a more adversarial, legalistic approach, similar to that found in the United States. Although EU leaders routinely express their commitment to the adoption of flexible, informal policy instruments at the EU level, the impact of such approaches has been overshadowed by the less discussed but more pervasive spread of transparent, legalistic, and adversarial approaches to regulation across a number of policy areas. The spread of adversarial legalism in the EU is not a product of the most common explanations for policy diffusion, such as policy emulation and regulatory competition. Rather, adversarial legalism is spreading primarily in response to political pressures generated by the EU's fragmented institutional structure and functional pressures generated by economic liberalization in the EU context.

Part V of the book examines global change in yet another sphere: how democratic ideas about participation in public policy are transferred from one polity to another, and how a new policy norm in this sphere is globally consolidated. It also discusses the difficulties involved in the actual implementation of this norm. Séamus O Tuama's chapter on public policy and public participation in the knowledge society examines the prospects for decision making in science and technology policies. The author reminds us that policy transfer is the transfer of knowledge, and that in this process—if we are to follow demands of civic republicanism—the agents should be the citizens. The purpose of the chapter is to suggest a model of democratic engagement in issues of science and technology. Concerns about the governance of science and technology increased considerably during the second half of the 20th century, and they continue today. Addressing these concerns is a challenge to democratic theory and practices. As science and technology produce increasingly complex dilemmas, on one hand, and risks and opportunities, on the other hand, they present a challenge to the legitimacy of democratic processes. Expert-centered policy process may make citizens' engagement a redundant part of the policy process. Yet why do science and technology need to be democratically steered? Because the fundamental issue is our expectations of the process of government itself. If we value efficiency more than other values, we might not require science and technology to be democratically steered. But if we value democracy at least as much as efficiency, we should understand that it holds little meaning unless it allows ordinary people to have a say over the most far-reaching developments that impact on their own lives, the lives of future generations, the human species itself, and all life on this planet. It should follow that policy transfers across nations should be examined not only against the gains in efficiency that

they provide, but also by the criteria of how they constrain or stimulate citizens' engagement in the policy process.

Deborah F. Shmueli and Pnina O. Plaut's chapter, "Translating Public Participation into Planning Policy," examines the difficulties involved in the implementations of policy learning. Their point of departure is the observation that public participation, transparency, consensus, and collaboration are widely embraced planning dogmas within highly developed countries of the world. Most planners and behavioral scientists are dedicated to the value of collaboration and participation, whereas lawmakers and administrators are wary but reluctant to declare themselves publicly opposed to them. The chapter reviews trends—both traditional and current state of the art—in the impact of citizen participation mechanisms on policy making over three decades. The background experience is drawn from North America, Europe, and Australia, whereas the empirical cases are taken from Israel's planning arena. The findings illustrate the obstacles that face attempts to transfer the collaborative dogma of American and European planners to the Israeli scene. To date, Israel has failed to embrace the participatory planning process wholeheartedly. The processes it has recently emulated are those practiced in the early years of participation in Western societies, which in recent years have been replaced by more collaborative approaches. Israel's planning policy makers and bureaucrats have, for the most part, regarded collaboration, transparency, and shared decision making as impediments to rational, technical planning models. They continue to follow statutory laws and structures that are top-down and narrow, pursuing implementation of the planning process in ways that pay only lip service to interests of many stakeholders. However, the cases also offer a note of optimism, indicating initial efforts to emulate participatory processes that may lead to collaborative and consensus-building structures adapted to local and regional planning policies.

Ian Bartle's chapter on political participation and market citizenship explores the relationship between economic integration and the development of markets and pressures for political participation and citizenship with particular focus on the EU. Markets are extending their reach into more and more areas of the economy; globalization and regional integration are distinctive trends of our time. The market is also increasingly encroaching on government and public administration. At the same time, and apparently paradoxically, citizenship and participation, together with notions of transnational and global civil society, have become prominent political themes. Bartle's chapter draws on work which suggests that markets and civil society are complementary and mutually dependent, and that although the rise of the market may threaten some forms of participation, new possibilities of political participation have arisen.

From evidence primarily in the EU, it is argued that spillover pressures exist from new markets that can create pressures for political participation and citizenship. In the EU, the limited idea of “market citizenship” has developed into something resembling political citizenship. In the emerging single European market, pressures for participation have led to the proposals in the EU’s White Paper on Governance for the increased participation of “civil society.” Similar, although much more inchoate, processes are evident in other world regions and in the systems of global governance. Comparison of different transnational arenas indicates that markets per se do not explain the forms of developing participation. Political and institutional contexts are necessary to understand the ways in which the pressures are manifested and citizenship and participation are realized.

The effectiveness of new forms of transnational political participation is, however, somewhat limited. In the most developed transnational arena, the EU, proposals associated with the White Paper, such as incorporating stakeholders in coregulation arrangements and extending the role of the Economic and Social Committee, do not significantly enhance participation, although ideas such as better consultation offer more promise. In other much less institutionalized regions, participation is correspondingly more limited. The problems of participatory governance are, however, not limited to the transnational level and, as within nations, significant improvements may require an “authentic discourse” between citizens and the policy elite. This may exist within social subgroups, but transferring it to larger national polities entails great difficulty. If transferring the discourse to larger and highly institutionalized national polities is hard, transferring it to less institutionalized transnational arenas is a mammoth task.

All in all, these chapters point to the increasing importance of policy transfer and diffusion within transitional policy communities in the shaping of national and international policies. In doing so, they contribute to a better understanding of the process of policy change and governance in a global polity by improving cross-cultural collaboration to maximize the benefits of knowledge and experience from other polities and sectors (see also Vigoda-Gadot, 2003b).

NOTES

1. Cf. “In scholarship on institutional change, imitation has become nearly invisible, relegated to the status of curiosity mentioned in historical footnotes or superficial prescriptive asides. I believe that imitation should in fact be acknowledged as crucial to many cases of institutional change. Surely, the idea that the fortunes of societies have no influence on choices beyond their own borders is implausible” (Jacoby, 2000, p. 2).

2. The pioneering work on diffusion research across the American states (Walker 1969; Gray 1973) is an exception. It is only with the policy learning/policy transfer literature of the 1990s that the issue became again a major focus of research in the discipline.
3. This does not mean that all diffusion analyses pay attention to the contagious aspects of the process.
4. It might well be that we all wear jeans to work, but we will make an effort to distinguish ourselves from others either by the sort of jeans we use or by adding accessories to them. We want to be similar to others and, at the same time, differ.

REFERENCES

- Barker, E. (1944). *The Development of Public Services in Western Europe*. London: Oxford University Press, pp. 1660–1930.
- Bennett, C. (1991). What is policy convergence and what causes it? *Br. J. Polit. Sci.* 21(2):215–233.
- Braithwaite, J., Drahos, P. (2000). *Global Business Regulation*. Cambridge: Cambridge University Press.
- Dolowitz, D., Marsh, D. (1996). Who learns what from whom: A review of the policy transfer literature. *Polit. Stud.* 44(2):343–357.
- Dolowitz, D., Marsh, D. (2000). Learning from abroad: The role of policy transfer in contemporary policy-making. *Governance* 13(1):5–24.
- Finnemore, M. (1996). *National Interests in International Society*. Ithaca, NY: Cornell University Press.
- Gray, V. (1973). Innovation in the States: A diffusion study. *Am. Polit. Sci. Rev.* 67(4):1174–1185.
- Haas, M. P. (1992). Introduction: Epistemic communities and international policy coordination. *Int. Organ.* 46:1–36.
- Hall, A. P. (1993). Policy paradigms, social learning and the state. *Comp. Polit.* 25:275–296.
- Jacoby, W. (2000). *Imitation and Politics: Redesigning Modern Germany*. Ithaca: Cornell University Press.
- Jordana, J., Levi-Faur, D. (2003). *The Rise of the Regulatory State in Latin America*. Presented at the American Political Science Association Annual Meeting, Philadelphia, August 28–31.
- Levi-Faur, D. (2002). *Herding Towards a New Convention: On Herds, Shepherds, and Lost Sheep in the Liberalization of the Telecommunications and Electricity Industries*. Politics Papers Series. Nuffield College, University of Oxford, W6.
- Levi-Faur, D. (2004). Comparative research design in the study of regulation: How to increase the number of cases without compromising the strengths of case-oriented analysis. In: Jacint, J., Levi-Faur, D., eds. *The Politics of Regulation*. Manchester: Elgar and the Centre on Regulation and Competition, University of Manchester, pp. 177–199.
- Majone, G. (1996). Public policy and administration: Ideas, interests and institutions.

- In: Goodin, E. R., Klingemann, H. -D., eds. *A New Handbook of Political Science*. Oxford: Oxford University Press, pp. 610–627.
- Marsh, D., Smith, J.- A. N. (2004). *Globalization, the Discourse of Globalization and the Hollowing Out of the Nation State*. Unpublished manuscript.
- Meseguer, C. (2003). *The Diffusion of Privatisation in Industrial and Latin American Countries: What Role for Learning?* Prepared for delivery at the workshop on the Internationalization of Regulatory Reforms: The Interaction of Policy Learning and Policy Emulation in Diffusion Processes, Berkeley, April 24–25.
- Meyer, J. W., Boli, J., Thomas, G. M., Ramirez, F. O. (1997). World society and the nation-state. *Am. J. Sociol.* 103:144–181.
- Nowrot, K. (1999). Legal consequences of globalization: The status of non-governmental organizations under international law. *Indiana J. Glob. Leg. Stud.* 6(2):579–645.
- Ohame, K. (1995). *The End of the Nation State*. London: Collins.
- Peters, B. G. (1997). Policy transfers between governments: The case of administrative reforms. *West Eur. Polit.* 1.20(4):71–88.
- Rhodes, R. A. W. (1997). *Understanding Governance*. Buckingham: Open University Press.
- Rhodes, R. A. W., Marsh, D. (1992). New directions in the study of policy networks. *Eur. J. Polit. Res.* 21:181–205.
- Rogers, M. E. (1995). *The Diffusion of Innovations*. 5th ed. New York: Free Press.
- Rose, R. (1993). *Lesson Drawing in Public Policy*. New Jersey: Chatham House.
- Stone, D. (2003). The “knowledge bank” and the global development network. *Glob. Gov.* 9(1):43–61.
- Strang, D. (1991). Adding social structure to diffusion models: An event-history framework. *Sociol. Methods Res.* 19:324–353.
- Strange, S. (1996). *Retreat of the State*. Cambridge: Cambridge University Press.
- Tarde de, G. (1903). *The Laws of Imitation*. New York: H. Holt and Company.
- van Waarden, F. (1992). Dimension and types of policy networks. *Eur. J. Polit. Res.* 21:29–52.
- Vigoda, E. (2002). *Public Administration: An Interdisciplinary Critical Analysis*. New York: Marcel Decker.
- Vigoda, E. (2003a). New public management. In: Rabin, J., ed. *Encyclopedia of Public Administration and Public Policy*. New York: Marcel Dekker, pp. 812–816.
- Vigoda-Gadot, E. (2003b). *Managing Collaboration in Public Administration: Governance, Businesses, and Citizens in the Service of Modern Society*. Westport, CT: Praeger.
- Walker, J. (1969). The diffusion of innovation among American states. *Am. Polit. Sci. Rev.* 63:880–899.
- Weiss, L., ed. (2003). *States in the Global Economy: Bringing Domestic Institutions Back*. Cambridge: Cambridge University Press.

2

Bring Back the States

Correcting for the Omissions of Globalization

David P. Dolowitz

*School of Politics and Communication Studies, University of Liverpool,
Liverpool, UK*

I. INTRODUCTION

Globalization is commonly described as the processes and forces leading to an ever-decreasing capacity of the nation state to govern within its territorial boundaries. The causes for the state's loss of its governing abilities range from the transnational nature of issues (such as environmental degradation and spread of terrorism) to the speed and intensity of financial and capital flows. The combined global nature of issues, and the ease and speed with which finance and capital flow in and out of a national market ensure that governance in one nation is almost impossible, as governments are judged by their attractiveness to international actors, not by indigenous policy success or failure. The problem faced by policy makers is that although they might have been accountable to indigenous forces in the past for their social and economic policies, international actors are not accountable or loyal to individual states but they can punish any state they perceive as acting against their needs or against their desires. As such, even traditional welfare state policies have had to be rethought to ensure that the international community perceives national socio-economic paradigms as being both safe and in their particular interests.

The problem with this is threefold. First, it is clear that the nation state has continued to be an important—if not the predominant—entity in international governance. Second, few within the globalization debate acknowledge, let alone discuss, the importance of the state for the very development and survival of “globalization” (for exceptions, see Clark, 1999; Dunning,

1997; Gilpin, 2001; Pierre, 2000). Finally, and importantly for this chapter, few have discussed the processes inherent in globalization in light of the fact that any state can utilize these processes to strengthen its own position in relation to domestic and international governance. This is particularly salient when a group of states agrees to pool sovereignty under the umbrella of an international governing body (IGB), such as the European Union (EU). It is arguable that in these instances, although some national sovereignty is lost to the IGB, member nations actually strengthen their relative position in relation to the both the processes and forces of globalization.

In light of the aforementioned omissions, it will be argued that it is possible to view the processes and mechanisms driving the globalization of politics, economics, and cultures as providing the means (and opportunity) to learn from other political systems. It is through these processes and opportunities that states can observe how other political systems have responded to, and defended themselves against, the undesirable effects of globalization and, where desirable, transfer information and policies into their own governing regimes. It is possible to illustrate this by examining how the processes and mechanisms associated with globalization and governance mix with the literature associated with policy transfer (Bennett, 1991a; Dolowitz and Marsh, 1996; Rose, 1993) to create a very different picture of the globalization process from the one traditionally presented. By linking the processes involved in policy transfer to those associated with globalization, it is possible to demonstrate how political systems can learn from each other to:

- Enhance or reduce the international effects of globalization
- Expand or reduce the impact of globalization on individual political systems
- Use the rhetorics of globalization to justify actions based on “foreign” actions and ideas
- Utilize institutions such as the EU, to harness the forces of globalization to their advantage
- Use IGBs to weaken the impact of globalization on member states.

II. LEARNING, HERDING, AND UNINFORMED TRANSFER

Before proceeding further, it is necessary to note that when discussing “learning” as part of the policy transfer process, it is not being suggestive that every instance of policy transfer involves a process where the learner gains deeper understanding, comprehension, or knowledge of the item under investigation, the originating political system, or even its own socio-political system. Rather, it is likely that many instances of policy transfer are linked to processes associated with herding (Levi-Faur, 2003), fear (Way, 2003), and

symbolic movement (Gilardi, 2003). For example, there is evidence that if an international order appears to be developing around a common norm or procedure, nations not part of the order will begin “transferring” these norms or procedures once a “tipping point” (or critical mass of states) is reached, and will begin adopting similar policies without undertaking a Bayesian analysis of what they are developing or transferring (Nelson and Morrissey, 2003). Similarly, uninformed policy transfer can be driven by the fear of being left behind one’s primary competitors. The ideas here relate to the fact that many policy makers report extreme pressures to remain “ahead of the game” in relation to their primary social and economic competitors (regardless of how different the two systems may be). Under these conditions, many policy makers acknowledge that they do borrow from the nations they perceived as being on top. By doing so, they argue that it is possible to ensure that their nation is not (or is not perceived to be) lagging behind important international actors. The significance of this discussion is that all of these processes involve policy transfer and all of them have important implications for the global spread of ideas and policies. For instance, if one views policy transfer as a result of fear or a herding instinct, it is likely that the process will lead to poor or uncritical analysis of borrowed policies. Thus, if global forces indiscriminately encourage nations to become more alike, it is likely that the long-term impact of globalization will lead to unpleasant and unexpected political, social, and policy consequences.*

III. THE GLOBALIZATION DEBATE IN CONTEXT

Although there are dissenters, it is widely accepted that the industrialized world has entered an intensive period of globalization, and that this is eroding the traditional role, authority and powers of the nation state. At one extreme of this debate are authors such as Horsman and Marshall (1994), Ohmae (1994, 1995), and Rodrick (1997), who argue that the state has been relegated to a secondary governing position behind multinational corporations (due to their reliance on international trade for economic success) and international

* It should be noted that, simply because nations become more alike, they do not provide evidence of policy transfer. All that convergence indicates is that a common exogenous force might be acting on all states, requiring similar responses from the entire global community. Equally, it is possible that different nations are experiencing similar internal forces, which require nations to undertake similar responses. For policy transfer to occur, there must be evidence that one political system actively adopted or emulated the policies of another political system; it is not enough to argue that because two or more nations are alike, policy transfer occurred.

capital and financial operators who have the power to transfer resources out of a state with a single key stroke. In consequence, not only have states lost control over their capital and financial markets, but they have been forced to eliminate employment and welfare protections and to open endogenous workforces and assets to the influence and efficiencies of the global market. As such, it is argued that nations have relinquished true authority to international governing forces.

On the other side of the debate, authors such as Clark (1999), Hirst and Thompson (1996), and Rugman (2000) argue that there is little new in the realms of international capital and financial markets. In between these extreme are authors who, although accepting that there have been real changes to the global economy and business practices, tend to be skeptical of the worst dangers discussed by the proponents of globalization (Berger and Dore, 1996; Boyer and Drache, 1996). Despite adopting a more critical stance on the effects of globalization on the nation state, no one on this side of the debate examines the possibility that states might use the processes associated with globalization to strengthen themselves and the international state system.

Before examining the linkage between globalization and policy transfer, a concise definition of globalization is required. Although this may appear easy, it is not, as no definition of globalization is universally accepted and most definitions rely on general themes rather than expressly designated components (see Giddens, 1991; Robertson, 1992; Sassen, 1996; Strange, 1996). Despite this, for the purposes of this chapter, globalization will be defined as a “complex web of interconnectedness through which life is increasingly shaped by decisions or events taken at a distance” (Axford et al., 2002, p. 424), and as characterized by “the economic, political, and cultural processes through which the world is becoming more interconnected” (Heywood, 2002, p. 565).

There is a clear need to bring states back into the globalization equation. This chapter suggests that one way to do this is to adopt a policy transfer framework. This approach will indicate that states continue to be important political actors in the age of global politics. Indeed, it is only when the political side of the globalization equation is considered that a clear theoretical framework for the analysis of the globalization thesis can emerge. It is only when states are seen as important actors in their own right—importing what they “perceive” to be the “best practices,” “ideas,” policies, or what they perceive to be in their “best interest”—that the globalization literature can reintegrate national politics and practices into the governance equation.

To illustrate how policy transfer can expand our understanding of globalization, this chapter is organized around the following questions:

- What is policy transfer?
- Who transfers policy?

- Why policy transfer?
- What facilitates (restricts) policy transfer?

Policy making concerns lesson learning. This simple truth holds at every level of governance, whether it refers to conditions within a policy regime or between regimes and within a nation or between nations, or involves the interactions within a single policy-making institution or between institutions. As such, policy transfer (the process by which one political system's ideas and models are utilized in the development of another political system) is likely to be involved in many policy-making situations. Ironically, it is one of the core elements driving the globalization process telecommunication advances that has made international policy transfer more likely to occur today than at any point in history. In fact, due to these advances, policy transfer is more likely to occur even when no face-to-face interactions occur: all that is required is a moment of browsing the Internet or talking to someone via e-mail. Because of this, it is possible (and probable) that the ideas being generated and implemented in one political system will be used by policy makers as "laboratories" in the development of policy solutions in their own system, even if the lesson drawn is not to follow what was done in the modelled system.

It should be clear that part of the explanation as to why policy transfer helps bring the state back into the globalization equation is that there is an almost limitless diversity regarding:

- What is and can be transferred (from complex institutions to simple ideas)
- The strategies and processes involved in transferring information from one setting to another (from simple looking to complex combinations of events and agents)
- Who becomes engaged in the transfer process
- When individuals become involved in the process
- What motivates individuals to engage in policy transfer.

Moreover, any consideration of the mechanisms involved in globalization reveals that many of the same processes, institutions, and individuals are involved in policy transfer. As such, it is as easy to discuss how the processes of globalization are leading to the empowerment of the state as it is to see them as leading to the loss of state power.

IV. BRING BACK THE ACTORS

Within the globalization literature, there is a growing recognition that national actors do influence the processes of globalization and policy making. However, there is still a woeful lack of empirical study on the role these actors

play in establishing the conditions necessary for the expansion (or contraction) of the global market, including the market for ideas. Nor is there recognition that the same actors, who are “constrained” by these global markets, might be using the very mechanisms driving globalization to strengthen their nation’s international position. By examining who is involved in the policy transfer process, it should be possible to begin redressing this deficiency. Because, although there is a growing awareness that globalization *depends* on the nation state, not just global finance and corporations, there is still little empirical evidence concerning the role of public and private actors in the continuation and spread of the rhetorics and processes of globalization. The discussions that do occur tend to portray public officials as being captive to global pressures, having lost their ability to govern within their own territory. The policy transfer literature calls this into question. At a minimum, politicians set the acceptable parameters within their nations, and their values and beliefs provide the primary direction and content for their nation’s policy regime. In many areas, including business and finance, it is only after governing officials have provided their endorsement for a given policy approach that the approach will be accepted as legitimate and available for adoption. By neglecting the role of “actors,” the globalization literature neglects the importance of public power and perceptions in creating (or dismantling) the environment necessary to develop and maintain the policy terrain necessary for their very arguments. Without actors ensuring the rules of law, political stability, and an advantageous economic environment, both the rhetorics and reality of globalization will collapse.

Building on this, studies of globalization will be greatly strengthened by examining not only which actors engage in policy transfer and when they become involved in the policy-making process, but also what networks (broadly defined) they operate within, how they use these networks to gain information, how they eliminate “unacceptable” alternatives, why they look for the information they do, where within the network ideas are originating, and how the network operates to shape these lessons (see Sabatier, 1988; Sabatier and Jenkins-Smith, 1993; Marsh and Rhodes, 1998). By way of illustration, if a group of states, operating under the umbrella structures of an IGB, look at each other for ideas and policies, it is possible that they will be able to coordinate how the forces and processes of globalization impact upon them. The idea is that as a block of nations they should be capable of pooling sovereignty and power to such a degree that even financial and capital markets are not capable of controlling any individual nation working in unison with its IGB partners.

On the opposite side, systems that choose to open up to the forces of globalization may be acting on the motivations of particular actors within the state, rather than any real (or perceived) threat from the global market.

Similarly, when proglobalization actors depart or are replaced, their replacements may be less inclined to allow the forces of globalization to dominate their policy paradigm and may actively look for models designed to reduce the impact of the forces previously used to justify internal reforms, which lead to a decline in the nation's governing authority. In other words, the removal of particularly influential actors driving a given policy-making system from the policy-making equation could dramatically upset the entire globalization equation operating within the state or policy-making system under consideration.

V. WHERE IS THE MOTIVATION?

A crucial component of policy transfer and globalization is the factors motivating actors (broadly defined) to undertake an examination of a "foreign" model(s). To understand the importance of motivation, it is first necessary to acknowledge that it is often the reason driving actors to engage in policy transfer that shapes where they look for lessons, what lessons they find, and how they use the information. By way of illustration, any state wishing to manage its own decisions relating to welfare policy can utilize information gathered from political systems and regimes where the commitment and structure of the welfare state have changed little in the face of global pressures. These states provide counterfactuals to arguments that extensive and/or generous welfare state policies are impossible given the imperatives of the global market. Because these countries exist, proponents of state services can use them to provide the evidence needed to support their arguments that states can retain power to govern the politics and policies of their welfare systems. Similarly, the models adopted and used by these states can (and are) used as alternatives to the models of welfare state retrenchment being forwarded by proponents of the globalization thesis. These points were made by a number of EU officials who acknowledged that during the 1980s and early 1990s, to counter neoliberal arguments (and models) being forwarded by the UK, many community officials turned to Nordic block nations for policy inspiration and ideas. In fact, this also held true among the Nordic states, which tended to look at each other for ideas and inspirations, rather than more liberal or corporatist nations.*

Schematically (Figure 1), motivations can range from attempts to justify an action or decision that has already been made (voluntarily by the actor or

* Information gathered during interviews conducted in Brussels and Sweden between January 1, 2002 to July 13, 2002.

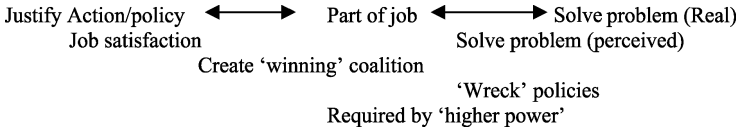


Figure 1 What motivates policy transfer?

institution in question, or coercively by those acting above the actor or institution in question), to utilizing a foreign model or idea to solve a perceived or “real” policy problem or failure.*

As illustrated in Figure 1, policy transfer can be motivated by a range of reasons and, in any single instance, there may be more than one reason driving actors to engage in the process. Similarly, once a lesson has been drawn, it can be used in more than one way, including ways in which the original model was not being used or was not designed for. For example, although policy makers can learn from the experience of others to help direct their policy-making decisions, they can also use the same information to politicize the policy-making arena to ensure that their model is the “preferred model” (or that at a minimum it is capable of wrecking the “preferred” model). This can be illustrated most clearly during the heyday of the neoliberal movement of the 1980s and 1990s. At this time, many European and Australasian nations utilized Anglo-American economic and business models to reform their political and social systems.[†] At the same time, they used the rhetorics of globalization (and the example that other nations were undertaking these very reforms) to justify their need to make similar alterations, regardless of the reality of the situation. In contrast, during the late 1990s to early 21st century, those opposed to the changes being made in the name of globalization began using policy transfer to help counter many of these changes, borrowing and spreading ideas loosely contained in the programs and rhetorics associated with the “third way.” In time, it is theoretically possible that this approach could alter the path of market deregulation in much the same way that the Clinton and Blair Administrations began undoing the worst policies and programs developed during the 1980s to early 1990s (Dolowitz, 2004).

* This continuum is for analytical purposes. As such, there are more reasons motivating policy transfer than listed, the distance between any two points is not equidistant, and the categories listed can be moved about and overlap in any single instance of policy transfer. This applies to the information presented in Figure 2.

[†] These transfers were multidirectional—particularly in relation to New Zealand, Australia, and the UK.

Discussing perceptual imperatives as being the driving force behind policy transfer—particularly when the perception is that transfer must be engaged in to ensure one’s political or situational position of influence—does not however indicate that the perception has anything to do with the reality of an existing situation. All that has to occur is for political actors to believe that transfer is in their best interests. Similarly, when considering motivations lying toward the coercive end of the continuum, it is often the case that the power “requiring” the actor(s) to engage in policy transfer does not exist within the indigenous political system. Rather, pressures to engage in transfer often result from the decisions made in other states, at the international level, or from obligations undertaken when a nation accepts the rules governing treaties and memberships within larger organizations. For instance, any member state of the European Union can be “obligated” to enter a policy transfer mode of decision making when a new directive or court ruling is passed. Similarly, positive and negative externalities emerging out of the decisions made by one state can force another state to look around for ways to take advantage of, or block, the worst effects of these externalities.

Relating this back to globalization, it can be argued that one of the reasons that international organizations develop and publish benchmarks and league tables is to place political leaders and national political systems under pressure to engage in policy transfer. In this regard, it could be argued that rather than weakening the state, benchmarking exercises and league tables offer states the means of strengthening their internal and international position (even if this relates to nothing more than international prestige). The argument is that states can borrow from the political systems or areas listed at the top of the table in any area where they want to compete with the leaders. Similarly, if they want to promote their own paradigm, they can work at developing benchmarks based on their existing practices.

This discussion highlights an important aspect of motivations: they lie on a continuum running from those that are mostly (or entirely) voluntary in nature, to those of a more (or entirely) coercive character. This distinction can help correct a failure of the globalization literature, which tends to imply that globalization forces lie almost exclusively at the coercive end of the continuum, when in reality, empirical research has likely shown (and is likely to show) that a much greater mix of motivations and causes exists.

When discussing motivations, it is also important to stress that definitions of problems and solutions are not uncontentious. Because of this, it is vitally important to ensure that the definitions being used to investigate the phenomena associated with globalization and policy transfer actually match those used by agents of change, particularly given that in politics: “Evidence is used in. . . highly selective ways. . . and [often] information about the effects of programs elsewhere enters debate. . . to justify prior positions” rather than to

inform the debate with new knowledge (Bennett, 1991b, p. 38). In this context, it is hard to deny that many western leaders have used the “logic” of globalization to justify restrictions on labor rights and trade unions even when the reality of the situation might have suggested other solutions or actions (Hirst and Thompson, 1996). Once the justification for the curtailment of labor rights was established through the logic of globalization, it was an easy next step to borrow the “best practices” of competitor systems, arguing that this was the only way to improve one’s global economic position.

In the same vein, how a lesson is used or portrayed often depends on the audience being addressed. For example, although the Thatcher and Major Governments admitted on many occasions that they drew lessons from the United States during parliamentary debates, they rarely admitted to the influence the American welfare-to-work system was casting on their thinking in public statements or press releases. Taking the opposite approach, the Blair Government has had no qualms about publicly admitting its links to the Clinton Administration to justify and shape some of its key alterations to Britain’s economic and social policy domains. The key has been to use the rhetorics and policies advocated (although often not implemented) by the Clinton Administration (based on endogenous growth) to curtail the most negative effects of globalization, while using globalization’s more positive aspects to improve Britain’s position in international political, economic, and idea markets.

Proponents of globalization go beyond its direct influence on states to argue that, although states might not be directly affected by the forces of globalization, “the *potential* for international movements of capital, in response to shifts in interest rates or *changing expectations* about exchange rates, can exert profound effects on national economic conditions and policies even if no capital movement actually takes place” (Keohane and Milner, 1996, p. 196). As discussed above, the perception (or threat) of capital and/or financial movements may have as profound an effect upon policy decisions as any actual globalization force. However, it is only by examining the processes and individuals involved in the transfer of ideas and policies around the globe will it be possible to distinguish the myth of globalization from the reality of specific types and processes of global convergence. By examining the motives of actors engaging in policy transfer, it should be possible to begin testing how important various elements of the globalization process are in the development of national policies.

VI. WHY SEARCH?

As important as actors and motivations, the ways in which actors search for lessons must not be neglected. As Figure 2 illustrates, actors can engage in

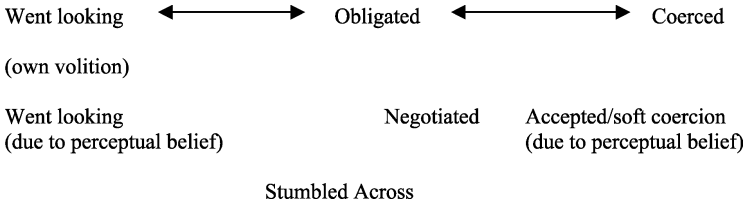


Figure 2 Why engage in policy transfer?

policy transfer out of a simple desire to find a new way of doing things to relieve the boredom associated with their current routines (as a bureau-shaping model would suggest), all the way to internationally imposed solutions being forced upon a nation against its wish.

One reason why it is necessary to examine the causes leading to policy transfer and/or globalization is that, often, the “why” question informs what is found, how it is interpreted, and how it utilized in the policy process. This is true regardless of whether the lesson has been sought (and used) to prevent the forces and processes of globalization from eliminating the ability of the state to govern itself, or whether it attaches itself to the forces of globalization to push administrators to go further down the road of internationally “agreed upon” policies and procedures, leading to the further opening of indigenous policy regimes to the dictates of the global community.

This noted, it should be stressed that outside the writings and beliefs of hard globalizers, when looking at Figure 2, it should be almost impossible, outside a situation of direct foreign control, that a nation, or even an IGB, could be totally coerced into policy transfer. Rather, most contemporary instances of coercive transfer are likely to fall somewhere in the middle of Figure 2. Additionally, when policy transfer is linked to globalization, it is likely that many instances will be linked to “perceptions” of the international order, and one’s place within it. Thus, states may voluntarily look for ideas, due to a perception that other political systems are doing things better, or states may look to a foreign idea because that they feel there is no other option in light of the global order. Similarly, often nations are obligated to undertake either “soft” or “hard” forms of policy transfer as part of their obligations as signatories to treaties, membership in international governing organizations (IGOs), or consequences of membership within an IGB, or conditions of joining an IGB. Taking the EU as a subconstellation of how globalization works, any country that is part of the EU might be obligated to implement a policy emerging out of the union policy process. However, within this process, when the policy is “sent down” to member states, there will often be room to learn how other countries (or even localities) are implementing the policy, or

to utilize information gathered during the processes leading to its passage at the EU level.

Finally, when thinking about this continuum, it should be stressed that different processes are likely to lead to different types of transfer and different problems in relation to guiding the item through the policy-making and implementation processes. For instance, if a system engages in policy transfer as a result of a coercive process, it is likely that the transfer will be less considered, with few (if any) secondary implications for the wider political and cultural systems considered. Similarly, if an item is brought into the regular legislative process voluntarily to improve the indigenous political system, the lesson is likely to be subjected to a process of Bayesian or semi-Bayesian examination and analysis as to how it will impact the existing political/cultural system. As a result, it is arguable that when a political system is forced to engage in transfer, it is highly probable that the consequences of the transfer will have unpredicted (and unpredictable) results.

The key is that within most situations of policy transfer falling outside some of the more coercive situations, if desired, policy makers can use lessons to reduce the adaptive costs associated with implementing the policy into an existing political system. However, within this process, one of the key problems facing those utilizing lessons is that if they do not utilize some form of Bayesian analysis, they tend to forget that the initial political system (probably) never considered the possibility that someone would borrow from it, or that if borrowed, the policy or idea might have secondary effects for both the borrower and the originating system. Similarly, no matter why or how a country begins engaging in policy transfer, when viewed in light of globalization, most nations are going to adapt any lesson or model that ensures that they incur the minimum adoption costs. As such, no matter how a policy or regime might be developing at the international level, once it reaches the nation state, there will be considerable room to adjust a model to fit the existing system as easily as possible, or shape the lesson so that it requires a minimum of changes to the existing political or cultural situation.

VII. HOW TO FIT LESSONS INTO AN EXISTING GOVERNING SYSTEM?

Regardless of how or why a political system decides to engage in policy transfer, it is important to consider what can or should be transferred, particularly when considered in light of the implications for national (or even global) governance. To this, figure 3 represents how a lesson can be used within a borrowing system.

As figure 3 illustrates while the continuum between copying a foreign model in total and using it to inspire an indigenously developed solution, or as



Figure 3 What to do with lessons.

a model as what not to do is fairly straightforward, the decisions made here are probably among the hardest actors face when engaging in policy transfer, especially when they perceive themselves as forced into it by the forces of globalization. Not only will any decision on how to utilize information influence its subsequent interaction with the existing political and cultural system at both the international and national levels, it will ultimately shape the ease and processes involved in guiding it through the policy-making processes. It is also important to stress that when examining the various items that can be transferred through, and in response to, the mechanisms supporting the processes of globalization, it should be remembered that although it is often not possible to copy anything outside of a specific technique or idea due to the structure of any given political system, there is an almost limitless mix of policies, ideas, technical solutions, programs, institutions, etc., which can be combined to form a workable approach within the constraints posed by the global and domestic institutional structures.

VIII. WHAT IS TRANSFERRED?

Given the above discussion on what can be transferred from one political system (even the “global” political system) to another, it is interesting to note that to date, few authors engaging in the globalization debate have analyzed the contradiction between the primary function of any state the development and implementation of effective and efficient public policies across the range of issues which seems to be continuing unabated, and the assertions that such functions are beyond the effective control of any state, aside from relatively minor issues. This neglect becomes even more problematic when it is realized that not only have states continued to successfully govern within areas deemed to be beyond their control, but states have retained enough authority and capacity to continue to perform the very functions necessary for the proliferation of the processes associated with globalization. In other words, without bringing the state back into the globalization debate, how can the forces of globalization survive? Without the state and its powers of policy making and enforcement, there is no nation for globalization to impact upon or operate within.

One explanation as to why and how states continue to survive despite the “debilitating” impact of globalization is that they are engaged in learning how

to survive. They are doing this by looking at how other political systems have succeeded. Thus, by examining the political processes involved in the spread of ideas and policies among political systems, it should be possible to begin integrating the role of the state in the processes underpinning globalization. A key to understanding this has been provided by Hobson (1997, p. 4), who argues that “states shape the economy and society for domestic (as well as international) reasons and that state action can be reduced neither to the interstate system nor to the domestic social structure.” To link this directly to policy transfer, it can be argued that rather than being passive in the face of globalization and accepting the loss of their sovereignty and capacity to govern, states can and do engage in policy learning, designed to take advantage of both domestic and international situations, to enhance their domestic and global position. Thus, instead of seeing the state as forced out of politics, by attaching policy transfer to globalization, academics can begin bringing the state back into the governing process by analyzing why, what, and how ideas, policies, and processes are being globalized, and what impact this has on states in the global environment. Clearly, at the interface between the international and the local, the state is ideally positioned to learn from both and, as such, act as the creator and mediator of the processes governing globalization.

In the process of learning, the most important lessons states can transfer from other political systems are “successful” public policies, particularly the policies operating in areas where the state has “lost” its ability to govern. A clear example of this has been the spread and use of new forms of welfare, which depend on the tax system to provide benefits that were once handed out through a semi-independent benefit system. Thus, although many of the proponents of globalization argue that globalization has eliminated the ability of states to engage in welfare politics, it is clear that over the past 10 years, states have not only retained their welfare states, but they have looked at each other to meet the challenges posed by changes in the international system. In the United States and the UK, the most direct example of this can be seen in the development and spread of programs designed to help unemployed individuals back into work. Although this might seem to support the arguments of globalizers, this fails to address the wider implications of these programs: the extension and deepening of tax credits, minimum wage policies, and redevelopment programs. Instead of simply forcing unemployed people to accept low-paying jobs while reducing their job protections and wages, which was apparently required by globalization, these policies have been designed to ensure that those “forced” back into the labor market are better off than they would have been on benefits and that they are provided with “real opportunities” to enhance their skills and advance up the labor ladder when they enter the labor market (Buckler and Dolowitz, 2004).

On the other side, it is clear that when ideologues enter office, they often look for the rhetorics necessary to justify policy preferences and/or programs—particularly when arguing that the only way to survive in the global era is to engage neoliberal, open market, deregulatory, policies, regardless of the realities of the global situation. In this vein, the Thatcher and Major Governments often justified free market programs and the prolonged attacks upon the welfare state by framing them in terms of global economic competitiveness. Yet, it is arguable that many of these policy decisions had more to do with Thatcher's particular ideology than any "global" forces impinging on the state's ability to govern as it chooses. Or as a former Permanent Secretary in the Department of Employment noted: "the ideology bit was I don't believe all those people are unemployed. I think there is a lot of work in the black economy. . . probably more than you think. That's the ideological approach. . . Let's smoke them out."*

Similarly, although used in exactly the opposite way, the Blair Government has utilized the rhetorics of globalization to justify its efforts to transfer substantial resources toward training and education. To engage in resource redistribution (based on a mixture of U.S. and Scandinavian models), New Labor has turned the traditional globalization arguments on their head. Instead of arguing that globalization eliminates the state, New Labor argues that because of the forces of globalization, the state has a core role in actively investing in human and technological capital and in encouraging and establishing the conditions necessary for private capital to undertake similar investments.

Thus, just as states can engage in positive policy transfer to adapt their existing political regime to the tenants of globalization, they can just as easily engage in policy transfer to resist these pressures and processes. Equally, states can also draw negative lessons (i.e., what not to do based on what is being done elsewhere) for similar purposes. Thus, if a nation notices other political systems reforming in ways that open them up to the forces of globalization, they can see what not to do so as to protect themselves from the very same pressures. Similarly, if there is a model that appears to make a nation more vulnerable to capital or financial flight, a nation not wanting to follow a similar route can borrow models to counter the pressures acting on the initial nation. In the same way, if the EU is perceived as a microcosm of the international order, members can learn how to reform (or how not to reform) in light of the actions of "first mover" nations. A clear example of this was the EU's rejection of the British model of electricity regulation. Although the UK model was the early frontrunner guiding the work of the commission, it

* Interview conducted in November 4, 1996.

quickly became apparent that most members were opposed to this model and took active steps to that ensure the EU develops an alternative system—one that left a considerable amount of room for individual national discretion.* Similarly, acting as units of shared sovereignty, nations can use IGBs to deflect and/or shape the processes of globalization. By developing unified policies based on models drawn from a mix of member states, these institutions can ensure that no member state will be worse off than it was before the IGB acted. For example, it is clear that (despite their weak status) many of the European Union’s social regulations and benchmarking exercises have allowed member states to develop policies that would not have been possible if these states were attempting to fight the forces of globalization on their own.

IX. WHAT RESTRICTS (OR FACILITATES) POLICY TRANSFER WILL RESTRICT (OR FACILITATE) GLOBALIZATION

In bringing politics back into the globalization equation, it is necessary not only to examine how ideas, institutions, and policies are transferred around the globe and how the very technologies leading to the reduction of time and space enable the policy transfer process to enhance or constrain the processes of globalization, it is also necessary to consider how the factors facilitating (or restricting) policy transfer impact the processes of globalization. In this sense, it can be expected that the factors that inhibit or facilitate the ability of a state (or states) to engage in policy transfer will also have a direct impact on the forces of globalization. Put another way, no matter how globalization is perceived, states engage in strategic actions: these actions are directed at both the international regime and the domestic socio-political regime. By adopting a policy transfer strategy designed to maximize their autonomy and minimize any actions that restrict their freedom, states can derive “considerable power and autonomy, often by playing each spatial dimension off against the other” (Hobson, 1997, pp. 253–254).

Taking this a little further, it can be argued that no matter what the international or domestic political, social, and/or economic environment is, on average, the more complex is the “model,” the harder it will be to transfer and the less likely it will be used to form the basis of a global solution or position. This is because, on average, the more complex a policy is, the larger

* Information gathered during interviews conducted in London and Brussels between February 2, 2002 and July 5, 2002.

are the resources and structural adjustments a state will have to use to implement the solution. In terms of the existing globalization literature, this predicts that the more complex a nation's regulatory, economic, or financial structures are, the less likely it is that other nations will adopt the same system. Under these conditions, it is possible to predict that until forced to do otherwise, the international regulatory regime will have a tendency to lend itself to the lowest common denominator or model—as it is arguable as was the case from the mid-1980s—until the fall of the tiger economies forced an international rethink.

Although an examination of complexity can help elucidate some of the processes involved in globalization, so, too, does the literature associated with new institutionalism. For instance, the insight that past policies and institutional structures create “path dependencies,” which can constrain or facilitate the options available to policy makers engaged in policy transfer, makes it apparent that globalization is itself dependent on the existence of the correct institutional, ideological, and cultural structures. As such, it is arguable that if the existing structures of a given political system are not open to the “forces” (either real or perceived) of change, it is probable that the system will be resistant to the globalization of its governing powers. For instance, regardless of the complexity of a model or the structures of a nation's existing political system, it is clear that how a state perceives the forces of globalization will be shaped (if not determined) by that nation's political/ideological outlook, technological capabilities, and economic resources.

Looking at the first of these, it is arguable that ideology plays an important, if not dominant, role in determining as to what extent, and in what way, political actors perceive, and respond to, the pressures of globalization. For instance, during the 1990s, most western governments, based on their ideological predisposition, argued that globalization was a reality, and that this dictated that any nation wanting to maintain its global position and internal stability needed to retract the state from the market to ensure the promised efficiencies and economic gains that could emerge. On the other hand, due to a significant ideological shift, although the Clinton and Blair Governments accepted the reality of globalization, they took an entirely different approach to that of their predecessors. Instead of giving in to the pressures of the international market and “throwing open” the door, the Clinton and Blair Governments worked individually and together to corral those elements of globalization perceived as destructive to the national and international interests, and utilized other elements to ensure both macro-policies and micropolicies worked to the advantage of all individuals (Buckler and Dolowitz, 2004).

Similarly, ideology will often determine where states look for lessons. For example, in their efforts to develop a version of workfare, the ideological

outlook of the Thatcher Government ensured that it was going to borrow from the most extreme models of workfare (having punishment at their core), whereas in response to the same pressures, the Blair Government adapted this approach to utilize models perceived as being the most progressive illustrations of positive welfare-to-work systems (those designed to help individuals back into the market without denying them the income necessary to survive). Thus, the same process may be at work in relation to the forces of globalization, but the ideological outlook of key policy makers can dramatically alter how their state responds to these pressures and which models they develop and borrow in response.

Closely associated with ideologies are social values. In short, when engaging in policy transfer, even if in response to real impacts occurring as a result of globalization, states are going to be constrained by the prevailing values of their leaders and society. If the prevailing values of a society are so dissimilar to a preferred model, the possibilities of transfer are severely restricted. At the same time, transfer is likely to be facilitated by an extensive degree of cultural proximity between two or more nations. Thus, it is arguable that if the values predominating in a society are opposed to the deregulated, open-market, antiwelfare notions contained within the processes of globalization, it is far less likely that the state will engage in the types of activities or transfers that will lead to these policies being borrowed or adopted.

Thus, it is clear that there are many factors beyond the general developments in the global financial and capital markets that must be considered when examining the processes of globalization because clearly, these better help explain why authors such as Lipsey (1997, p. 93) can argue that the perception and argument being forwarded by the globalization literature, that “the national government has lost its power over economic matters, does not seem to stand up to investigation.”

X. CONCLUSION

To understand how states respond to and shape the forces of globalization, politics must be brought back into the equation. One way of doing this is to examine how policy transfer interacts with the forces of globalization to influence the ability of the state (or states) to govern effectively and efficiently. It is important to understand these processes because decisions to transfer or not to transfer a policy, or to transfer a policy from one setting to another, reflect, among other things, the restrictions actors face when engaging in transfer; the attitudes and beliefs of nationally and internationally placed decision makers; the dominant ideologies of the political and social structure;

institutional constraints; and, perhaps most importantly, the interrelationships between policy development and the wider political system. Linking a policy transfer framework to the globalization literature should help those interested in governance to develop a more accurate model of how indigenous factors shape, restrict, develop, and are integral to the process of globalization. This approach will not only elucidate how indigenous policies, institutions, cultures, political and societal structures, and ideologies lead to the extension of the globalization processes within and between nations, but also how they act to mediate (or even block) the impact of global forces on any given policy area and state. For clearly, the decision to transfer (or not to transfer), when examined in light of the factors and processes leading to the globalization of governance, helps policy makers and academics better understand the shape and final outcome of these decisions, which can only lead to a more informed debate emerging.

REFERENCES

- Axford, B., Browning, K., Huggins, R., Rosamond, B. (2002). *Politics*. London: Routledge.
- Bennett, C. (1991a). What is policy convergence and what causes it? *Br. J. Polit. Sci.* 21(2):215–233.
- Bennett, C. (1991b). How states utilize foreign evidence. *J. Public Policy* 33(4):31–54.
- Berger, S., Dore, R., eds. (1996). *National Diversity and Global Capitalism*. Ithaca, NY: Cornell University Press.
- Boyer, R., Drache, D., eds. (1996). *States Against Markets*. London: Routledge.
- Buckler, S., Dolowitz, D. (2004). Can fair be efficient? *New Polit. Econ.* 9(1):23–38.
- Clark, I., ed. (1999). *Globalization and International Relations Theory*. Oxford: Oxford University Press.
- Dolowitz, D. (2004). Prosperity for fairness? Can new labour bring fairness to the 21st century by following the dictates of endogenous growth? *Br. J. Polit. Int. Relat.* 6(2):213–230.
- Dolowitz, D., Marsh, D. (1996). Who learns what from whom. *Polit. Stud.* 44(2):343–357.
- Dunning, J., ed. (1997). *Governments, Globalization, and International Business*. Oxford: Oxford University Press.
- Giddens, A. (1991). *Modernity and Self-Identity*. Cambridge: Polity Press.
- Gilardi, F. (April 25–26, 2003). *Spurious and Symbolic Diffusion of Independent Regulatory Agencies in Western Europe. The Internationalization of Regulatory Reforms The Interaction of Policy Learning and Policy Emulation in the Diffusion of the Reforms*. Berkley: University of California.
- Gilpin, R. (2001). *Global Political Economy*. Princeton: Princeton University Press.
- Heywood, A. (2002). *Politics*. Basingstoke: Pelgrave.
- Hirst, P., Thompson, G. (1996). *Globalisation in Question*. Cambridge: Polity.

- Hobson, J. (1997). *The Wealth of States*. Cambridge: Cambridge University Press.
- Horsman, M., Marshall, A. (1994). *After the Nation State*. London: Harper Collins.
- Keohane, R., Milner, H. (1996). *Internationalization and Domestic Politics*. New York: Cambridge University Press.
- Levi-Faur, D. (April 25–26, 2003). *Herding Towards a New Convention. The Internationalization of Regulatory Reforms. The Interaction of Policy Learning and Policy Emulation in the Diffusion of the Reforms*. Berkley: University of California.
- Lipsey, R. (1997). Globalization and National Government Politics. In: Dunning, J., ed. *Governments, Globalization, and International Business*. Oxford: Oxford University Press.
- Marsh, D., Rhodes, R. (1998). *Comparing Policy Networks*. Buckingham: Open University Press.
- Nelson, D., Morrissey, O. (April 11–12, 2003). *Characterizing International Learning. Political Economy of Policy Transfer, Learning and Convergence*. New Orleans: University of Tulane.
- Ohmae, K. (1994). *The Borderless World*. London: Collins.
- Ohame, K. (1995). *The End of the Nation State*. London: Collins.
- Pierre, J., ed. (2000). *Debating Governance*. Oxford: Oxford University Press.
- Robertson, R. (1992). *Globalization*. London: Sage.
- Rodrik, D. (1997). *Has Globalization Gone Too Far?* Washington, DC: Institute for International Economics.
- Rose, R. (1993). *Lesson Drawing in Public Policy*. New Jersey: Chatham House.
- Rugman, A. (2000). *The End of Globalisation*. New York: AMACOM.
- Sabatier, P. (1988). An advocacy coalition framework of policy change and the role of policy oriented learning therein. *Polit. Stud.* 24:147–168.
- Sabatier, P., Jenkins-Smith, H., eds. (1993). *Policy Change and Learning*. Boulder: West View.
- Sassen, S. (1996). *Losing Control?* New York: Columbia University Press.
- Strange, S. (1996). *Retreat of the State*. Cambridge: Cambridge University Press.
- Way, C. (April 25–26, 2003). *Fear Factor. The Internationalization of Regulatory Reforms. The Interaction of Policy Learning and Policy Emulation in the Diffusion of the Reforms*. Berkley: University of California.

3

International Nongovernmental Organizations: Globalization, Policy Learning, and the Nation-State

Robert K. Christensen

*School of Public and Environmental Affairs, Indiana University,
Bloomington, Indiana, U.S.A.*

[Through the world campaign of nongovernmental organizations] ordinary people from around the world articulated their concerns about a global economic injustice... thereby altering... policy towards poor countries. Where these people led, politicians began to follow.

—Bono, U2 (Human Development Report, 2002)

I. INTRODUCTION

I focus in this chapter on two concepts—globalization and policy learning—and how international nongovernmental organizations (INGOs) as non-state actors influence and relate to both of these concepts. Nye and colleagues define globalization as “the thickening of the networks of interdependence spanning international boundaries that accompanies increasing rapid and inexpensive movement of information, ideas, money, goods, and people across boundaries” (Brown et al., 2000, p. 272). Following Hecló’s (1974) work, Dolowitz and Marsh (1996, p. 344) inform that “policy transfer, emulation, and lesson drawing all refer to a process in which knowledge about policies, administrative arrangements, institutions etc. in one time and/or place is used in the development of policies, administrative arrangements and institutions in another time and/or place.”

The studies of globalization and policy learning are linked in many ways, but few are more notable than the debate that spans and shapes each of these fields. The debate most conspicuously revolves around the role and prominence of the nation-state (see, e.g., Dolowitz's chapter "Where's the State"). The literature on globalization falls across a spectrum with two extremes: those arguing that the forces of globalization increasingly render the nation-state less powerful and less meaningful, and those arguing that the model for "power remains the *Rechtsstaat*, [where] national states are its primary embodiment" (Hirst and Thomson, 1999, p. 278; for a recent example of empirical work, see Coleman and Chiasson, 2002).

The literature on policy learning similarly suffers and enjoys the same vitality of this debate. Dolowitz and Marsh (1996) describe the history of the policy transfer literature as highly state-centered prior to the 1940s, with more emphasis on the interaction between states and civil society up to the 1960s. Despite the work of some authors (e.g., Brown et al., 2000; Radaelli, 2000; Dolowitz and Marsh, 1996, 2000) drawing attention to the influence of non-nation-states in the policy process, the policy learning literature's lexicon still denotes that policy learning is a "cross-national" phenomenon (e.g., Mossberger and Wolman, 2003).

If we are to make progress in resolving this debate, we need to carefully assess the role and influence of non-state actors. In this chapter I look at the role of INGOs as non-state actors and their relation to nation-states. I draw attention to the impacts of INGOs on the process of globalization, including the role INGOs play in competing global governance models. I focus here on the influences of INGOs with potential impact on international, national, and local policy. This discussion is centered in a description of the impacts of INGOs through soft law, or norms that can develop into binding, international law.

Because the debate common to globalization and policy learning will not likely settle at one or the other extreme, I offer a map to conceptually bridge whether non-state actors, INGOs being the case in point here, are most appropriately placed within (O'Toole and Hanf, 2002; Hirst and Thomson, 1999) or without (Ronit, 2001; Welch and Wong, 2001) Westphalia, the traditional worldview paradigm recognizing sovereign nation-states as the primary and legitimate institutions of global policy creation, enactment, and enforcement. Indeed, Keohane and Nye (2000, p. 12) suggest that the globalization debate is settling into something much more nuanced where the "nation-state is being supplemented by other actors—private and third sector—in a more complex geography." This chapter is a step toward mapping that geography. Before turning my focus to INGOs, I begin with a more careful look at the source and terminology of the globalization debate.

A. Two World Paradigms

Traditional assumptions about governing structures and processes are now suspect (Kettl, 2000; Wise, 1997). The language once used without discrimination to describe global dynamics has been distinctly refined. Illustratively, internationalization and globalization have come to connote two distinct concepts.

While the former is a form of institutionalized cooperation between States with the aim to complement their national efforts to promote national power and welfare, “globalization” denotes a process of “denationalization” of the production or provision of “public goods” (e.g., security and global climate protection), i.e., the fulfillment of public tasks—sometimes by a transfer of powers to supranational authorities—that by their very nature and dimension transcend national capabilities (Delbruck, 1997, footnote 3)

Represented in the distinction of these terms, two metaconcepts or worldviews have emerged to describe modern society. Discussed in greater detail below, these concepts can be thought of, at least simplistically, as covering two ends of a spectrum, with international society on one end and global society on the other. The international society worldview denotes a policy process populated primarily by state actors. On the other hand, a global society worldview introduces a competing understanding: the encouragement and inclusion of non-state actors in the policy process.

1. International Society: Westphalian Paradigm

The model traditionally associated with an international society is the Westphalian model based on the still-predominant idea that sovereign nation-states comprise the global arena’s central, if not exclusive, actors (Benvenisti, 1999). Significantly, the name and the birth of the concept stem from the Westphalian Peace Treaty, which, in 1648, officially recognized the principle of a sovereign nation-state (Delbruck, 1997). “The present-day international system, national policies, and the policies of international organizations appear to be determined by factors deeply rooted in and informed by the historical and cultural experiences and the political socialization of the nation-state era. . . distinguished by its fixation on sovereign, national interest” (1997, p. 279). The process of globalization, however, suggests the necessity of considering a different concept of society.

2. Global Paradigm

This paradigm has various names but, like Delbruck’s discussion of the word globalization, it suggests the presence of other, non-national actors. Global

society (Nowrot, 1999; Teubner, 1997), open constitutional state (Hobe, 1997), transnational society (Slaughter, 1995), and world community (Seita, 1997) all describe the concept of “a society of State actors and non-State actors like NGOs, multinational corporations, and individuals on a global scale, which is characterized by a multitude of decentralized lawmaking processes in various sectors, independent of nation-states” (Nowrot, 1999, p. 641).

Some suggest that Westphalian model is inadequate (Benvenisti, 1999; Delbruck, 1997), missing arenas where economic, political, and social operations are energized by actors other than sovereign nation-states (Delbruck, 1997). Nowrot (1999) suggests that we have not yet fully transformed from an international into a global society, but that such a change is inevitable. However, “from a more critical angle...internationalization is a more...appropriate concept to describe the variety of economic, cultural, and political processes unfolding beyond the state level, [as such] we are seeing a continuation of...internationalization rather than a radical change” (Ronit, 2001, p. 555).

Rather than couching the INGO analysis in the categorical terms of a mutually exclusive debate that seems to be centered on the affirmation or rejection of the Westphalian model, I argue that the question is largely impact-dependant. In other words, certain categories of INGO influence would appear to demand a world paradigm accommodating non-sovereign actors, while other INGO influences are better accommodated by the Westphalian paradigm.

B. Scope of Focus: INGOs

Definitional work is especially critical in the analysis of INGO issues because failure to do so can contribute to the already existing political confusion concerning the roles of INGOs (Bendaña, 2000). This chapter focuses on those nongovernmental organizations (NGOs) that operate beyond state boundaries, usually with participation from several countries, and have an international mission. Those organizations operating beyond state boundaries do not necessarily distinguish a subclass of NGOs, but do emphasize the context of this paper: state vs. non-state actors involved in international policy making.

Salamon (1999, p. xvii) iterates that NGOs are “organizations that operate outside the state apparatus.” Indeed, this is one of the requirements articulated in the international legal arena, reinforced by the definitions of the United Nations Economic and Social Council (U.N. ECOSOC) and Union of International Associations. NGOs “must be founded by private individuals; be independent of states; be oriented toward the rule of law; pursue public rather than private interests as an objective; demonstrate a transnational

scope of activities; and possess [at least] a minimal organizational structure” (Hobe, 1997, p. 194).

As indicated in Hobe’s summary of INGO definitions, all NGOs are not necessarily involved in international activities. A subclass of NGOs, commonly referred to as INGOs, are adopting the ECOSOC definition, “[a]ny international organization which is not established by intergovernmental agreement” (U.N. ECOSOC Resolution 288[X], 1950). It is important to note that from a legal perspective, and by definition, NGOs “are capable of playing a role in international affairs by virtue of their activities” (Rechenberg, 1986, p. 276). Notwithstanding the requirement of international orientation, INGOs can be significant actors in local and national as well as international arenas (Brown and Moore, 2001; Hobe, 1997).

Although not sovereign entities, INGOs possess a vast potential to influence international, national, and local policy and have demonstrated that potential in many instances. In an effort to bring coherence to current and future research on this topic, I categorize the various impacts of INGOs and conclude that among these, some are more responsible than others in motivating the need for a global model accommodating a broader host of primary global actors. As INGO impacts are demonstrated to be complicated and diffuse, ultimately this inquiry is impact-specific.

Relevant to policy learning, describing the mechanisms by which INGOs influence world paradigms is prerequisite to an understanding of the development of institutional arrangements affecting world, national, and local policy. “To an increasing degree, a government’s success in pursuing domestically defined national objectives depends on how effectively it can act within changing institutional contexts, including new transnational institutions” (O’Toole and Hanf, 2002, p. 160). The mechanisms by which INGOs might affirm a paradigm of globalization are important inasmuch as globalization “is relevant to any framework used to analyze the evolution of different policy fields and emerging forms of institution building” (Ronit, 2001, p. 556).

C. Context of INGO Growth

Several considerations demand the supply of predominantly lacking analysis (Gamble and Ku, 2000) of the impacts and roles of INGOs in international law and, more generally, on worldview paradigms. First, scholars suggest that at least for the foreseeable future the wave of NGO influence and involvement, even if cyclical as some have suggested (Charnovitz, 1997), is still cresting (Nowrot, 1999;). Second, because of the “increasing tendency to enact and enforce individual responsibilities under international law” (Nowrot, 1999, p. 645), parties previously considered ancillary in the international

policy-making process, namely INGOs, are of increasing importance and should be analyzed.

Since the first INGO was formed in 1839 (Human Development Report, 2002), the most recent decades have witnessed remarkable growth in numbers of these organizations, with nearly one-sixth of today's approximately 37,000 INGOs being formed in the 1990s (Figure 1). The substantive foci of these organizations range from economic development and policy advocacy to research and education (Figure 2).

Possibly more significant than the expanding number of these organizations, Lindenberg and Bryant (2001) observe that where NGOs handled \$1.0 billion in world development funds in 1970, by 1997 these organizations handled more than \$7.0 billion.

Accordingly, our understanding the circumstances encouraging INGO growth and variety is as important as defining what an INGO is. Many believe that the growth of INGOs, both in number and impact, is spurred by the following factors:

- Most significantly, the *decline of the state* [Lindenberg and Dobel 1999 (eroding trust in government, decline in public sector resources, privatization, failed states); Salamon, 1999],
- *Articulation of global problems*, where, for example, transnational environmental problems require transnational action (Nowrot, 1999, p. 587),

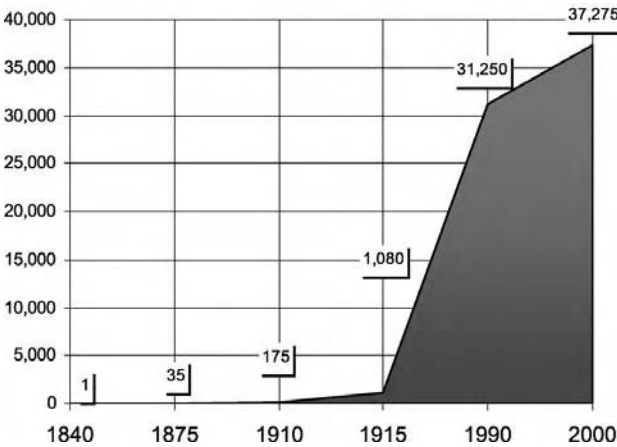


Figure 1 INGO growth: number of registered organizations. (Adapted from: Anheier et al., 2001; Held and McGrew, 2000.)

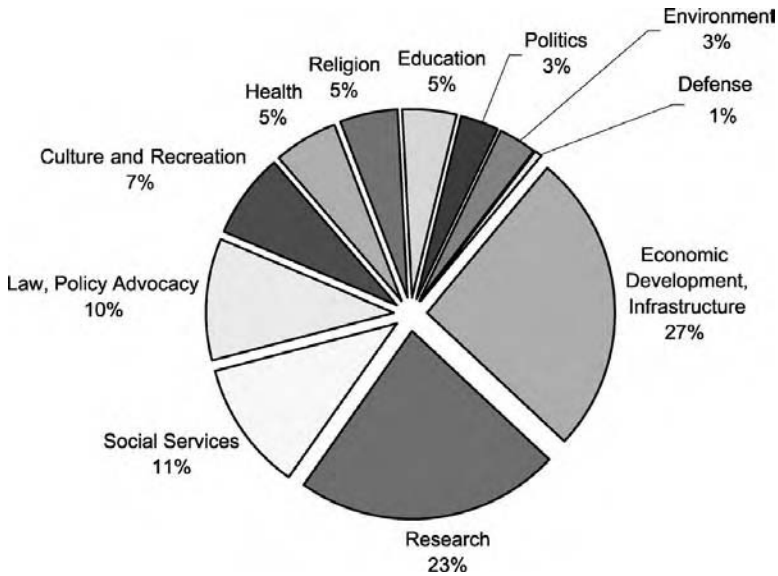


Figure 2 Range of INGO activities: based on approx. 37,000 INGOs registered in 2000. (Adapted from: Anheier et al., 2001.)

- *Denationalization of multinational corporations* (Grossman and Bradlow, 1993; Nowrot, 1999), and
- *Developments in communications/information technologies* (Gamble and Ku, 2000; Salamon, et al., 1999; Grossman and Bradlow, 1993).

INGOs are not a new phenomenon, some dating back as early as 500 A.D. (Nowrot, 1999). Notwithstanding, the recent proliferation of INGOs and increasing attention on the potential impacts of NGO involvement in national and world policy (Held and McGrew, 2000) suggest the need for analysis focusing on these organizations in relation to policy making and administration and, more generally, world paradigms.

II. INGO IMPACTS

Because authors, scholars, and practitioners are increasingly focusing attention on INGOs, it is important to develop our understanding of the nature of this influence. Identifying and organizing factors of INGO influence can further this understanding. I conceptualize the influences of INGOs on international/global society by offering the following categories of INGO

impact factors: input strategies, pursuits, output forums,* and constitutional/national competition. These INGO impact factors broadly represent the various points and means of INGO influence on international, national, and local policy. Following a short introduction and presentation of the model, each category is discussed in turn below.

Although referring specifically to Third World INGOs (Southern NGOs) Fisher's (1998) work, used here more generally to consider the impacts of all INGOs, offers the seed for the first set of impact factors, the categorization of three types of NGO input strategies: isolation, advocacy, and cooperation. I refer to these strategies as input strategies because they describe how INGOs inject their ideas and influence into society. By employing these strategies, INGOs can engage in a myriad of pursuits including policy creation and modification, monitoring, and enforcement—the second set of impact factors. Commensurate with INGO input strategies, INGO influence manifests itself in several forums: local, national, and international. Of these three, the international forum is of particular interest because of its potential to circumscribe national and local policies. Illustrative of international influence, the role of INGOs in the creation of soft law is a central discussion in this paper. Finally, depending on the policy focus of a particular INGO, its impact on the world paradigm may be greater if it competes with state or national policy actors in their existing policy or constitutional agendas.

This chapter theorizes that the worldview paradigm, whether Westphalian or global society, is determined, at least in part, by INGO impact factors. The theoretical considerations, discussed in the final paragraphs of each of the following descriptions of the INGO impact factors, contemplate how INGO strategies, pursuits, output forums, and constitutional/national effects might challenge or affirm the Westphalian paradigm. I summarize these discussions in the following figure.

A. Input Strategies

Fisher's strategy categorizations intuitively conceptualize INGO activities in relation to the sovereign nation-state, e.g., government operations. A strategy of isolation marks those INGOs that would "steer clear of the state for some time, build a mass base, strengthen independent-sector networks, and develop

* The discussion on output forums also includes a description of how international law is made and sets forth the implication that INGOs influence international, and often national and local, law.

alternative approaches to development that can influence policy over the long run” (Fisher, 1998, p. 108).

The strategy of advocacy also involves avoiding the risk of government control by working too closely with state actors. However, unlike isolationist organizations, INGOs using advocacy strategies communicate with governments about policy through a variety of techniques: protest, negotiation, friendly and high-pressure lobbying activities, litigation, network/alliance building, and mass advocacy (Fisher, 1998).

Cooperation can exist simultaneously with advocacy strategies, but indicates a more obvious move toward INGOs working with governments in “everything from parallel cooperation to full field collaboration” (Fisher, 1998, p. 117), where the former marks working with state actors, but at a safe distance, and the latter denotes a more involved, joint relationship.

Theoretical Considerations

INGO strategies of cooperation and friendly advocacy affirm the Westphalian paradigm (e.g., Fisher, 1998, p. 109). By cooperating with and amicably working closely with sovereign nations in advocacy campaigns, INGOs confirm the more traditional notion of nations as the dominant, if not sole, vehicles by which policy is created and maintained (Figure 3).

On the other hand, strategies of isolationism or of more coercive advocacy (Fisher, 1998, p. 110) promote the notion that states as sole policy makers can or should be bypassed or manipulated—a step in the direction of a global society paradigm where the number of policy actors is open and subject to competition. These are the INGOs who see “international law and international agreements. . . as a means of doing an end-run around domestic democratic processes” (Anderson, 2001, p. 373). For example, because sovereign states were not involved during much of its process (Drezner, 2001), the formation of the international treaty to ban land mines illustrates NGOs acting in isolation, without the consent or cooperation of nation-states. Nevertheless, the finished treaty has the weight of international law and deep impact on national and local policies worldwide.

B. INGO Pursuits

Another useful classification in charting INGO impacts on international/global society concerns their primary activities. Authors have recently classified such activities as service-provision, capacity-building, and policy/institutional influence (Brown and Moore, 2001). The lattermost category is echoed in a modification of Dichter’s (1999) classification of development organizations, or those organizations seeking a permanency of results from

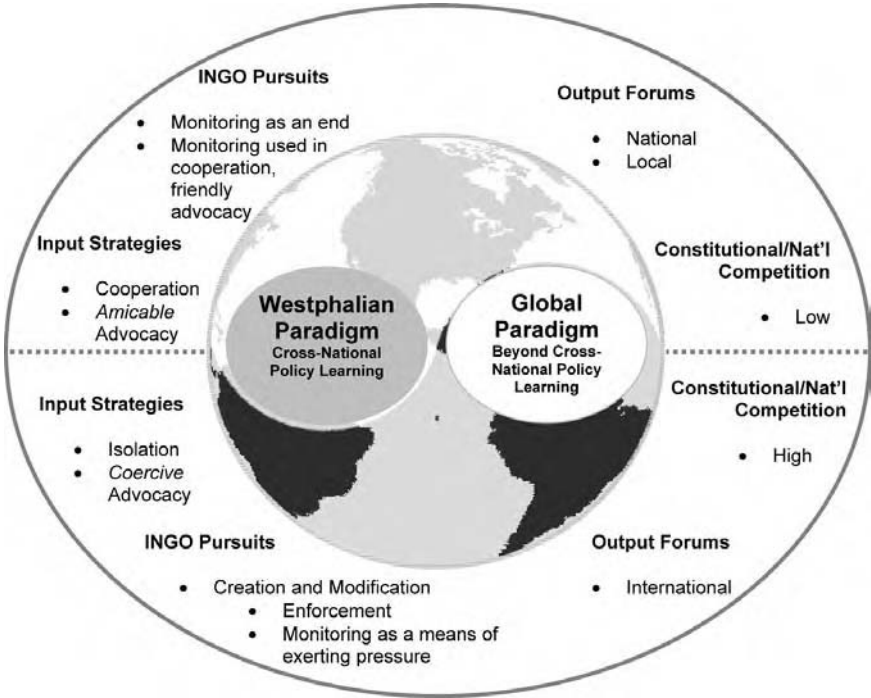


Figure 3 INGO impact factors: conceptual framework.

their work as the primary focus of their activities. These concepts, encompassing those INGOs advocating or pressing “claims against national and international institutions” (Brown and Moore, 2001, p. 582), are related to a rise in other INGO activities such as policy monitoring (Brinkerhoff and Coston, 1999) and enforcement.

By employing strategies such as isolation, advocacy, and coordination, INGOs can pursue activities divisible into the following conceptual categories: policy creation and modification, monitoring, enforcement and implementation, service provision and capacity-building.*

* In terms of Brown and Moore’s (2001) classification, with particular relevance to policy learning, organizations pursuing the first three categories can be thought of as policy- and institutional-influence INGOs, while the latter two categories are less oriented towards policy influence.

1. Policy Creation and Modification

INGOs engaged in policy creation and modification act with the goal of producing “effective political demands for action on others” (Brown and Moore, 2001, p. 582). Illustrative of policy creation are those INGOs involved in campaigns to regulate the commercial activities of international corporations such as Nestlé (Johnson, 1986), or those organizations working to establish new international institutions, e.g., the International Criminal Court (Pace and Thieroff, 1999). INGOs involved in the policy modification process work to alter extant policies, such as those INGOs working to change the policy of the World Bank concerning indigenous peoples (Gray, 1998).

The number and effect of non-state organizations involved in these activities is growing as illustrated by the “the increasing and formalized position of NGOs in the United Nations, which permits these nongovernmental groups to have a place in some official meetings. In 1948, 41 NGOs played an official consultative role; in 1993, 978 did so” (Resnik, 2001, p. 674).

2. Monitoring

Well-known organizations such as Greenpeace and Amnesty International typify a host of organizations monitoring states’ progress on various issues, for example, environmental protection and human rights (Hobe, 1997; Chayes and Chayes, 1995). These activities can serve as the foundation for the information gathering and research required to create or modify a policy, or to enforce policy.

Accordingly, INGO monitoring pursuits potentially yield multiple impacts. The world paradigm affirmed depends on whether the monitoring activity is an end unto itself, where information is not explicitly introduced into the policy process, or is more means-oriented, where gathered information can either be injected in a manner of friendly advocacy or cooperation with states, or to manipulate and bypass states, i.e., manifest strategies of isolationism, coercive advocacy.

Illustrative of this latter, more manipulative approach are the whistleblowing activities of Traffic International, which have ensured the viability of the 1972 Convention on International Trade in Endangered Species of Flora and Fauna (Yamin, 2001) and the almost 1500 NGOs that achieved the Mine Ban Treaty (Human Development Report, 2002, p. 102).

3. Enforcement and Implementation

From a global policy perspective, INGOs also fill enforcement and implementation roles (Hobe, 1997; Abbott and Snidal, 2000; Yamin, 2001). For example, from the field of environmental law, the International Union for the

Conservation of Nature and Natural Resources (IUCNNR) has been given the power to directly implement environmental policy (Hobe, 1997). Courts facilitate other examples of INGO enforcement as national courts increasingly allow NGOs to intervene litigiously in areas such as environmental protection (Yamin, 2001).

4. Service Provision and Capacity-Building

Service provision INGOs are instruments of service and product delivery; their goals center in benefiting clients and satisfying/attracting donors (Brown and Moore, 2001). Capacity-building organizations are related but differ in that they follow the old adage of teaching how to fish (capacity building) rather than providing fish (service provision). Most significantly, capacity-building organizations “impl[y] a commitment to strengthening clients’ abilities to carry out their own purposes and aspirations rather than to achieving those purposes specified by the INGO or its contributors” (Brown and Moore, 2001, p. 581). Yamin (2001, n. 69) notes that capacity-building is mandated in most post-1992 conventions and international organization work programs.

5. Theoretical Considerations

As summarized in Table 1, those INGOs involved in the creation or modification of policy encourage a worldview that would accommodate non-state actors filling the part of policy creation and modification, a part normally reserved for sovereign states under the Westphalian paradigm.

Similarly, INGOs involved in policy implementation or enforcement would join nation-states as independent global actors in the policy process—affirming a global society paradigm. Non-state activity influential in policy enforcement and implementation evidences a broader context for “cross-national” policy learning as well. For example, the nongovernmental organization IUCNNR has been integrated into the implementation and enforcement roles within the domain of environment law that are traditionally fulfilled by states or state agencies acting through “cross national” channels.

Both monitoring as an end activity and monitoring as a means of amicable cooperation and advocacy affirm the Westphalian paradigm. Monitoring information used to exert pressure upon the state affirms a strong role for non-state actors, accommodated in the global society model. Amnesty International, for example, has a large monitoring component to its pursuits and leverages information gathered against sovereign state policies to effect change in such issues as human rights.

Service delivery, more a product of the policy process than an input, is also a potentially neutral pursuit as it contributes largely indirectly to the

Table 1 INGO Pursuits: Summary of Impacts and Implications

INGO pursuit	Description	Example	World paradigm and policy learning implications
Policy creation and modification	INGOs that work to establish new policies and institutions, or change extant policies and institutions.	Those INGOs involved in establishing the International Criminal Court.	Affirms a global paradigm and suggests that policy learning reaches beyond “cross-national” constructs when nonstates create and modify state policy.
Monitoring	INGOs that monitor nations’ activities, usually limited to a particular substantive area such as environmental issues.	INGOs such as Amnesty International involved in monitoring and reporting human rights issues.	Implications for world paradigm and policy learning depend on whether information is used in conjunction with (Westphalian paradigm), or to compromise (global paradigm), state sovereignty.
Enforcement and implementation	INGOs that seek or are granted power to implement and enforce policy.	INGOs such as IUCNNR given authority to implement environmental policy.	Affirms a global paradigm and suggests that policy learning reaches beyond “cross-national” constructs when nonstates enforce and implement policies that may intervene in a nation’s policy agenda.
Service provision and capacity-building	INGOs that provide services or seek to build state capacity.	Lindenberg and Bryant (2001) note the sevenfold increase in monies handled by development/capacity-building organizations over the last decades.	Effects on world paradigms are likely to be indirect at most. Note that the definition of capacity building subjugates the mission and agenda of the NGO to those of the state.

international policy agenda. Similarly, INGOs that are solely involved in capacity-building conceivably have a little or no direct effect on the world paradigm, but might have an indirect effect by helping to develop globally potent policy and institutional influence organizations.

C. Soft Law and Output Forums

The impact of the INGO pursuits can range across seeding an idea in a populous, facilitating a minority voice, changing a political atmosphere, and ultimately having an impact on regulation and law. Depending on the emphasis of the INGO, these impacts manifest themselves in public policy at various levels of society and government including local and national sovereignties, and/or international governance bodies.

Much has been written about the impact of INGOs on the local level, e.g., encouraging and supporting grassroots organizations (Fisher, 1998), and national level, e.g., developing special interest groups (Brown and Moore, 2001). Although this chapter focuses on the international forum, the emphasis does not exclude INGO impact on local and national levels, for in many cases international law greatly impacts local and national policy forums. This is true, for example, to the extent that national courtrooms have been used as venues to promote and apply international law against national and local policies (Knop, 2000).

Although there is no sovereign international government body or constitution on which INGOs can focus their efforts per se, there are a variety of forums constituting the organic arena from which international law arises. These venues of international law are generally held to derive from Article 38 of the Statute of the International Court of Justice and include “international conventions establishing rules expressly recognized by the contesting states; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; judicial decisions and the teachings of the most highly qualified publicists of the various nations” (reprinted in Weston et al., 1997, p. 36). In the variety of Article 38 venues comprising international law, INGOs have, whether intentionally, found place to exert influence.

To understand the potential extent of these pursuits, a few general observations about international law are necessary. Until recently, “most rules of international law could be found in one of two places: treaties-binding, written agreements between states; or customary law-uncodified, but equally binding rules based on long-standing behavior that states accept as compulsory” (Ratner, 1998, p. 67). While much of international customary law has been codified into international hard law, a third level of international

law, known as soft law, has grown commensurate with the present multitude of international actors and policy areas and the general reluctance of states to adopt binding rules outright (1998).

Soft law constitutes those “statements intermediate between law and the merely hortatory. . . international norms still in the process of formation” (Grant, 1999, p. 456). Soft law is not binding upon states as hard treaties and international customary law are, but is significant because of its potential to become binding customary or hard international law. “Normative expectations are built more quickly than they would through the evolution of a customary-law rule, and more gently than if a new treaty rule were foisted on states. Soft law principles. . . represent a starting point for new hard law, which attaches a penalty to noncompliance” (Ratner, 1998, p. 68). From a legal point of view, the line between soft law and binding customary or hard law is often very thin. Soft law principles are considered international “rules in statu nascendi [and] may be advanced by their commitment to paper. . . Over time, if endorsed by further instruments and by practice, such statements can become binding erga omnes” (Grant, 1999 or universally binding. In other words, sovereign nation-states cannot legally exclude themselves thereafter.

The major implication of the soft law discussion is that because INGOs are frequently involved, and often demand a voice in international conferences and other world legal processes (Ratner, 1998), their influence is not diminished by the fact that they are not sovereign bodies under the Westphalian model. In practice, their influence can be considerable. One observer evidences that because there is little public scrutiny in international law making and because there are few incentives for international law actors to enlighten the general public by reporting on their activities, “smaller interest groups enjoy a disproportionate influence over the state’s external policies through their involvement in the process of treaty negotiation and ratification” (Benvenisti, 1999, p. 200).

As hinted in the introductory quote, many INGOs have utilized soft law techniques, such as coordinating global issue campaigns and committing ideas to paper, to promote their agendas in international law. In fact, many NGOs “accredited to ECOSOC have the right to formally state their views and participate in. . . a global conference or meeting. They can, for example, make their views known in position papers circulated via UN distribution channels along with the other official documents” (Krut, 1997, p. 40). Recent changes have allowed even more NGOs, credited and nonaccredited alike, to have access to international lawmaking forums, including the bestowal of consultative status (Frechette, 1998). In 1948, for example, 40 NGOs had consultative status with ECOSOC (ECOSOC, 2003). Fifty years later, over 1500 organizations had such status and presently, there are almost 2400 non-sovereign organizations with consultative status (2003).

The preceding discussion does not make the assumption that all INGOs are pressing for a voice in international law forums. Nevertheless, the nature of soft law and past experience suggest that INGOs have the potential to shape international law, including that which impacts national and local policies, by influencing the agenda of statements and norms that become practice and then law. Examples of this influence are seen in the formation of the international treaty banning land mines and the drafting of the Rome Statute, which created the International Criminal Court (ICC). In both instances national and local policies are affected by these international laws seeded, if not largely energized, by INGOs (Price, 1998; Drezner, 2001).

Theoretical Considerations

The more global the activities of the INGO, the more likely their impacts will run counter to a Westphalian worldview. For example, facilitated through soft law mechanisms, those INGOs participating at the international level, particularly those advancing their ideas via papers and consultative avenues, are more likely to affect the worldview than those INGOs whose activities surface primarily on the local level. The former have the effect of developing practice and custom by which nation-states can eventually be bound, while the latter, more locally focused activities, do not.

D. Constitutional/National Competition

The preceding examples illustrate the importance of the final category used to conceptualize the nature of INGO influence: constitutional and national competition. The impact of INGOs on a world paradigm may be great or small depending on whether their specific tasks occupy the same substantive policy space reserved or explicitly articulated in national or constitutional policy. Both the land mine treaty and the ICC realistically overlap many rules and other legal structures already delineated in local or national policy, even codified in a national constitution. I refer to this impact factor as national/constitutional competition. An example where the constitutional/national competition would not be as great as the ICC would be the International Olympic Committee (IOC). Although the activities of the IOC can implicate many constitutional issues, such as denying a country the right to participate in Olympic games (Hobe, 1997), the IOC poses limited national competition because its narrow domain, amateur Olympic sports, has been widely ceded to the IOC by countries worldwide. On the other hand, those institutions, like the ICC, potentially involved in a broad scope of issues from human rights to environmental protection, extensively target substantive legal territories likely to be claimed by existing national constitutional, legislative policy agendas, and even legal traditions (Christensen, 2001/2002).

Theoretical Considerations

Those INGO activities that co-occupy a good deal of national policy or constitutional domain are more likely to promote a shift in the worldview toward global society. Again, the example of the IOC is useful to illustrate an organization with low national/constitutional competition. In a context such as one implicated by the IOC, Nowrot's (1999, p. 644) statement that INGOs' impact is minimal due to narrow sectoral focus may be most applicable. However, it is difficult to minimize, at least conceptually, the impact of organizations promoting a broad range of issues already spoken to in national policy or codified in constitutions. Such activities detract from the relevancy of the Westphalian paradigm.

III. CONCLUSION

The normative debate continues as to whether the global paradigm should be the current and proper worldview, some attempting to entirely neutralize the question by arguing that globalization is little more than a mythical manifestation of an increasingly sophisticated concept of internationalization (Hirst and Thomson, 1999). As this chapter is a conceptual and descriptive endeavor, understanding the dynamics undergirding the affirmation of a particular world paradigm is important for different, nonnormative reasons. As suggested by O'Toole and Hanf (2002), the success of domestic policy execution rests upon the ability to respond to changing international/global contexts. Accordingly, whether INGOs pursue activities that affirm a paradigm of globalization over Westphalian internationalization is very relevant to a current understanding of policy learning.

Some have minimized the import of INGO involvement by arguing that INGO influence is disaggregated and issue-specific (Schachter, 1997) and, consequently, does not challenge the sovereignty of state actors (Nowrot, 1999). The IOC is arguably an example of the political narrowness of INGO influence. On the other hand, the example of the International Criminal Court, with its potential to have world jurisdiction over a variety of constitutional issues, contradicts observations that would minimize INGO impacts. Farazmand (1999, p. 515) observed that "[m]any states have surrendered their national policy-making ability to regional or international organizations for collaborating with globalization efforts." This chapter contends that INGO activities, even if sectoral and disaggregated in the main, give rise to the phenomenon highlighted by Farazmand: state's policy-making ability is being redefined by non-sovereign entities. How that ability is altered is discussed below in the context of articulating the implications of INGO influence.

The first implication has already been covered with the explanation of output forums: INGOs influence international, national, and local policy processes through the soft law process.

Related to the first, the second implication is that certain aspects of INGO activity are motivating a transition from the Westphalian, international society paradigm to a global society paradigm. As soft law is becoming a more prominent feature of international law, INGOs are effecting a worldview that accommodates and legitimizes non-state actors as global lawmakers.

A third implication deals with policy learning. While the majority of the literature still supports talking about policy learning as a cross-national phenomenon, the preceding discussion on INGO impacts suggests that, at least in some respects, the cross-national model is as inappropriate as the Westphalian paradigm. Those INGO impacts that affirm a global paradigm (Figure 3) would similarly affirm a model of policy learning that accounts for learning beyond the constructs of nation-states.

Among other reasons, understanding the dynamics behind such a shift is significant for its potential to affect political efficacy and accountability. As INGOs “are not elected, [and] not accountable to any body politic” (Rivkin and Casey, 2000/2001, p. 37), they are not solidly integrated into a political process with such features as democratic accountability. Under the global society paradigm where policymaking would be an open marketplace, some predict a lack of protections for transparency and accountability (Spiro, 1996).

While such challenges are not absent under a more centralized Westphalian model, public lawmaking with the nation-states as primary actors has typically been associated with more “formal mechanisms designed to enhance the accountability of decision makers as well as the transparency of the process itself, both ultimately designed to increase the optimality of regulatory results” (Spiro, 1996, pp. 962–963). Furthermore, the geographic permanence of the nation-state has the potential to support greater attention on systemic features producing problems, as opposed to a focus on treating the symptoms alone.

These final observations on efficacy and accountability notwithstanding, one must be mindful of Ronit’s (2001, p. 556) observation that a holistic discussion of the consequences of globalization is problematic in that “globalization is an evolutionary and complex process that does not penetrate all states and does not reach them at the same time, nor affect them to the very same degree.” As the framework offered in this chapter relies upon an impact-specific analysis, Ronit’s observation is in harmony with that which is recommended in this chapter.

Recalling the debate over whether civil society has a home in the Westphalian paradigm, this paper conceptualizes a framework supporting the argument that the complexities of INGO influence do not justify a categorical placement of INGOs either within or without a single worldview model. Similarly, the rise of international, non-sovereign organizations neither entirely affirms nor rejects a cross-national policy learning model. This chapter offers a conceptual framework which can find future theoretical and empirical work analyzing the impacts of INGOs. Such a map encourages a more detailed understanding of how INGOs are affecting law, policy learning, and world governance paradigms.

If we are to understand the processes and effects of globalization we must advance research focused on global actors—their actions and impacts on each other and their effect on the world. To this end, the discussion and model presented in this chapter serve as a point of departure for developing a more current and contextualized understanding of the impact of INGOs. Although particularly challenging in the global context where there are multitudes of potentially intervening variables, future research should focus on more detailed, impact-specific theories and the operationalization and measurement of the INGO impact factors.

Almost 10 years ago, Salamon (1994, p. 109) noted that the expansion of the global third sector could be “permanently altering the relationship between states and citizens, with an impact extending far beyond the material services they provide.” Now is the time to better understand the nature of that impact.

REFERENCES

- Abbott, K. W., Snidal, D. (2000). Hard and soft law in international governance. *Int. Org.* 54(3):421–456.
- Anderson, K. (2001). The limits of pragmatism in American foreign policy: unsolicited advice to the Bush Administration on relations with international non-governmental organizations. *Chicago J. Int. Law* 2(2):371–388.
- Anheier, H., Glasius, M., Kaldor, M. (2001). *Global Civil Society*. New York: Oxford University Press.
- Bendaña, A. (2000). Which ways for NGOs? A perspective from the south. *Coalition for Global Solidarity and Social Development*. Available from <http://www.globalsolidarity.org/articles/bendana.html>.
- Benvenisti, E. (1999). Exit and voice in the age of globalization. *Mich. Law Rev.* 98(1):167–213.
- Brinkerhoff, D. W., Coston, J. M. (1999). International development management in a globalized world. *Public Admin. Rev.* 59(4):346–361.

- Brown, L. D., Moore, M. H. (2001). Accountability, strategy, and international nongovernmental organizations. *Nonprofit Volunt. Sect. Q.* 30(3):569–587.
- Brown, L. D., Khagram, S., Moore, M. H., Frumkin, P. (2000). Globalization, NGOs, and multisectoral relations. In: Nye, J. S. Jr., Donahue, J. D., eds. *Governance in a Globalizing World*. Washington, D.C.: Brookings Institution Press, pp. 271–296.
- Charnovitz, S. (1997). Two centuries of participation: NGOs and international governance. *Mich. J. Int. Law* 18(2):183–286.
- Chayes, A., Chayes, A. H. (1995). *The New Sovereignty: Compliance with International Regulatory Agreements*. University: Harvard University Press.
- Christensen, R. K. (2001/2002). Getting to peace by reconciling notions of justice: the importance of considering discrepancies between civil and common legal systems in the formation of the International Criminal Court. *UCLA J. Int. Law Foreign Affairs* 6(2):391–423.
- Coleman, W. D., Chiasson, C. (2002). State power, transformative capacity and adapting to globalization: an analysis of French agricultural policy, 1960–2000. *J. Eur. Public Pol.* 9(2):168–185.
- Delbruck, J. (1997). The role of the United Nations in dealing with global problems. *Indiana J. Glob. Leg. Stud.* 4(2):277–296.
- Dichter, T. W. (1999). Globalization and its effects on NGOs: efflorescence or a blurring of roles and relevance? *Nonprofit Volunt. Sect. Q.* 28(Suppl):38–58.
- Dolowitz, D., Marsh, D. (1996). Who learns what from whom: a review of the policy transfer literature. *Polit. Stud.* 44(2):343–357.
- Dolowitz, D., Marsh, D. (2000). Learning from abroad: the role of policy transfer in contemporary policy-making. *Governance* 13(1):5–24.
- Drezner, D. W. (2001). On the balance between international law and democratic sovereignty. *Chicago J. Int. Law* 2(2):321–336.
- ECOSOC. (2003). Consultative status with ECOSOC. Available from <http://www.un.org/esa/coordination/ngo/about.htm>
- Farazmand, A. (1999). Globalization and public administration. *Public Admin. Rev.* 59(6):509–524.
- Fisher, J. (1998). *Nongovernments: NGOs and the Political Development of the Third World*. West Hartford, CT: Kumarian Press.
- Frechette, Deputy Secretary-General Louise. (1998). United Nations Press Release, DSG/SM/38. Available from <http://www.un.org/News/Press/docs/1998/19981203.dsgsm38.html>
- Gamble, J. K., Ku, C. (2000). International law-new actors and new technologies: center state for NGOs? *Law Policy Intern. Bus.* 31(2):221–262.
- Grant, T. D. (1999). Defining statehood: the Montevideo Convention and its discontents. *Columbia J. Transnatl. Law* 37(2):403–457.
- Gray, A. (1998). Development policy-development protest: The World Bank, indigenous peoples, and NGOs. In: Fox, J. A., Brown, L. D., eds. *The Struggle for accountability: NGOs, social movements, and the World Bank*. Cambridge, MA: MIT Press, pp. 267–302.
- Grossman, C., Bradlow, D. D. (1993). Are we being propelled towards a people-centered transnational legal order? *Am. Univ. J. Int. Law Policy* 9(Fall):1–25.

- Hecló, H. (1974). *Social Policy in Britain and Sweden*. New Haven, CT: Yale University Press.
- Held, D., McGrew, A. (2000). The great globalization debate. In: Held, D., McGrew, A., eds. *The Global Transformations Reader: An Introduction to the Globalization Debate*. Malden, MA: Blackwell Publishers Inc., pp. 1–45.
- Hirst, P., Thomson, G. (1999). *Globalization in Question: The International Economy and the Possibilities of Governance*. Cambridge, UK: Polity Press.
- Hobe, S. (1997). Global challenges to statehood: the increasingly important role of nongovernmental organizations. *Indiana J. Glob. Leg. Stud.* 5(1):191–209.
- Human Development Report. *Deepening Democracy in a Fragmented World. United Nations Development Programme*. Oxford: Oxford University Press.
- Johnson, D. A. (1986). Confronting corporate power: strategies and phases of the Nestle boycott. In: Preston, L. E., Post, J. E., eds. *Research in Corporate Social Performance and Policy*. Vol. 8. Greenwich, CT: JAI, pp. 323–344.
- Kettl, D. F. (2000). The transformation of governance: globalization, devolution, and the role of government. *Public Admin. Rev.* 60(6):488–497.
- Keohane, R. O., Nye, J. S. Jr. (2000). Introduction. In: Nye, J. S. Jr., Donahue, J. D., eds. *Governance in a Globalizing World*. Washington, D.C.: Brookings Institution Press, pp. 1–44.
- Knop, K. (2000). Here and there: international law in domestic courts. *J. Int. Law Polit.* 32(2):501–535.
- Krut, R., 1997. Globalization and civil society: NGO influence in international decision-making. United Nations Research Institute for Social Development (UNRISD), Discussion Paper No. 83.
- Lindenberg, M., Dobel, J. P. (1999). The challenges of globalization for northern international relief and development NGOs. *Nonprofit Volunt. Sect. Q.* 28(Suppl.):4–24.
- Lindenberg, M., Bryant, C. (2001). *Going Global: Transforming Relief and Development NGOs*. Bloomfield, CT: Kumarian Press.
- Mossberger, K., Wolman, H. (2003). Policy transfer as a form of prospective policy evaluation: challenges and recommendations. *Public Admin. Rev.* 63(4):428–440.
- Nowrot, K. (1999). Legal consequences of globalization: the status of nongovernmental organizations under international law. *Indiana J. Glob. Leg. Stud.* 6(2):579–645.
- O’Toole, L. J., Hanf, K. I. (2002). American public administration and impacts of international governance. *Public Admin. Rev.* 62(Special):158–169.
- Pace, W. R., Thieroff, M. (1999). Participation of non-governmental organizations. In: Lee, R. S., ed. *The International Criminal Court: The Making of the Rome Statute*. Boston: Kluwer Law International, pp. 391–398.
- Price, R. (1998). Reversing the gun sights: transnational civil society targets land mines. *Int. Org.* 52(3):613–644.
- Radaelli, C. M. (2000). Policy transfer in the European Union: institutional isomorphism as a source of legitimacy. *Governance* 13(1):25–43.
- Ratner, S. R. (1998). International law: the trials of global norms. *Foreign Policy* 110(Spring):65–80.

- Rechenberg, H. K. (1986). Non-governmental organizations. *Encycl. Public Int. Law* 9:276.
- Resnik, J. (2001). Categorical federalism: jurisdiction, gender, and the globe. *Yale Law J.* 111(3):619–680.
- Rivkin, D. B., Casey, L. A. (2000/2001). The rocky shoals of international law. *Natl. Interest* 62(Winter):35–45.
- Ronit, K. (2001). Institutions of private authority in global governance: linking territorial forms of self-regulation. *Admin. Soc.* 33(5):555–578.
- Salamon, L. M. (1999). Preface. In: Salamon, L. M., Anheier, H. K., et al., eds. *Global Civil Society: Dimensions of the Nonprofit Sector*. Baltimore: The Johns Hopkins Center for Civil Society Studies, pp. xvii–xix.
- Salamon, L. M. (1994). The rise of the nonprofit sector. *Foreign Affairs* 73(4):109–122.
- Salamon, L. M., Anheier, Helmut K., et al. Civil society in comparative perspective. In: Salamon, L. M., Anheier, H. K., et al., eds. *Global Civil Society: Dimensions of the Nonprofit Sector*. Baltimore: The Johns Hopkins Center for Civil Society Studies, pp. 3–39.
- Schachter, O. (1997). The decline of the nation-state and its implications for international law. *Columbia J. Transnatl. Law* 36(1,2):7–23.
- Seita, A. Y. (1997). Globalization and the convergence of values. *Cornell Int. Law J.* 30(2):429–491.
- Spiro, P. J. (1996). New global potentates: nongovernmental organizations and the “unregulated” marketplace. *Cardozo Law Rev.* 18(3):957–969.
- Slaughter, A. (1995). International law in a world of liberal states. *Eur. J. Int. Law* 6(4):503–538.
- Teubner, G. (1997). Foreword: legal regimes of global non-state actors. In: Teubner, G., ed. *Global Law Without a State*. Brookfield, VT: Dartmouth Publishing, pp. xiii–xvii.
- United Nations Economic and Social Council, Resolution 288[X]. (1950). Reprinted in Types of International Organization. Available from <http://www/uiaa.org/uiadocs/orgtypec.htm>
- Welch, E. W., Wong, W. (2001). Effects of global pressures on public bureaucracy: modeling a new theoretical framework. *Admin. Soc.* 33(4):371–402.
- Weston, B. H., Falk, R. A., Charlesworth, H. (1997). Supplement of Basic Documents to International Law and World Order. St. Paul, MN: West Publishing Company.
- Wise, C. R. (1997). The future of public law: beyond administrative law and national borders. In: Cooper, P. J., Newland, C. A., eds. *Handbook of Public Law and Administration*. San Francisco: Jossey-Bass, pp. 569–587.
- Yamin, F. (2001). NGOs and international environmental law: a critical evaluation of their roles and responsibilities. *Rev. Eur. Commun. Int. Environ. Law* 10(2):149–162.

4

State Regulation of the Banking Sector in the Era of Globalization: Divergence or Convergence?

Andreas Busch

University of Oxford, Oxford, UK

I. INTRODUCTION

Over the last two decades, an ongoing debate about the issues of governance and the role of the nation-state has been taking place that was largely (but not exclusively) triggered by the simultaneous processes of globalization and European integration. The changing role of the nation-state has been particularly debated in political science. Here it has been widely accepted that today, the role of the state has become quite different from that classically put forward by political theory, which had defined the state as characterized by external independence and sovereignty within (Hintze, 1970).

By the end of the 20th century, that role has clearly changed. Internally, sovereignty has been challenged by the growing differentiation of societal subsystems as well as by pluralist and corporatist influences which successfully resists state attempts at hierarchical coordination; externally, sovereignty is penetrated by growing transnational links and supranational integration.

But, what conclusions are to be drawn from these developments still seems unclear. Indeed, participants in that debate draw quite different conclusions from the same evidence. Some speak of an “erosion” (Cerny, 1996), “decline” (Schmidt, 1995), “crisis” (Dunn, 1995), “retreat” (Strange, 1996), and even “the end” (Ohmae, 1995) of the nation-state. They point to the impotence of state governance of the economy in a world largely without borders and the futility of attempts at compensation through welfare state measures which will only serve to disadvantage the competitive position of

domestic business.* Ultimately, the cohesion of society and the legitimacy of the state are seen to be under threat, as the following quotation illustrates:

(T)he more economies of scale of dominant goods and assets diverge from the structural scale of the national state (...) the more the authority, legitimacy, policymaking capacity, and policy-implementing effectiveness of the state will be eroded and undermined both without and within. (Cerny, 1995, p. 621)

On the other hand, there are authors who refute the hypothesis of the growing insignificance of the state and see not only a continuing significant task for the nation-state, but also one that may actually be growing. These authors talk about the “revival of the nation-state” (Lütz, 1996) and of “new tasks” for it (Sassen, 1998). In this perspective, the hypothesis of the withering nation-state is seen as a “myth” (Weiss, 1998): rather than losing importance, the nation-state continues to be the crucial institution determining the conditions under which the process of economic globalization takes place. This is even the case in the seemingly so autonomous sphere of financial markets (Helleiner, 1994, 1995; Kapstein, 1994). Even for the future, prospects for continuing state capacity look good:

It seems likely that as we move into the twenty-first century, the ability of nation-states to adapt to internationalization (so-called ‘globalization’) will continue to heighten rather than diminish national differences in state capacity and the associated advantages of national economic coordination. (Weiss, 1998, p. 212)

Why is it that this debate has spawned such wildly different views of the role of the nation-state? Conditions for state action are changing—that is not only agreed in the academic debate, but also the result of voluminous studies from international organizations (United Nations Research Institute for Social Development, 1995; World Bank, 1997). But so far, the academic community has not been able to agree on a common view as to the direction of that change.

One reason for this, I want to suggest, is that theoretical considerations offer two different perspectives and dynamics for an interpretation of that process and, consequently, expect different outcomes: one sees an overwhelm-

* Interestingly, this debate focuses largely on challenges for the state which come from “outside.” Challenges from “inside” due to privatization and agencification (Rhodes, 1994), developments of the welfare state (Grimm, 1990), or changes in administrative behavior (Schuppert, 1999) are discussed in a more specialized literature that has largely failed to be incorporated into the larger debate on the role of the state. Scharpf (1992) is one of the few who integrate the challenges from “within” and “without” in their analysis.

ing pressure for policies to converge (and hence reduce the role of the individual nation-state), and the other expects exactly the opposite, namely, a continuing or even mounting divergence of policies (and thus a continuing or enhanced role for the individual state). In the remainder of this paper, I will first briefly sketch out these two different views. The “big” questions they raise, however, can obviously not be dealt with conclusively in the space of one paper. This contribution therefore chooses to apply itself to a particular area of the discussion, namely, the question of the divergence or convergence of policies, politics, and institutions as a result of the processes mentioned above. Obviously, any results thus obtained cannot claim to be representative for the overall questions, but they can contribute to our knowledge in one specific area and—hopefully—together with other similar studies that focus on other aspects, eventually enable us to answer the underlying questions.

For its empirical material, this paper draws on the results of two recently concluded studies that deal with governance and state capacity in the financial sphere.* The reason for that choice is that this is where “pressure” from globalization is commonly perceived to be highest, making this policy area into an ideal and “hard” test case for theories of convergence that presently dominate the discourse about globalization.

II. CONVERGENCE OR DIVERGENCE?

Research about the state’s capacity to act (and the potential change thereof) requires hypotheses that can be empirically tested. There are at least two strands of theory regarding the consequences of greater integration for advanced industrialized states that inform the analyses in the debate mentioned before—even if these theoretical foundations are not always explicitly mentioned or acknowledged. One predicts greater convergence, and the other predicts constant or even increasing divergence.

A. Convergence

Theories that predict a trend toward political convergence can be traced back, on the one hand, in the economic theory of international trade and, on the other hand, to theories of intergovernmental or interjurisdictional competition.

* These are a major study by the author on the subject of banking regulation in international comparison which focuses on state capacity under conditions of globalization (Busch, 2003) and the results of the finance section of the project on “Success and Failure in Public Governance,” for which the author acted as sectoral editor (Bovens et al., 2001).

The former build on the *Heckscher–Ohlin theorem* which sees comparative advantage as based on differences in relative factor endowments across countries and differences in relative factor intensities across industries. A country will thus tend to export such goods where it has a relative abundance of factor endowments and import such goods where there is a comparative scarcity of production factor endowments. Building on such standard economic theory, Rogowski (1987, 1989) suggested a model—which makes rather simple assumptions about the domestic political process*—to explain the development of societal cleavages. Later, this model was extended to accommodate the process of globalization and to explain the policy preferences of relevant domestic actors, the policies implemented, and the development of domestic institutions (Frieden and Rogowski, 1996). Thus the authors postulate that the ability of interest groups to assert themselves covaries with the mobility of their production factor: those who can most credibly threaten with *exit* will increase their negotiating power and prevail. It follows that a consequence of globalization is the adaptation of government policy to the interests of capital (as the most mobile production factor), and since this will take place everywhere, a convergence of policies is the result.

The second approach focuses on government action under conditions of competition and ultimately arrives at similar conclusions. The fundamental idea is that governments compete for mobile capital seeking the highest net return. This leads to an international equalization of net yields and consequently to tax competition between countries seeking to offer the best conditions for business.† Competition, however, is not limited to taxation alone, but extended to labor market and social and environmental regulations—which all have an effect on the expected return on capital—and leads to an equalization here as well.

To sum it up, these theories postulate that growing international integration will have implications for domestic policy—once indirectly through a change in the domestic distribution of political power, and once directly through influence on government policy—and will lead to a convergence of policies and institutions.

* There are only two assumptions (Rogowski, 1987, p. 1123): 1) Those who stand to profit from a change will promote it, while those who stand to lose will try to prevent or delay it. 2) Those whose welfare is presently or will in the future be enhanced will derive an increase in political influence.

† A survey of the respective economic literature can be found in, e.g., Schulze and Ursprung (1999).

B. Divergence

Another group of theories, however, expects completely different consequences from the same process. These approaches focus on the stability of specific national characteristics such as the differences in national policy styles, the stability of institutional arrangements, and the importance of path dependence. Consequently, they predict constant or even increasing divergence in national policies and institutional structures.

These theoretical approaches—an early representative is Shonfield's (1965) study on "Modern Capitalism" with its emphasis on the importance of specific historically derived assumptions of national actors—focus, for example, on differences in policy making and policy implementation, such as in the concept of "policy styles" (Richardson, 1982). These national policy styles show a great deal of resilience when challenged (Waarden, 1995), which is not least due to institutional stability:

(T)o portray political institutions simply as an equilibrium solution to the conflicting interests of current actors is probably a mistake. Institutions are not simply reflections of current exogenous forces or micro-behavior and motives. They embed historical experience into rules, routines, and forms that persist beyond the historical moment and condition. (March and Olsen, 1989, p. 167f)

As a consequence, even increasing international integration is not likely to lead to major changes, both in terms of institutions and policies.

The most general formulation of this perspective can be found in the concept of *path dependence* as pioneered above all by the institutional and transaction cost schools of economic theory (North, 1990; Williamson, 1994). In this view, positive returns to scale, network externalities, and feedback effects can lead to equilibrium outcomes that are very stable (*lock-in*). Therefore the costs of change are prohibitively high, and consequently, change is very rare.*

To sum this position up, one can expect that even growing international integration would not deflect states from their historically rooted trajectories, so that not convergence, but constant and perhaps even increasing divergence would be the result for policies and institutions.

We can conclude this section by saying that there are good theoretical grounds for both positions—that of convergence and that of divergence. This controversy is consequently one that can only be resolved by subjecting it to

* For a recent application of the concept of path dependence to the study of politics, see Pierson (2000).

empirical research and check which of the two schools of thought's predictions are more accurate and reflective of the developments in reality.

III. STATE REGULATION OF THE BANKING SECTOR

State regulation of the banking system is the policy area chosen in this paper to test the two competing sets of hypotheses outlined in the previous section, namely, that of convergence and divergence. If the former were to prevail, we would expect a far-reaching assimilation of national policies in banking regulation, as well as of the processes of decision making. Both would probably be driven by problem definitions that are very much alike across countries, derived from similar perceptions of the challenges facing national policy makers. International cooperation should be an important feature of this process, leading to institutional convergence, most likely on a system that is considered best practice to cope with the common challenges. If the divergence hypothesis were to prevail, however, we would expect largely the opposite: continuing, perhaps even increasing differences in the content of state regulation of the banking sector, as countries follow their national-specific paths to cope with the different challenges they perceive. The methods and processes of policy making should show no signs of convergence, and international cooperation should not prominently feature on the agenda. Lastly, national regulatory institutions should not become more alike, but continue on the trajectories of their respective developments.

There are a number of reasons why the policy area of banking regulation seems particularly suitable to the task at hand.

On the one hand, the banking sector plays a special role in the economy. The reason for this is twofold*: the banking sector makes credit available to all the other sectors in the economy and to consumers; a well-functioning banking sector is thus a vital prerequisite for a well-functioning economy as a whole. Yet at the same time, it is particularly vulnerable, for the failure of a bank can have distinctly different consequences from the failure of a business in another sector of the economy and threaten the viability of the whole banking sector (*bank run*). States have therefore traditionally subjected the banking system to specific regulation. This regulation could take a variety of forms, such as

- Socialization of the whole or part of the banking system
- The issuance of detailed directives to allocate credit to specific purposes

* See Busch (2001) for a more detailed exposition of this argument.

- A legally enforced separation of activities between commercial banks and investment banks to limit risk
- State setting of interest rates for deposits and lending
- The creation of a mandatory system of deposit insurance

As a result, national institutional configurations in this policy area have historically developed in widely differing ways, making it an ideal test case for the convergence hypothesis.

At the same time, globalization is particularly prominent in the financial sphere, which has so far come closest to the idea of an integrated world market that is working 24 hr a day. The revolutionary developments in computing and telecommunications over the last three decades have played a large part in making this a reality—by lowering distance costs, enabling interaction across continents, and providing the computing power that enabled ever more sophisticated financial instruments such as complex derivatives to become an important feature of financial market trading. Add to that the rapid decrease of capital controls in most countries since the mid-1970s* and—at least partly resulting from that—a massive increase of cross-border bank lending in the same period (see Fig. 1), and it becomes clear that national regulators were faced with quite a challenge to maintain banking system stability in the last 30 years or so.

Indeed, many countries suffered substantial problems in their banking system in the period since the breakdown of the Bretton Woods system of fixed exchange rates in 1973—no fewer than two-thirds of IMF member states reported problems in the period since 1980 (Lindgren et al., 1996). But the success or failure of the national regulatory systems is not what the focus of this paper is on, even if it may be interesting to have a look at this variable in the end.

Rather, the country sample was chosen to reflect as much variety as possible in a small group. In choosing the United States, the United Kingdom, Germany, and Switzerland, this was largely achieved: the group comprises different “varieties of capitalism,” having two members of the “Anglo-Saxon” (USA, UK) and “Rhenish” (GER, CH) variety each; EU member states (GER, UK) and non-EU member states (USA, CH); and, lastly, representatives of the “consensus” (CH, to a lesser degree, GER) and Westminster types of democracy. Table 1 summarizes the key indicators.

Developments in these four countries in the field of banking regulation were researched through detailed case studies for the period of 1974–1999. A multiplicity of interviews with key actors in regulatory agencies, interest groups, legislative bodies, as well as academic experts was con-

* Compare the data presented in Simmons (1999, p. 42).

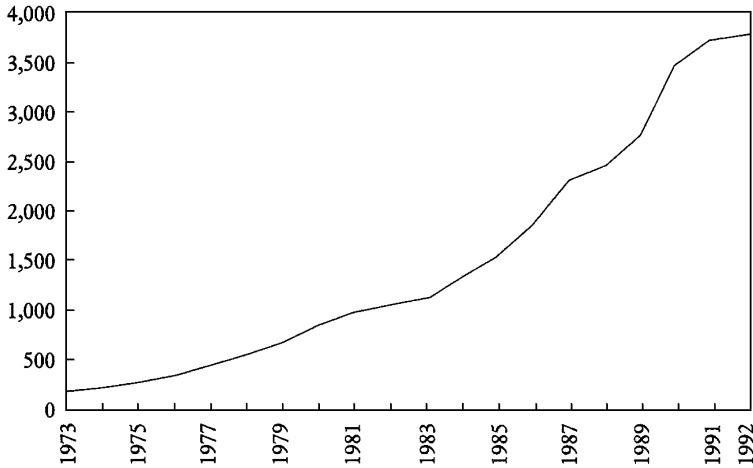


Figure 1 Volume of cross-border bank lending, 1973–1992 (in billion dollars). (From Herring and Litan (1995, p. 26).)

Table 1 Summary of Country Characteristics

	USA	UK	GER	CH
Political system	Presidential	Parliamentary	Parliamentary	(Presidential)
Balance between parliamentary chambers	Symmetrical	Asymmetrical	Asymmetrical	Symmetrical
Judicial review	Yes	No	Yes	No
Territorial organization	Federal	Unitary	Federal	Federal
Dominant party in government, 1950–1994 (Schmidt, 1996)	Conservative	Conservative	Centrist	Liberal
Party system	Two-party system	Two-party system	Multiparty system	Multiparty system
EU member	No	Yes	Yes	No
Type of economy (Soskice, 1999)	Liberal Market Economy (LME)	LME	Coordinated Market Economy (CME)	CME
Type of financial system (Cox, 1986)	Capital market oriented	Capital market oriented	Credit oriented	Credit oriented
Type of banking system (Pohl, 1994)	Specialized banking system (political regulation)	Specialized banking system (historical development)	Universal banking system	Universal banking system

ducted to gain insights into the motives, world-views, and problem definitions not accessible through the analysis of legislative and other policy documents alone.

The following section will briefly sketch the situation in each country at the beginning of the period of investigation, before the next section will then deal with the changes and processes that characterized this policy area at the last quarter of the 20th century.

A. Different Starting Points, Developments, and Problems

Obviously, this paper cannot reproduce in their full historical and institutional detail the case studies of the four countries under consideration. The main claim to be made here, namely, that there was very significant variation in the early 1970s—the starting point of the period of rapid integration and globalization—can be supported by a few paragraphs summarizing the main characteristics.

1. The United States

In the early 1970s, the U.S. banking system was clearly the most heavily regulated among the countries under consideration.* This was largely the legacy of the strict regulation imposed after the traumatic experiences of the Great Depression in the early 1930s and its massive banking crisis. After almost a quarter of all existing banks had failed, stringent controls were introduced in the “most comprehensive attempt ever to restructure the American financial system” (Cerny, 1994, p. 181). Extensive product, price, and geographical regulations were introduced to curtail the “excessive competition” that was viewed as the root cause of the problems.

Together with a multiplicity of regulatory agencies that had been set up since the middle of the 19th century, an extremely complicated system of various types of banks regulated by a multiplicity of agencies with often overlapping briefs was the result. Figure 2 attempts to depict the relationship between types of banks (left), regulatory agencies (right), and primary (solid line) and secondary (dashed line) regulatory oversight.

Evidently, this complicated system is unlikely to produce optimal results—an opinion widely shared by many observers since the 1950s. Many scholars and various commissions formed by Congress had called for

* A good overview of the developments of the system of regulations can be found, e.g., in Baer and Mote (1992) or Robertson (1995).

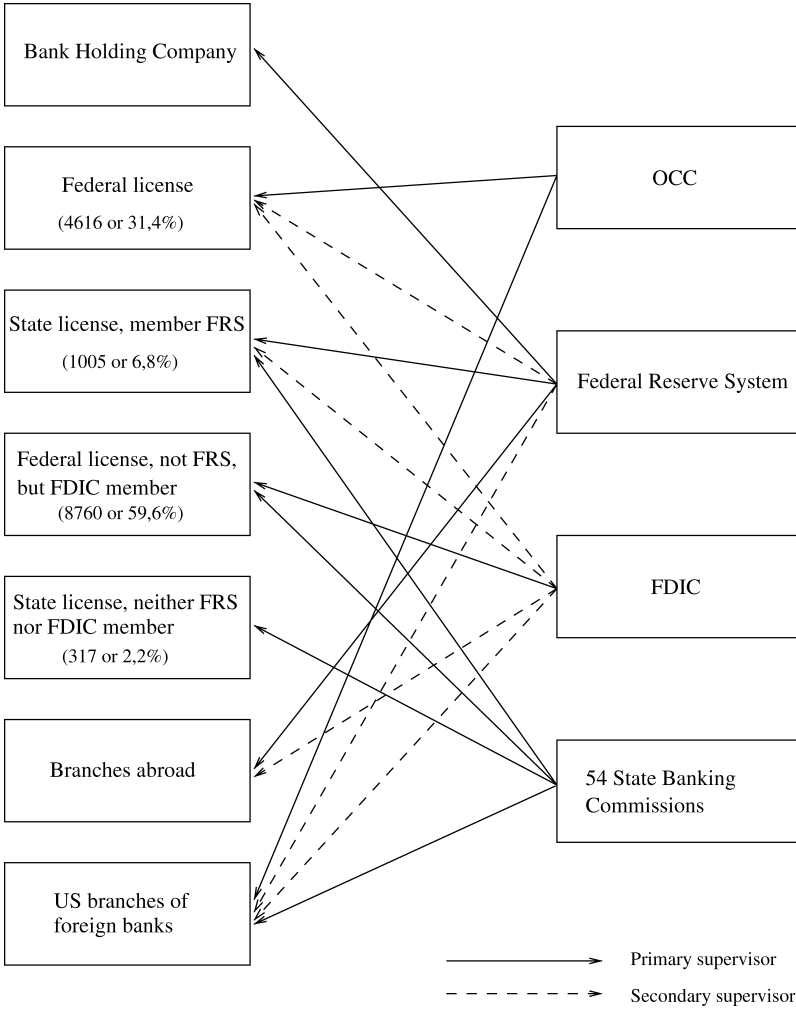


Figure 2 Overlapping regulatory competences in the U.S. banking system. (From Busch (2003, p. 76).)

wholesale reform of the system, simplification, and the abolition of the regulations introduced by the *Glass–Steagall Act* of the early 1930s.*

2. The United Kingdom

If the U.S. system had to be regarded as highly regulated in the early 1970s, that of the United Kingdom was the complete opposite, at least with respect to formal regulation. For no formal system of banking regulation and no agency empowered by law to deal with this area existed in the United Kingdom at all.[†] Rather, a both geographically (the “City”) and in terms of the number of banks highly concentrated system had weathered even the crises of the 1930s remarkably well and was guided by advice from the Bank of England. The latter, for centuries a private bank and only nationalized in 1946, “served as spokesman both for the City within the government and for the government within the City” (Vogel, 1996, p. 98). Preferring the flexibility and informality traditionally associated with the “club culture” of the City (and stressing the latter’s cost efficiency), the Bank was not in favor of codifying its powers and preferred a system in which the “raised eyebrows” of the Bank’s governor were the ultimate sanction. Its success in avoiding major problems in the British banking system was a considerable resource to defend its position.

3. The Federal Republic of Germany

State regulation in Germany had reacted swiftly to the major banking crisis in the early 1930s by imposing an encompassing system of banking regulation and partly even of bank socialization, but the latter was quickly reversed until the end of the 1930s. In the Federal Republic, a relatively liberal approach to banking regulation was taken.[‡] Caps and ceilings on interest rates, introduced in the 1930s in an attempt to avoid “destructive competition,” were lifted already in the mid-1960s. The Federal Republic was thus one of the first countries to liberalize this sector, and no attempts were ever made to use the banking system as a means of monetary policy (as in Britain) or for the allocation of credit (as, e.g., in France or Sweden). In addition, the whole topic was politically uncontentious, in marked contrast to the situation in the United States. There were, however, two specific topics that were recurrent during most of the 20th century: on one hand, a public debate about the “power of

* See, as two examples among many, Pierce (1977) and Task Group on Regulation of Financial Services (1984).

[†] For overviews, see Gardener (1986) or Reid (1988, Chapter 10).

[‡] For an overview, see, e.g., General Accounting Office (1994) or the chapter on Germany in Coleman (1996).

banks” (deemed excessive by exponents of both the political left and right, albeit for different reasons), and, on the other hand, worries about deposit insurance.

4. Switzerland

At last, a look at the Swiss case. While it had introduced a system of banking supervision as a reaction to the banking system crisis of the 1930s, the Swiss state handled it in a very liberal way and never tried to impose wide-ranging regulations through it.* In addition—and remarkably in so strongly federalized a state—this was a unitary supervision system which mainly operated through fiduciary agencies assessing the banks’ accounts according to rules set up by a largely independent “banking commission.” While the majority of Swiss political opinion was in favor of the traditionally liberal approach toward the banking sector (economically one of the most important sectors of the Swiss economy), a sizable minority—the Social Democrats—demanded stricter regulations and were critical of the negative economic consequences of a strong banking sector such as upward pressure on the Swiss currency (induced by capital movements) and the ensuing problems for Swiss exports. After the breakdown of the system of fixed exchange rates and the switch-over to a system of currency floating in the early 1970s, these problems became particularly pressing.

B. Twenty-Five Years Later: What Are the Results?

As the previous section has argued, the four countries under consideration considerably exhibited differences both in terms of institutional setup and the extent and use of regulation in the early 1970s. They therefore entered the ensuing decades of growing economic integration and globalization from quite different positions.

Given the competing theoretical models outlined at the beginning of this paper and the questions they raise, is there a clear result that allows us to endorse or refute one or the other position? Did globalization lead to a convergence of policies and institutions? And if so, was that the result of democratically legitimate action and conscious political decisions, or did internationalized, anonymous markets force that development? Or did policies and institution follow the trajectory determined by past decisions, and if so, for reasons of conscious political choice or because of an inability to adapt to changing circumstances? Depending how these questions are answered, four results are possible. They are summarized in Scheme 1.

* A good overview of the developments of the Swiss case can be found in Cassis (1994).

		Convergence	
		yes	no
yes	voluntary	<i>active political design</i>	<i>path dependent development</i>
no		<i>market dominance</i>	<i>blockade</i>

Scheme 1 Typology of possible policy outcomes.

Obviously, the different developments in each of the four countries cannot be summarized in the space available here.* Only some hints at main aspects of the respective developments are possible in the remainder of the paper. But even if one takes all the evidence into account, it is not possible to give a clear affirmative or negative answer to any of the above questions. However, a differentiation between the dimensions of *policy*, *politics*, and *polity*—the content, processes, and institutional aspects concerning our topic—can help to make further distinctions and yield more insights.

1. Policy

Looking at the content of regulation, it becomes evident that here, a lot of convergence has taken place in the last 25 years. Compared to the situation in the mid-1970s, there has been a clear trend toward both codification and liberalization in the field of banking regulation. While the United Kingdom did not have a formalized system of banking regulation at the start of the period, it developed both an institutional structure and legal regulations by the end of the 1970s, catching up with the other countries that had developed such institutions already in the 1930s. Both a national banking crisis and the development of European integration played a role in the British case. Liberalization was also an international trend, even if in this sample only the heavily regulated U.S. banking market was affected, and the result was

* For that, see Chapters 4–7 of Busch (2003).

less than successful, being characterized by abject policy failure (the crisis of the *Savings Loan* system in the 1980s and early 1990s) and an endless series of attempts at repealing the *New Deal* regulations of the 1930s that heavily restricted the banking system which ultimately resulted in both courts and regulatory agencies taking the lead in deregulation.

These trends, however, produced nothing like perfect convergence in terms of policy. While international cooperation in the *Basel Process* has helped to coordinate regulations by focusing it on agreed parameters such as banks' own capital ratios, implementation of these measures varies widely across countries. Not least the fact that a new round of negotiations (the *Basel II Process*) was started in 1999 demonstrates continuing differences in the content of regulations—but also the desire to overcome them. So far, top international bankers keep complaining about the different treatment their banks receive in different countries, and even within the European Union and its single market, different national implementations of the respective directives as well as opt-out clauses and effects of the tax system have led to some continued divergence (Molyneux, 1996).

While there is a strong overall tendency toward convergence, there still remain significant differences.

2. Politics

In the politics dimension, however, there is practically no convergence whatsoever at play. The hypothesis assuming that growing international economic integration will lead to more power and influence for the capital side (Frieden and Rogowski, 1996), resulting in “convergence towards an agenda set by investors” (Cohen, 1996, p. 288), is not confirmed by the case studies. Rather, these demonstrate that attempts at liberalization can fail because of the resistance of subgroups of the capital side (as in the United States), or that they can be forced through even against the express wishes of the banks (such as the abolishment of cartels in Switzerland in the early 1990s).^{*} In the view of this evidence, any assumptions often made about homogenous interests within this rather divergent group of sectors and companies must seem highly questionable.

Above all, the case studies demonstrate that the national systems of interest intermediation and the respective policy networks work in very different ways and demonstrate great stability over time. The more consensual systems of Germany and Switzerland are here contrasted with the more adversarial systems of the United Kingdom and the United States.[†] Change, if it takes place at all, is only on the margins. This can partly be explained by the stability of the institutional frameworks within which these processes take

^{*} For a similar development in Spain, see Pérez (2001).

[†] Which, however, differ substantially in terms of state capacity! See more below.

place (see below) and also by the fact that in each country, a multiplicity of issues competes for influence on the national political agenda. The assumed “pressure” from globalization—a comparatively long-term and slow process—must be judged as relatively small and unimposing. Only in cases of acute crisis the issue of banking regulation gains universal attention, as the respective episodes in all four-country studies demonstrate. Otherwise, this issue is characterized by *low politics* and a relatively high degree of expert influence and technicality—not exactly the stuff media headlines are made of.

3. Polity

Similarly, convergence seems largely absent from the institutional dimension. The components of the national policy networks in banking regulation appear in their clear majority very stable and highly resistant to change. This is particularly evident in the case of the United States where repeated attempts to reduce the number of regulatory agencies and/or reform their respective tasks (and assign them more logically) failed. Both in the German and Swiss cases, there were no attempts at institutional reform. The only exception from the rule is the case of the United Kingdom where a major institutional reform took place after 1997. It not only stripped the *Bank of England* of its supervisory role, transferring that task to a new *Financial Services Authority* (FSA), but also transferred all areas of financial market supervision to that new institution—once the Westminster system has made up its mind, there is literally nothing that can stop it. But the characteristics of the FSA do not resemble the institutional structures of any of the other countries’ regulatory systems so that clearly, there is no tendency toward convergence on a common institutional model or even the emergence of a “reference model.”*

In addition, it must be emphasized that the reform in Britain was triggered by two national failures of the existing system of banking regulation (*BCCI* in 1991 and *Barings Bank* in 1995) and not by the pressures emanating from international developments of globalization. Moreover, both the blockade of institutional reform in the United States and the implementation thereof in the United Kingdom can best be explained by characteristics of the national political institutions, namely, the tendency of Congress for stalemate in dealing with contested measures in the maze of committees and subcommittees on the one hand, and unchecked centralization of power in the case of the British Westminster system on the other hand.

A convergence of institutional systems in the foreseeable future thus seems rather unlikely. Moreover, since different institutions react differently

* For example, in the way an independent central bank has become the international “reference model” or “best practice” for central banks during the last decade.

to identical challenges, namely, according to their respective “logic of appropriateness” (March and Olsen, 1989), even complete convergence in the content of regulations (the policy dimension) would still likely yield different national reactions to similar crises.

IV. THE SOURCES OF CHANGE AND THEIR NATIONAL FILTERS

Looking at the changes, if varying, that have taken place in the national systems described in this paper, it is interesting to ask whether common sources exist for these changes.

Among such potential common sources, the “Basel Committee” stands out. Following disturbances in foreign exchange markets after the end of the system of fixed exchange rates, it was set up in December 1974 by the G-10 countries and operated under the auspices of the *Bank for International Settlements*. It is within this institutional context that international cooperation in the field of banking regulation has been conducted since. However, the “Basel Committee’s” agreements are not legally binding—they are merely “Gentlemen’s agreements” which are voluntarily followed by the participating parties as well as many other countries.

Since there is a large degree of overlap in the membership of the “Basel Committee” and the European Union,* the recommendations of the former are usually transformed into EU directives. This was the case with the First Banking Directive of 1977, which included the principle of home country control as well as the commitment to further supervisory cooperation. As the idea of a common European banking law failed because of member states’ resistance, the 1980s saw the application of the principle of mutual recognition of national practices enshrined into the Second Banking Directive of 1989. Banks from EU member states thus only needed a “single passport,” i.e., to be licensed in one member state allowed operation in all member states.

The regulations emanating from the “common sources” are not very detailed. They leave room for national maneuver and different implementation—a necessary condition given the varying characters of national financial systems. But more importantly, these recommendations and regulations do not constitute an external imposition for nation-states, but are the result of international negotiations that have been voluntarily accepted.†

But what happens with these regulations in the national systems? Here the “stimuli” that emanate from the international regulatory sphere meet very

* Eight of the 12 members of the Basel Committee are also members of the European Union.

† This is true in the strict sense only for the states that participate in the “Basel Committee.”

different domestic circumstances which act as national filters. Two examples may serve to illustrate that point:

- In the United States, for example, the national environment in this policy area is characterized by a high degree of politicization, a multiplicity of policy actors (see Fig. 2), and a policy style that is confrontational and legalistic. As a result, adaptation of the existing regulatory system through changes of the laws governing it failed for many years—repeated attempts at reform failed to overcome the high consensus requirements in the maze of committees and subcommittees on Capitol Hill in the brief time span of a congressional period of session.* Given the blockade of the legislative system, however, the necessary changes were provided by other parts of the system which acted, as one can argue, as “safety valves,” preventing lasting damage. Court decisions and changes of long-standing interpretations on the part of the regulatory agencies introduced the flexibility into the process that the legislative system could not provide. Ultimately, in 1999, after several decades of failed attempts, a law was passed that ratified the changes courts and regulatory agencies had carried out.
- In contrast, the system in Germany is characterized by low politicization and a high degree of corporatist cooperation which takes place both between the industry associations and the state and between the sectoral peak associations of the three main banking sectors. This system, in which consultation of industry is mandatory before any changes are introduced, has provided the state with relatively low costs (as the associations take on a large part of the supervisory work themselves) and has given the industry a high degree of flexibility. Within this system, the shift from a system largely determined on the national level to one largely determined on the European level has been implemented without any great disruptions.† Apart from the two directives mentioned above, seven more directives have been incorporated into national law between 1983 and 1995.‡

The different domestic environments, I argue, work as national filters, preventing convergence and producing continuing difference among both banking systems and regulatory systems. These, in turn, produce different interests in regulatory matters on the national level. As international institu-

* See Reinicke (1995) for a detailed description of the process.

† The German *Kreditwesengesetz* is today considered as “largely determined by EU directives.”

See Boos et al. (2000, V).

‡ Busch (2003, p. 133f.).

tions like the “Basel Committee,” however, are made up of national representatives, these different national interests are being brought into the international negotiation process. As a consequence of such cycles, one would expect negotiations in the “Basel Committee” to become more time-consuming and politicized, and this is indeed what seems to be the case. The more detailed the “Basel” regulations get (and the more they matter under conditions of increasingly integrated financial markets), the more governments get involved. What used to be primarily technical negotiations now become politicized more and more. This is certainly a completely different situation from the one of the “Basel Committee’s” first meeting, where “supervisors sat around a table, quiet and suspicious of each other.”* Nowadays, national representatives bargain hard for their national interests and advantages.

This is also the reason why the “Basel Committee” cannot be adequately described as an epistemic community. World views and interests differ substantially among this group of experts, which constitutes a clear difference over the existence of a shared belief system that unites the community of central bankers and has made policy coordination in that area so much easier (Haas, 1992). In banking supervision, however, the role and influence of ideational factors are quite limited, which is primarily due to the highly technical nature of the field and to the absence of a “best practice” model (Busch, 2004).

The changes in the preferred instruments of banking supervision (from no common instruments at all in the 1970s to a focus on fixed capital ratios in the 1980s to the use of flexible risk-adjusted models in the 1990s) do therefore not reflect the pursuit of a coherent vision of banking regulation, but rather the increased experience with the workings of financial markets, the development of ever more sophisticated financial instruments, and the influence of powerful interests that push for the adoption of instruments that save them money[†] or suit the interests of their national banking system.[‡]

While the “Basel Committee,” being the focus of international cooperation in questions of banking regulation, may thus be a common *source* of change, it cannot be considered the *cause* of these changes. Olson (1982, p. 4) has advocated that distinction and (criticizing his fellow economists’ explanations of economic growth) stated that

they trace the water in the river to the streams and lakes from which it comes, but they do not explain the rain

* This is how one of the participants describes it (Kapstein 1994, p. 45).

† This is, for example, the case with big international banks and the introduction of risk-adjusted measures of core capital.

‡ As is the case with the exceptions from the system of risk-adjusted measures won by small banks.

In a similar fashion, looking at the “Basel Committee” tells us a lot about the way standards in banking regulation were invented and implemented, but it does not explain why the need for them was felt. After all, systems had worked for decades without such common standards. If we want to explain why this situation changed, looking at the development of and negotiations in the “Basel Committee” will not get us very far. Rather, we will have to take into account more basic underlying factors such as technological development (computer and IT revolution, the invention of ever more sophisticated financial instruments) and, above all, the experience of crises. For it is both on the national level (see below) and the international level that crises led to the perception of the need for change: the “Basel Committee” was set up as a reaction to the failure of the German *Herstatt Bank*; its *Concordat* was revised as a reaction to the Latin American debt crisis and the collapse of *Banco Ambrosiano* in the early 1980s and again in the 1990s as a reaction to the *BCCI* case.

V. CONCLUSION

Looking back on the arguments presented in this paper, what is the conclusion? It was demonstrated that evidence from the policy area of banking regulation does not support the more sweeping claims at (policy and institutional) convergence often found in the literature on globalization. While there is substantial (but imperfect) convergence in terms of regulatory content and policy, there is none in terms of the political processes and the institutional dimension. Policy discourses in the field are only to a small degree characterized by the *frame* of international competitiveness, while more often, national specific issues dominate the day-to-day legislative debates—e.g., in the Swiss case, the issue of money laundering, in the United Kingdom, the details of the several high-profile banking failures that each triggered changes in the banking legislation, and in Germany, the debate about access to bank accounts for everybody.

But does that mean that there is more support for the theories of divergence and path dependence? Again, some relevant qualifications have to be made. When faced with the momentous changes in the policy field in the mid-1970s, countries did not primarily embark on the search for national specific solutions, but tried to coordinate their actions through the *Basel Committee*. Even if these negotiations took 15 years to reach a first agreement, they resulted in a common regulatory framework that often required substantial changes in national regulation.

With respect to the dimensions of politics and polity, however, the latter theoretical approaches are much better suited to explain the absence of change and the continuing divergence. Nationally specific institutional con-

figurations, historically developed, produced incentives which favored certain patterns of action and inaction and thus influenced the strategic choices of political and economic actors. Routines and patterns of interaction were developed and, in turn, created stability and lowered transaction costs.

If there was any change, it was in all four cases triggered through *national* crises, not international developments, and different national contexts led to very different reactions:

- In Germany, the *Herstatt* crisis led to substantial self-regulation, if only after the threat of massive state intervention.
- In Switzerland, the *Chiasso* scandal also led to increased self-regulation, but as an influential party (the Social Democrats) was not satisfied with the result, continuing politicization was the result.
- In Britain, reactions to crises came exclusively from the side of the state or the regulator, the *Bank of England*. Banks and associations never proposed any reforms of their own, which they did not regard as their task.
- In the United States, not even the *S&L* crisis with its enormous costs could stop the long-standing trench warfare about liberalization. In addition, there were no reform proposals from associations here either, but that was more probably due to their competitive relationship with each other than with their perceived role in the policy process.

What may seem surprising, given its focus on economic integration, is the lack of a role for Europeanization in this. Even if only two countries in our sample are members of the European integration process, one might have expected to see an effect of European influence at least in these cases. How can its absence be explained? This is probably best done by reference to timing since European level policy making only came late to the area of banking regulation. The Second Banking Directive (which introduced the principle of the “single passport” for banks) was the first major EC directive in this field, and it came only in 1989. The fundamental challenges, however, as we have seen, had arisen in the early and mid-1970s and had had to be dealt with by each country alone or, in the case of cooperation, in an intergovernmental fashion.* In the 1990s, European influence has grown, even if it remained limited to the content of regulation,[†] and had little impact on processes and

* However, even in areas with greater Europeanization, the persistence of national administrative systems is a characteristic. Compare Page (2003) who also uses the metaphor of the “filter.”

[†] Even here, convergence was far from perfect—see Molyneux (1996, pp. 259–264).

institutions. Whether European integration will play a bigger role in banking regulation in the future remains to be seen. So far, there are few signs for it, but the introduction of the Euro may lead to changes here.

In the period under investigation here—the last quarter of the 20th century—we can sum up by saying that national institutions functioned as “filters” of globalization. They dealt with similar or even the same problems in their own specific ways, thereby producing different policy outcomes and dynamics in the various countries. In terms of the possible outcomes of Table 2, we can say that the results vary between “active political design,” “path-dependent development,” and “blockade.” That the position of “nonvoluntary convergence” or “market dominance” could not be observed should be good news for reasons of democratic legitimacy of national policy making.

REFERENCES

- Baer, H. L., Mote, L. R. (1992). The United States Financial System. In: Kaufman, G. G., ed. *Banking Structures in Major Countries*. Boston: Kluwer Academic Publishers, pp. 469–553.
- Boos, K. -H., Fischer, R., Schulte-Matler, H., eds. (2000). *Kreditwesengesetz. Kommentar zu KWG und Ausführungsvorschriften*. München: Beck.
- Bovens, M., 't Hart, P., Peters, B. G., eds. (2001). *Success and Failure in Public Governance: A Comparative Analysis*. Cheltenham: Edward Elgar.
- Busch, A. (2001). Managing innovation: regulating the banking sector in a rapidly changing environment. In: Bovens et al., eds., pp. 311–325.
- Busch, A. (2003). *Staat und Globalisierung. Das Politikfeld Bankenregulierung im internationalen Vergleich*. Wiesbaden: Westdeutscher Verlag.
- Busch, A. (2004). National filters: Europeanisation, institutions, and discourse in the case of banking regulation. *West Eur. Polit.* 27(2) (Special issue: Opening the Black Box: Europeanisation, Discourse, and Policy Change. Vivien A. Schmidt, Claudio M. Radaelli, eds.) In print.
- Cassis, Y. (1994). Banks and banking in Switzerland in the nineteenth and twentieth centuries. In: Pohl. pp. 1015–1036.
- Cerny, P. G. (1994). Money and power: The American financial system from free banking to global competition. In: Thompson, G., ed. *Markets. The United States in the Twentieth Century*. Vol. 2. London: Hodder & Stoughton in association with the Open University, pp. 175–213.
- Cerny, P. G. (1995). Globalization and the changing logic of collective action. *Int. Organ.* 49(4):595–625.
- Cerny, P. G. (1996). International finance and the erosion of state policy capacity. In: Gummert, P., ed. *Globalization and Public Policy*. Cheltenham: Elgar, pp. 83–104.

- Cohen, B. J. (1996). Phoenix risen: The resurrection of global finance. *World Polit.* 48(1):268–296.
- Coleman, W. D. (1996). *Financial Services, Globalization and Domestic Policy Change: A Comparison of North America and the European Union*. London: Macmillan.
- Cox, A. (1986). *State, Finance and Industry. A Comparative Analysis of Post-War Trends in Six Advanced Industrial Economies*. Brighton: Wheatsheaf.
- Dunn, J., ed. (1995). *Contemporary Crisis of the Nation State?* Oxford u.a.: Blackwell.
- Frieden, J. A., Rogowski, R. (1996). The impact of the international economy on national policies: An analytical overview. In: Keohane, R. O., Milner, H. V., eds. *Internationalization and Domestic Politics*. New York Cambridge: Cambridge University Press, pp. 25–47.
- Gardener, E. P. M., ed. *UK Banking Supervision: Evolution, Practice and Issues*. London: Allen & Unwin.
- General Accounting Office. (1994). *Bank Regulatory Structure: The Federal Republic of Germany*. Washington, DC: U.S. General Accounting Office. (GAO/GGD-94-134BR).
- Grimm, D. (1990). Der Wandel der Staatsaufgaben und die Krise des Rechtsstaats. In: Grimm, D., ed. *Wachsende Staatsaufgaben-sinkende Steuerungsfähigkeit des Rechts*. Baden-Baden: Nomos, pp. 291–307.
- Haas, P. M. (1992). Introduction: Epistemic communities and international policy coordination. *Int. Organ.* 46(1):1–35.
- Helleiner, E. (1994). *States and the Reemergence of Global Finance: From Bretton Woods to the 1990s*. Ithaca, NY: Cornell University Press.
- Helleiner, E. (1995). Explaining the globalization of financial markets: Bringing states back in. *Rev. Int. Polit. Econ.* 2(2):315–341.
- Herring, R. J., Litan, R. E. (1995). *Financial Regulation in the Global Economy*. Washington, DC: The Brookings Institution.
- Hintze, O. (1970). Wesen und Wandlung des modernen Staats. In: Hintze, O., ed. *Staat und Verfassung. Gesammelte Abhandlungen zur allgemeinen Verfassungsgeschichte*. 3 ed. Göttingen: Vandenhoeck Ruprecht, pp. 470–496.
- Kapstein, E. B. (1994). *Governing the Global Economy. International Finance and the State*. Cambridge, MA: Harvard University Press.
- Lindgren, C. -J., Garcia, G., Saal, M. I. (1996). *Bank Soundness and Macroeconomic Policy*. Washington, DC: International Monetary Fund.
- Lütz, S. (1996). *The Revival of the Nation-State? Stock Exchange Regulation in an Era of Internationalized Financial Markets. MPIfG Discussion Papers*. Vol. 96/9. Köln: Max-Planck-Institut für Gesellschaftsforschung.
- March, J. G., Olsen, J. P. (1989). *Rediscovering Institutions. The Organizational Basis of Politics*. New York: Free Press.
- Molyneux, P. (1996). Banking and financial services. In: Kassim, H., Menon, A., eds. *The European Union and National Industrial Policy*. London New York: Routledge, pp. 247–266.
- North, D. C. (1990). *Institutions, Institutional Change and Economic Performance*. Cambridge New York: Cambridge University Press.
- Ohmae, K. (1995). *The End of the Nation State: The Rise of Regional Economics*. London: HarperCollins.

- Olson, M. (1982). *The Rise and Decline of Nations. Economic Growth, Stagflation, and Social Rigidities*. New Haven: Yale University Press.
- Page, E. C. (2003). Europeanization and the persistence of administrative systems. In: Hayward, J., Menon, A., eds. *Governing Europe*. Oxford: Oxford University Press, pp. 162–176.
- Pérez, S.A. (2001). The liberalization of finance in Spain: from interventionism to the market. In: Bovens et al., pp. 383–400.
- Pierce, J. L. (1977). The FINE Study. *J. Money, Credit Bank*. 9(4):605–618.
- Pierson, P. (2000). Increasing returns, path dependence, and the study of politics. *Am. Polit. Sci. Rev.* 94(2):251–267.
- Pohl, M., ed. (1994). *Handbook on the History of European Banks*. Aldershot: Elgar.
- Reid, M. (1988). *All-Change in the City: The Revolution in Britain's Financial Sector*. Basingstoke: Macmillan.
- Reinicke, W. (1995). *Banking, Politics and Global Finance. American Commercial Banks and Regulatory Change 1980–1990*. Aldershot: Elgar.
- Rhodes, R. A. W. (1994). The hollowing out of the state: The changing nature of the public service in Britain. *Polit. Q.* 65:138–151.
- Richardson, J. J., ed. (1982). *Policy Styles in Western Europe*. Boston: Allen and Unwin.
- Robertson, R. M. (1995). *The Comptroller and Bank Supervision. A Historical Appraisal*. Washington, DC: Office of the Comptroller of the Currency.
- Rogowski, R. (1987). Political cleavages and changing exposure to trade. *Am. Polit. Sci. Rev.* 81(4):1121–1137.
- Rogowski, R. (1989). *Commerce and Coalitions: How Trade Affects Domestic Political Alignments*. Princeton: Princeton University Press.
- Sassen, S. (1998). Zur Einbettung des Globalisierungsprozesses: Der Nationalstaat vor neuen Aufgaben. *Berl. J. Soziol.* 8(3):345–357.
- Scharpf, F. W. (1992). Die Handlungsfähigkeit des Staates am Ende des Zwanzigsten Jahrhunderts. In: Kohler-Koch, B., ed. *Staat und Demokratie in Europa. 18. Wissenschaftlicher Kongreß der Deutschen Vereinigung für Politische Wissenschaft*. Opladen: Leske + Budrich, pp. 93–115.
- Schmidt, M. G. (1996). When parties matter: A review of the possibilities and limits of partisan influence on public policy. *Eur. J. Polit. Res.* 30:155–183.
- Schmidt, V. A. (1995). The new world order, incorporated. The rise of business and the decline of the nation state. *Daedalus* 124(2):75ff.
- Schulze, G. G., Ursprung, H. W. (1999). Globalisierung contra Nationalstaat? Ein Überblick über die empirische Evidenz. In: Busch, A., Plümper, T., eds. *Nationaler Staat und internationale Wirtschaft. Anmerkungen zum Thema Globalisierung*. Baden-Baden: Nomos, pp. 41–89.
- Schuppert, G. F. (1999). Zur notwendigen Neubestimmung der Staatsaufsicht im verantwortungsteilenden Verwaltungsstaat. In: Schuppert, G. F., ed. *Jenseits von Privatisierung und "schlankem" Staat. Verantwortungsteilung als Schlüsselbegriff eines sich verändernden Verhältnisses von öffentlichem und privatem Sektor*. Baden-Baden: Nomos, pp. 299–329.
- Shonfield, A. (1965). *Modern Capitalism. The Changing Balance of Public and Private Power*. London: Oxford University Press.

- Simmons, B. (1999). The Internationalization of capital. In: Kitschelt, H., Lange, P., Marks, G., Stephens, J.D., eds. *Continuity and Change in Contemporary Capitalism*. Cambridge: Cambridge University Press, pp. 36–69.
- Soskice, D. (1999). Divergent production regimes: Coordinated and uncoordinated market economies in the 1980s and 1990s. In: Kitschelt, H., Lange, P., Marks, G., Stephens, J.D., eds. *Continuity and Change in Contemporary Capitalism*. Cambridge: Cambridge University Press, pp. 101–134.
- Strange, S. (1996). *The Retreat of the State: the Diffusion of Power in the World Economy*. Cambridge: Cambridge University Press.
- Task Group on Regulation of Financial Services. (1984). *Report: Blueprint for Reform*. Washington, DC: U.S. Government Printing Office.
- United Nations Research Institute for Social Development. *States of Disarray: The Social Effects of Globalization*. Genf: UNRISD.
- Vogel, S. K. (1996). *Freer Markets, More Rules. Regulatory Reform in Advanced Industrial countries*. Ithaca, NY: Cornell University Press.
- van Waarden, F. (1995). Persistence of national policy styles: A study of their institutional foundations. In: Unger, B., van Waarden, F., eds. *Convergence or Diversity? Internationalization and Economic Policy Response*. Aldershot: Ashgate, pp. 333–372.
- Weiss, L. (1998). *The Myth of the Powerless State*. Ithaca, NY: Cornell University Press.
- Williamson, Oliver E. (1994). Transaction cost economics and organization theory. In: Smelser, R., Swedberg, N. J., eds. *The Handbook of Economic Sociology*. Princeton: Princeton University Press, pp. 76–107.
- World Bank. (1997). *World Development Report 1997: The State in a Changing World*. New York: Oxford University Press.

5

Globalization, Regulatory Competition, and EU Policy Transfer in the Telecoms and Broadcasting Sectors

Peter Humphreys

Department of Government, University of Manchester, Manchester, UK

I. INTRODUCTION

This chapter explores the role of the European Union (EU) in coordinating a joint European regulatory response to the global pressures for liberalization in the telecoms and broadcasting sectors. The theoretical framework for this chapter draws on two concepts and two complementary sets of literature: those concerning regulatory competition and policy transfer, respectively. Although there has been considerable theorizing about the two concepts and their relevance to both comparative and EU policy analysis, with a few important exceptions (see below), this has produced relatively little detailed empirical investigation. The article seeks to help remedy this state of affairs, drawing on the findings of two recently concluded research projects.¹ It is herein contended that globalization pressures of an economic and technological kind have stimulated the dynamics of regulatory competition in the “communication” sectors, which has contributed to a paradigmatic change in regulatory policies for both broadcasting and telecommunications. EU supranational institutional actors (the agents) have employed the powers delegated to them by the member states (the principals) to steer a process of regulatory reform to achieve a harmonized European response to the globalization pressures (Thatcher, 2001). In this, the European Commission has responded in character, both as a “purposeful opportunist” seeking to expand its competence (Cram, 1997) and as a “policy entrepreneur” (Radaelli, 2000) coordinating Europe-wide policy learning and policy transfer in various forms, both coercive and voluntary. However, to the extent that positive

integration, requiring intergovernmental agreement in the Council of Ministers (CoM), is more difficult to achieve than the negative integration prescribed by the EU treaties, by European Court of Justice (ECJ) court rulings and by EC competition policy, there has remained considerable scope for regulatory reforms tailored to national regulatory styles and preferences. The chapter shows that regulatory harmonization has proceeded considerably further in the “technocratic” sector of telecommunications than in the much more “politically sensitive” sector of broadcasting, where the promotion of sociocultural goals has been a factor for continuing national divergence. At the same time, in broadcasting, the EU has, thus far at least, helped to provide some, albeit distinctly limited, cultural policy protection against globalization *à l’Hollywood*. The cross-national element of the analysis is limited to the cases of France, Germany, and the UK.

II. GLOBALIZATION AND INTERNATIONAL REGULATORY COMPETITION

At the core of the globalization thesis lies the concept of regulatory competition. Competing in the increasingly global economy, states have had to develop “competitive” policies on a whole range of fronts (tax regimes, employment and social legislation, regulatory policy in a host of economic sectors, etc.) in order to attract or retain investment. States have had to evolve into “competition states”—their interventions now geared to promoting competition and marketization; moreover, the process of adaptation has fed back into the globalization process itself (Cerny, 1997, p. 251). However, there is disagreement among globalization theorists as to whether national adaptation to globalization pressure leads to convergence around a neo-liberal model (Ohmae, 1991; Strange, 1996), or whether there remains a scope for significant national policy variation and state autonomy of action (Schmidt, 2002; Weiss, 1998). On the one hand, it has been widely argued that globalization (and European integration) diminishes national government capacities to regulate and to tax mobile firms, which can choose between locations on the basis of their regulatory relative attractiveness—referred to in the political economy literature as “regulatory arbitrage.” This state of affairs is often seen as naturally encouraging a (*de*)regulatory competition between “competition states,” which are eager to retain and attract investments within their regulatory jurisdictions. The result has been described by David Vogel (1995) as a “race to the bottom,” also famously referred to as the “Delaware effect” after the U.S. state that attracted firms through offering lax incorporation standards. Vogel’s own work, however, suggests that there is nothing inevitably deregulatory about regulatory competition, which may actually

raise regulatory standards, the so-called “California effect,” whereby that particular U.S. state was able to drive many U.S. environmental regulations upward (e.g., imposing high emission control standards on the nation’s car manufacturers). David Vogel’s conclusion is supported by the work of Steven Vogel (1996), who exposes the “deregulation revolution that wasn’t” (p. 1), arguing that the rhetoric of globalization and deregulation “serves only to obscure what is really going on” (p. 2), which is, in fact, a “re-regulation.” Steven Vogel’s comparative analysis of (principally) the telecoms and financial services sectors in the UK and Japan shows how governments have “achieved different levels of liberalization, adopted different types of re-regulation, and developed distinctive new styles of regulation” (p. 4). Extending the inquiry in less detail to reforms in other countries (United States, France, and Germany), Vogel points to the “many roads to re-regulation” (pp. 217–255).

Scharpf (1997) has identified a number of factors that might explain the varying intensities and directions of competitive pressures on national regulatory systems, whether a “race to the bottom” or, perhaps, a “race to the top.” Scharpf points out that many policy areas are “sheltered” from international economic competition; producers may serve local markets and therefore remain largely unaffected by foreign competition. Clearly, internationally exposed sectors will be under much greater pressure from regulatory competition. The resources—or bargaining power—of the regulatory jurisdiction is obviously another very important factor; California could only impose its emission standards on the car manufacturers because of the size and importance of the Californian car market. Also, just as firms compete on the quality of their goods and services and not just costs, regulatory competition may reflect the same concern (attracting inward investment because of the high level of regulation, as for instance in the case of stock market regulation). Not least, the political *salience* of the purposes served by regulation also matters; international economic competition will least affect “highly politicized regulations” that either prevent harmful effects, or promote public good (such as, it might be suggested, public service broadcasting).

Interested particularly in multilevel governance, Scharpf points out that the regulatory capacity that is lost by national governments under the pressure of regulatory competition might be regained through re-regulation at the European or international level. Indeed, the nature of the EU’s relationship with globalization has been put very neatly by Schmidt (1999, p. 172), pointing out that the EU “has acted both as a conduit for global forces and as a shield against them.” The EU has undoubtedly helped to open up member states to international markets and competition by “requiring deregulation and liberalization even from governments that were not yet ready to go down this road” (Scharpf, 1997, p. 533). It has also been able to counter some of the effects of globalization through its own regulatory

arrangements for the single market, these being by no means always “deregulatory” (“downward” re-regulation) or “lowest common denominator” solutions. Indeed, Vogel’s detailed work on consumer and (politically highly salient) environmental regulation shows that EU has combined liberalizing intracommunity trade with significantly raising standards for a number of member states, partly reflecting the “California effect” influence of its greener member states, most notably Germany (Vogel, 1995). At the EU level, however, much depends upon whether the EU’s institutional capacity for policy making is high or low. Scharpf (1997, 1999) argues that in the EU “negative integration” is easier to achieve where the commission and the European Court of Justice can rule unilaterally on competition-related matters, whereas the harmonization of market-correcting rules—“positive integration”—is rendered more difficult to achieve because of the need for agreement in the Council of Ministers. Given that national capacity may also be strong (e.g., sheltered sectors) or weak (exposed sectors), Scharpf (1997, pp. 532–533) posits four broad possibilities.

There are sectors, such as law and order or education policy, where national regulatory capacity remains high and is little affected either by international regulatory competition or by European negative integration. There are other sectors such as social policy, industrial relations, and business taxes where regulatory competition exerts strong downward pressure, whereas countervailing European action (harmonization) is impeded by the divergence of member state interests. Here there may indeed occur a “race to the bottom” to the detriment of problem solving. There are other sectors, such as health, safety and environmental regulations, or banking, where national regulatory practices are still legally protected² and where member state agreement on European standards is also easily achieved, so problem solving capacity is assured at both levels. Finally, there are many policy areas where national capacity (weakened by globalization, technological change, and regulatory competition) has been “displaced by an exclusive European competence.” Scharpf cites external tariffs and quotas, General Agreement on Tariffs and Trade (GATT) negotiations, competition policy, and, recently, telecommunications (once very “national”) as examples. Of course, the perceived impact of this shift to the EU level of problem-solving capacity varies among member states. In one country, the EU solution might be regarded as superior; in another, it may not; much depends on the way the problem has been defined by national policy processes.

III. EU POLICY TRANSFER

Levi-Faur (2002, p. 2) has made the very telling point about telecoms liberalization that, given the global and technological pressures for change,

“the major features of liberalization would have been diffused to practically all member states even if the European Commission and other agents of supranationalism had not existed.” Indeed, by 1999 (1 year after the EU’s full liberalization deadline), no fewer than 83 countries, of the 188 surveyed by the International Telecommunications Union, had privatized or part-privatized their incumbent telecoms operator and more or less the same number had introduced competition (Schneider, 2002, p. 28). However, this chapter does not claim that Europeanization *causes* liberalization; rather, it sees the EU action as an intervening variable, *coordinating*, *synchronizing*, and *mediating* a joint European response to the independent variables—globalization pressures, international regulatory arbitrage and competition, technological change, and hegemonic ideological pressures (the Washington consensus)—that are actually driving regulatory change in the wider, global political economy. Moreover, the EU has *facilitated* policy transfer by providing proreform national policy makers, facing domestic opposition, with an “alibi” (“Europe demands it”) (Héritier, 1999, p. 21).

As a concept, policy transfer (Dolowitz and Marsh, 1996) itself can be defined broadly as “the process by which knowledge about policies, administrative arrangements, institutions, and ideas in one political system (past or present) is used in the development of policies, administrative arrangements, institutions, and ideas in another political system” (Dolowitz and Marsh, 2000, p. 5). Policy transfer can occur through policy emulation (involving some “imitating action”), or through policy learning, involving “a redefinition of one’s interests on the basis of newly acquired knowledge” (Jordana et al., 2002, p. 3). Lesson drawing can be *facilitated* by policy networks and, in particular, by “epistemic communities,” which can be defined as “networks of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge” (Haas, 1992, p. 3). Policy can transfer at any point along a continuum from “obligated” (i.e., coercive) transfer to “voluntary” transfer, with a considerable amount occurring somewhere in between these poles. Voluntary transfer clearly involves policy learning, whereas coercive transfer occurs where a government is forced (for instance by a supranational institution) to adopt a policy (Dolowitz and Marsh, 1996, pp. 344–345).

International and intergovernmental organizations [such as the United Nations, the Organization for Economic Cooperation and Development (OECD), the World Trade Organization (WTO), and, indeed, the EU] can serve as important policy transfer institutions. Thus, Radaelli (2000) has referred to the “proto-federal” or “quasi-federal” system of the EU as “a massive transfer platform,” with transfer coming from dominant countries or from winning advocacy coalitions. Radaelli notes the role that transnational epistemic communities can play as a transfer medium. Also, in the transfer process, Radaelli notes, the European Commission has played the role of a

“very active policy entrepreneur.” The commission, “[o]ften in tandem with other policy transfer activists (pressure groups, consultancy firms, think tanks, and policy experts). . . suggests best practices, models, and original solutions.” Economic and Monetary Union (EMU) represents a “striking case of policy transfer.” The institutions of the EU actually provide scope for various different kinds of transfer. As Bomberg and Peterson (2000) have noted, the EU “employs a diverse mix of coercive and voluntary methods for Europeanizing policy.” In some policy domains, the EU is “schoolmaster,” and policy transfer can be directed (e.g., the Europeanization of competition policy). In many other policy domains, however, it is a “classroom” where member states learn from each other and the EU simply serves as “a sort of supranational idea hopper.” In fact, the EU offers a range of institutional possibilities (Bulmer and Padgett, 2001). Coercive, “obligated transfer” can result from rulings of the European Court of Justice, Commission competition rulings and regulations, and the implementation of EU Directives. Voluntary transfer can be mediated by the EU’s facilitating role, where the EU helps diffuse “best practice” through EU-fostered policy networks and epistemic communities, through the setting of targets and benchmarking, and through soft EU law—the kind of methods recently formalized as the “open method of coordination” (OMC). In between, there is scope for “negotiated” obligated transfer, which itself varies according to whether decisions are taken on the basis of qualified majority in the intergovernmental CoM or whether unanimity is required, the latter possibility being obviously closer to the voluntary pole of the continuum (Table 1).

Herein it is argued that globalization pressures strengthen the potential of the EU institutions for using or threatening to use “coercive” instruments

Table 1 EU Policy Transfer: The Continuum Between Coercive and Voluntary Transfer

Coercive, obligated transfer	Negotiated, obligated transfer		Voluntary transfer
ECJ ruling; Commission competition ruling; Article 86 (ex 90) Commission Directive; Commission Regulation; infringement proceedings against noncompliance	Council Directive by qualified majority vote (QMV)	Council Directive requiring unanimity	Open Method of Coordination (OMC); transfer facilitated by EU policy networks and “epistemic communities”

of liberalization to force the pace of liberalization. Thus, the commission may point to, and even exaggerate, the high economic stakes in a sector and the urgency of the need for a European-level regulatory response in order to employ distinctly coercive delegated powers even when certain member states may feel strongly that this is inappropriate. Globalization pressures will also have an important bearing on EU-level negotiated transfer. Where globalization pressures are strong, and particularly where technological change is involved as in the communications sector, there is more likely to be strong pressure on the member states to adopt a pragmatic, technocratic problem solving rather than a politicized bargaining approach to negotiation, and consensual decisions become more probable. However, this also depends on the political salience of the sector and of the particular issue; the political salience of broadcasting or of a controversial issue such as media concentration is much higher, and therefore much less amenable to technocratic problem solving, than are most issues in the telecoms sector, which are generally more technical in quality.

IV. TELECOMS LIBERALIZATION

In telecoms, the major stimuli to the paradigmatic change that has occurred since the 1980s in regulation and industry structure (from monopoly to competitive market) were globalization pressures combined with technological change in the information and communications industry at large. New “technologies of freedom” (Levi-Faur, 1999, p. 200), in the shape of digitalization, fiber optic cable, integrated services digital network (ISDN), satellite, and mobile telephony, swept away the notion that telecommunications was a natural monopoly, by allowing for increased service and network competition, and also rendered territorial markets indefensible, by allowing for the bypassing of national systems (international call rerouting). At the same time, the globalization of world trade, the communication requirements of the global financial structure, and the needs of multinational business users were all compelling demand side factors for telecoms reform that might be placed collectively under the heading “globalization pressures” for telecommunications liberalization (Humphreys and Simpson, 1996). These globalization pressures were institutionalized when the Uruguay Round of the GATT, and later the WTO, embraced liberalization of telecoms services (Simpson and Wilkinson, 2002). There was, of course, an important ideological/ideational component to globalization. The 1980s and 1990s were decades characterized by the global spread of the neo-liberal “Washington consensus,” which stressed the need for inter alia trade liberalization, deregulation, and privatization. In telecoms, regulatory reform was given

an added spur by the perception that liberalization was crucially important for national competitiveness in the emergent global information society (Commission of the European Communities, 1994).

The key element of regulatory competition is clear. Globalization pressures in telecoms were unleashed by reform in the world's largest telecoms market, the United States. The divestiture of AT&T demonstrated to the world that telecoms was no longer a natural monopoly and that introducing competition brought gains in terms of efficiency, innovation, consumer choice, better service quality, and reduced prices. Telecoms deregulation in the United States triggered a process of global regulatory competition as states sought to maintain the competitiveness of their telecoms industries by adopting liberalization, albeit a "domesticated" variant thereof. Protected national champion telecoms manufacturers such as Siemens (Germany) and Alcatel (France), dependent on world markets to recoup their high technological investments, were sensitive to U.S. demands for reciprocal liberalization from countries with which it ran a telecoms deficit, and came to see the opportunities of open European markets. Incumbent operators, too, reorientated their corporate strategies, imitating the international expansion and alliance strategies of the likes of AT&T and British Telecom (BT). Thus, under the pressures of globalization and new technology, opposition to liberalization eroded steadily even in protectionist countries (Humphreys and Simpson, 1996).

The EU response to the globalization pressure was relatively prompt and, upon first inspection, might be taken to represent a clear case of Europeanization by "coercive, obligated policy transfer." The actual "institutional trigger" for telecoms reform in Europe (comparable to the famous AT&T court ruling that unleashed liberalization in the United States) was the 1985 ruling of the European Court of Justice in the British Telecom case, which established that telecommunication was subject to the competition rules of the EC Treaty. This ruling was immediately exploited by the European Commission progressively to liberalize European telecoms through competition policy, namely repeated use of Article 86 (ex 90). This particular competition article empowered the commission to act unilaterally to remove dominant commercial positions of public undertakings that could be deemed anticompetitive and, crucially, it gave the commission the authority to bypass the Council of Ministers (i.e., intergovernmental decision making) to enact its own (supranational) liberalization directives. Early usage of this article—first to liberalize telecoms equipment, then to liberalize advanced services—led to appeals by certain national governments to the ECJ against what was perceived to be the commission's high-handed exceeding of its competence in telecoms policy. However, in 1991 and 1992, the ECJ upheld the commission's use of Article 86. Moreover, European competition authority rulings take

direct effect and could be employed to push the reforms forward at critical junctures. As will be seen, a particularly important such ruling occurred in 1993 (making the FT/DT alliance contingent on France and Germany's accepting further liberalization). Finally, once, in 2000, a Commission Regulation (also with direct effect) was employed (to mandate the unbundling of the local loop). However, the degree of EU coercive, obligated policy transfer should not be exaggerated. Different patterns of national institutional structures and vested interests produced very different cross-national "reform capacities" among the member states (Grande and Schneider, 1991). The need to overcome this national politics hurdle explains the incremental pace and timing of EU reform, stretching over 10 years from the publication of the 1987 European Commission Green Paper reform blueprint to the full liberalization of infrastructure and services in 1998.

Faced with this political reality, the commission preferred to proceed consensually. The "coercive" competition Article 86 (ex 90), was certainly employed to liberalize particular telecoms markets (i.e., negative integration), starting with the terminal equipment directive (1988) and value-added services directive (1990), followed by a directive liberalizing the provision of satellite services and equipment in 1994, a mobile telephony directive in 1996, and the full competition directive in 1996 providing for the liberalization of alternative telecoms networks by mid-1996 and full liberalization from January 1, 1998. However, the accompanying directives that prescribed the detailed harmonized procompetitive regulation (i.e., positive integration) were all negotiated intergovernmentally under Article 95 (ex 100a, internal market) and Article 55 (ex 66, freedom to provide services) and enacted by the council and parliament.

Nonetheless, the "technocratic" nature of the sector and the incremental liberalization timetable facilitated the relatively smooth agreement of a series of directives [Open Network Provision (ONP) Framework Directive in 1990, the application of ONP leased lines directive in 1992, application of ONP to voice telephony in 1995, interconnection directive in 1997, licensing directive in 1997, and universal service directive in 1998], with most of the details worked out in the council's working groups (Interview in the German Economics Ministry, March 2001). Moreover, this important element of negotiated policy transfer was accompanied by an important measure of "voluntary transfer" that was facilitated by the commission's "policy entrepreneurship" in promoting policy networks and epistemic communities through which member states would learn about the new realities in the sector. The commission sought to achieve this voluntary transfer by means of establishing networks and working groups, and reviews and consultations, involving the telecoms policy community at large. It established a comitology—an "epistemic community"—of EU telecoms regulation, in the shape

of the high-level regulators group and the ONP Committee and Licensing Committee, and it encouraged the activity of the Independent Regulatory Group (IRG) of national telecoms regulators. In this process, the apparent success of the UK model was helpful to the commission's cause, as indeed were the UK expertise and personnel that the commission was able to draw upon (interviews in the commission, 2000; interview in the French telecoms regulatory authority). The UK's influence exerted itself through a "kind of osmosis"; UK consultancy firms were influential and UK officials were very present in DG XIII, the Information Society directorate general of the Commission (interview in the French industry ministry, May 2001).

The UK clearly served as a helpful policy model for the move from the "interventionist state" to the new "regulatory state" paradigm (Majone, 1997), and it also provided an important degree of stimulus to a "regulatory competition" leading toward liberalization. Within the EU, Britain was the first mover in telecoms liberalization. During 1982–1984, the Thatcher Government licensed Mercury as a competitor network to BT, which was privatized. Value-added services were liberalized and, to supervise this new competition, a national regulatory authority (NRA) was established as an independent regulator of the telecoms sector, the Office of Telecommunications (OfTel), the first to be established within Europe. Together with the Federal Communications Commission (FCC) in the United States, OfTel provided the general model for the new regulatory paradigm—of active procompetitive asymmetric regulation by agencies independent of the industry—that was now being strongly promoted by the commission. Moreover, the UK soon had the lowest business call charges in Europe and many foreign multinationals (including telecoms firms such as Mitel, NEC, Northern Telecom, and Rolm) chose the UK as their chief location in Europe. Consequently, west European countries started "looking closely at the British" (Morgan and Webber, 1986, p. 62). Thus, the UK reinforced, or imported into Europe, the global pressure of regulatory competition that was emanating from the United States (Humphreys and Simpson, 1996, pp. 107–108). Continental European policy makers and industry players "learned" from both of the Anglo-Saxon first movers that telecoms liberalization contributed to national economic competitiveness, attracted investment, stimulated innovation, and increased quality of service and consumer choice while lowering prices. The global expansion of BT and AT&T demonstrated also to entrenched incumbent operators on the continent that—at least in the context of dynamic telecoms markets—liberalization did not pose a threat, rather, that it offered an interesting commercial opportunity to expand internationally (Humphreys, 2002, p. 58).

In fact, this particular "policy lesson" proved crucial for the achievement of the critical mass that was necessary for agreement of the key

intergovernmental Council Resolutions of 1993 and 1994 in favor of the full liberalization by 1998 of telecoms services and infrastructures. Agreement was only possible because two pivotal large and influential member states (Germany and France) were prepared to sign up to full telecommunications liberalization, albeit with a deferred deadline (1998), to suit the interests of their national champion incumbents. This deadline gave them a period of reprieve in which to forge their internationalization strategy (including a joint venture between them) and prepare themselves for full competition (Humphreys, 2002, p. 63; Waesche, 2003). That the reformers within these two key countries were now prepared to push forward toward full liberalization, against significant internal domestic opposition, can be explained by a mix of the regulatory competition dynamics and, again, the commission's judicious resort to its coercive competition powers. The part played by the liberalizing dynamics of international competition is clear from the way that the French and German incumbent operators (crucial veto actors) came to accept privatization and liberalization as the price to be paid for their ambitious internationalization strategy, itself a means of maintaining competitiveness with their Anglo-Saxon rivals. The commission's 1992 review of telecoms services exerted the soft institutional pressure for voluntary transfer, providing the locus for mutual learning and agreement about this further important step toward reform.³ At the same time, the commission forced the pace of French and German—and as a result European—telecoms liberalization at this critical juncture through a strategically timed element of “coercive” policy transfer pressure, exploiting France Télécom and Deutsche Telekom's internationalization strategies. In 1995, the EU Competition Commissioner made approval of the Atlas international alliance between DT and FT, the focal point for their international strategies, conditional upon French and German support for further liberalization. In pushing this liberalization through against domestic opposition, policy makers—mostly already persuaded of the need for reform—could point to Europe as an “alibi” (Schmidt, 1997, p. 17; Bartle, 1999, p. 172; Schneider and Vedel, 1999).

Therefore, in telecoms, EU policy transfer was achieved through the whole gamut of EU institutional transfer mechanisms: “coercive,” “negotiated,” and “voluntary.” The outcome was a mixed “pluralist/hierarchical” regime of new telecoms governance (Bulmer and Padgett, 2001). As Levi-Faur (1999, p. 189) has argued, there was a striking degree of supranationality in the new regulatory framework. The “technocratic” nature of the sector led to the relatively straightforward agreement of some detailed harmonized rules for the application of the principal of ONP; in other words, open access to public telephone networks and services. A prescriptive regime for interconnection was developed based on cost-oriented tariffs. The cost structures of players with significant market power had to be transparent, with clear

accounting of different market segments, to reveal any cross subsidies. Rather than “eliminate rules,” the new European regulatory regime “extended the rules.” So extensive and wide-ranging were the powers that were actually enshrined in the EU’s “regulation-for-competition” regime that Levi-Faur (1999, p. 189) argued that “if these regulations do not suggest a supranational structure, it is doubtful if such an ‘animal’ exists at all.”

On the other hand, “pluralism” was reflected in the fact that, rather than create a supranational EU regulatory agency, the EU regulatory package placed regulation firmly in the hands of NRAs, albeit monitored and coordinated by the commission. The commission accepted that the member states would not relinquish control over telecommunications to a centralized European agency (interview in the commission, 2000). Directives allowed the member states a degree of discretion in their transposition into national legislation. As a result, the national regulatory authorities were diverse in their design, constitution, and working practices (Thatcher, 2002). Eyre and Sitter (1999, pp. 64–65) have provided a taxonomy of regulatory practice: the administrative British system favored negotiation with the regulated interests, the German system was legalistic, and the French system was more orientated to *service public*. Reflecting the national institutional “refraction” effect (Waesche, 2003, p. 17), the member states’ regulatory structures achieved by the beginning of the new century could, in fact, be ranked on an *étatiste* liberal scale (Levi-Faur, 1999).

The UK was clearly in the “liberal” vanguard from the outset. Germany started off as a comparative laggard but moved over the course of the 1990s into the vanguard of the “liberal” camp, transposing key features of the EU regime ahead of the deadlines and actually leading the way (far ahead of the UK) in unbundling the local loop (Bulmer et al., 2003). France’s regulatory regime retained significantly *étatiste* features, notably in retaining a heavy licensing regime and a strong orientation toward *service public*. However, the French soon conceded that the heavy licensing regime was a mistake (interview in the French Industry Ministry, May 2001) and accepted the lighter regime mandated by a “2002 package” of one liberalization and five harmonization directives that streamlined the numerous directives of the “1998 package” and now opened the way for a reduction in the regulatory burden in the sector (see Section VII).

The technocratic nature of the sector led to a considerable amount of policy learning in the special regulatory committees—the Licensing Committee and the ONP Committee—and, above all, the Independent Regulators Group, which met beyond the oversight of the ministries (interviews in the commission, July 2000; interview in the French Regulatory Authority, May 2001; interview in the Swedish Regulatory Authority, June 2001; interview in

the German Regulatory Authority, March 2001). Successive Commission implementation reports charted steady progress toward competitive markets. The Commission's eighth such report stated that "after four and a half years of liberalization of telecoms services, the regulation put in place at national level [was] very substantially compliant with the EU framework. Licensing and interconnection regimes ha[d] permitted large-scale market entry..." (Commission of the European Communities, 2002, p. 6). The regular implementation reports, produced by a special unit in DG XIII, had themselves served as a mechanism of policy transfer, in that they subtly "named and shamed" poor performers and transferred knowledge about the best regulatory practice (Humphreys, 2002, p. 72).

V. BROADCASTING LIBERALIZATION

Like telecoms liberalization, the driving force for European broadcasting liberalization was a dynamics of globalization pressures on the European media industry, notably the international competitiveness of the U.S. audiovisual production industry, coupled with technological change, in this case, the arrival of transfrontier satellite broadcasting and the scope that the Luxembourg-based SES-Astra satellite series offered new entrants to broadcasting to circumvent national broadcasting regulation (Humphreys, 1996, pp. 169–170). As in telecoms, new technologies also swept away the monopoly rationale for public monopolies (the "scarcity of frequencies"). Regulatory competition played a role. Governments were keen to pursue regulatory policies that would promote the development of these technologies, in the growing conviction that they would be central to economic competitiveness in the emerging information society. Thus, France, for example, initially started to liberalize broadcasting in the 1980s as part of a grand national vision to develop cable and satellite broadcasting. The ambitious state-backed Cable Plan was intended to launch France into the technological front rank of information societies; although its implementation was disappointing, it spurred broadcasting deregulation (Humphreys, 1996, pp. 180–182). Moreover, satellite broadcasting led national policy makers to accept that important aspects of broadcasting policy would have to be handled at the supranational level. At the same time, the European Commission perceived the need from the 1980s to respond to globalization pressure in terms of Europe's growing vulnerability—with the arrival of cable and satellite—to a demand-fuelled increase in U.S. audiovisual imports and saw the need to create the right conditions (an internal market) that would bolster the European audiovisual industry. Increasingly, the audiovisual sector, con-

verging with telecoms, was viewed as strategic for Europe's competitiveness in the global information society (Humphreys, 1996, pp. 293–294).

The “Europeanization” of broadcasting policy occurred through a mix of coercive and negotiated policy transfer. As in telecoms, the ECJ actually opened up the way for the Commission to draft its broadcasting policy. The key European court rulings were the 1974 Sacchi and the 1980 Debaue rulings, which defined broadcasting as a tradable service subject to the EC treaties and specified the illegality of discrimination against broadcasting services from other member states (Humphreys, 1996, p. 262). The commission explicitly referred to these key ECJ rulings in its 1984 Green Paper as confirming the treaty-based legal basis for its involvement in a sector on the grounds of free economic competition freedom (culture not being an EU competence until the 1992 Maastricht Treaty). Subsequently, there followed a long period of intergovernmental negotiation leading in 1989 to the enactment in the Council of Ministers of the market-liberalizing EU Television Without Frontiers (TWF) Directive (Council of the European Communities, 1989).⁴ TWF opened up the European TV market by mandating the free reception and establishment of broadcasting services from other member states subject to the observation of fairly liberal minimum content and advertising regulations that were harmonized at the EU level by the directive. Adopted by qualified majority, against the votes of Belgium and Denmark and conditionally supported by France, the TWF Directive had involved intense intergovernmental negotiation, mainly over the details about the rules governing television advertising but also over cultural protectionism. Although the TWF Directive was mostly deregulatory, aimed at an industry-friendly and commerce-friendly market liberalization, it provided one element of significant “upward” regulation, namely the introduction, at France's insistence, of protectionist measures to reduce the cultural and economic impact of U.S. audiovisual imports. The introduction of a majority “made-in-Europe” program quota and also a quota to promote the European independent production sector by the TWF Directive was a very clear case of policy transfer via the EU of a key element of the protectionist French cultural policy model to other member states. The French also pushed the EU to protect *l'exception culturelle* in the GATT/WTO General Agreement in Trade in Services (GATS) negotiations on the treatment of audiovisual services, defending the Europeans' right to apply protectionist program quotas and to subsidize audiovisual production through national and EU TV audiovisual support funds (Humphreys, 1996, pp. 272–284). The result was formally a stalemate between Europe and the United States. Strictly speaking, a “cultural exception” was not established, but the Europeans nonetheless successfully defended their policies, albeit provisionally, against the far-reaching kind of liberalization sought by the United States; in 2003,

the EU has once again indicated that it is not prepared to negotiate further audiovisual liberalization through GATS.

The main effect of the EU's TWF Directive, however, was to reinforce the liberalization pressure that globalization, technological change, and regulatory competition were already exerting, through transferring liberalization to those (mainly smaller) member states with weaker media industries, which were still reluctant to rush down the liberalization route. Since the first enactment of the TWF Directive (in 1989) in a number of clear-cut cases, the European Court of Justice has obligated the policy transfer on member states whose laws interpreted the directive in too lax a manner. Thus, the court ruled in 1989 that The Netherlands was not entitled to impose its own strict advertising rules on foreign advertising-based services (Humphreys, 1996, p. 278). Moreover, the court deemed incompatible with community law the requirement that foreign companies granted air time on the national broadcasting network should purchase Dutch programming (Harcourt, 2000, p. 102). Again, in 1992, the court ruled against Belgium for retaining a number of protectionist measures that breached the TWF Directive's requirements, including a provision that had required the new commercial broadcaster in Flanders to be majority-owned by the Flemish press (Harcourt, 2000, p. 103). These rulings against culturally protectionist policies of small countries with relatively weak indigenous media industries clearly supported TWF's deregulatory thrust.

Rather than providing a real shield against globalization, TWF arguably stimulated (*de*)regulatory competition pressure within Europe (Harcourt, 2002). Alongside Luxembourg, whose comparative lack of media regulation was clearly attractive to international media investors (such as the investors in the SES-Astra satellite company, and its customers), the UK set the pace through the Thatcher Government's creation of a lightly regulated category of "nondomestic satellite licensee." As Levy (1999, pp. 34–35) has explained, companies "could obtain a nondomestic licence from the ITC [Independent Television Commission] more or less on demand." Thereby, BSkyB, although it was based in the UK, could be deemed to escape the country's strict domestic cross-media ownership rules by virtue of not using UK-allocated satellite frequencies (BSkyB used a Luxembourg-based SES-Astra satellite). As Levy notes, the UK became an attractive location as this state of affairs was "quickly seized on by other TV stations keen to beam their signals into neighboring EU territories while escaping the tighter regulatory regime that was often applied to them in those states."⁵ However, in response to complaints from other countries, the Commission took the UK to the ECJ in 1994, challenging this UK interpretation of what TWF actually allowed. As Harcourt (2000, pp. 105–106) explains, essentially, the commission objected to the UK's claiming of control over nondomestic broadcasters,

which amounted to a failure to embrace the principle of mutual recognition that underpinned the European single market created by TWF. The ECJ accepted the commission's case. Subsequently, the 1997 revision of the TWF Directive clarified that a member state only had jurisdiction over broadcasters when they had their headquarters in that member state and the editorial decisions about their schedules were taken in that member state (Harcourt, 2000, pp. 105–106). The UK duly abolished its previous distinction between “domestic” and “nondomestic” satellite broadcasters, retaining the light touch regulatory regime for all satellite broadcasters (Gibbons, 1998, p. 140). Nonetheless, this latter Commission and ECJ intervention could be seen as an attempt to “upwardly” regulate against an activity that some saw as an unfair gambit of (*de*)regulatory competition.

VI. MEDIA OWNERSHIP REGULATION

In one area of broadcasting policy, the impact of downward regulatory competition is particularly clear. Empirical academic research has produced strong evidence that regulatory competition has been the driving force behind the liberalization (relaxation) of media ownership rules in Europe, a clear case of “race to(ward) the bottom.” Traditionally, sector-specific media ownership restrictions have been seen as being necessary in addition to routine competition rules in order to control against the potentially negative impact on democratic pluralism of excessive concentrations of media ownership. However, a number of studies point toward an international trend toward a radical relaxation of these rules in response to technological change and economic competition.⁶ Humphreys and Lang (1998) have described how, during the 1990s, extensive media ownership deregulation occurred in Germany under the pressure of fierce regulatory competition between the German states (the *Länder*), competing strongly for media investment. In this context, media companies could engage in forum shopping or regulatory arbitrage, choosing between locations on the basis of their regulatory attractiveness. This, of course, placed pressure on politicians and regulators in the *Länder* to deregulate. Nor was this regulatory competition about a purely national regulatory competition between jurisdictions in a federal system. In pushing for media ownership deregulation, the German private media lobby made much of the competitive threat to German companies from foreign media interests. German rules, it was argued, “discriminated” against German media investors (Humphreys and Lang, 1998, p. 189). German politicians, too, have argued that Germany—even after considerable deregulation in 1996—remains overregulated to the detriment of the media industry's development (Humphreys, 1999a, pp. 42–43).

In the UK, a similar—although more incremental⁷—process of deregulation of media ownership restrictions occurred throughout the 1990s, culminating in some radically deregulatory measures contained in the Communications Bill submitted to the Parliament in 2002 and currently completing its passage (Doyle, 2002; Humphreys, 2003a, pp. 199–207). The (de)regulatory competition is clear. A constant refrain of the media industry lobby was the need to remove constraints that undermined their competitive position; duly echoed in successive official policy documents and statements, deregulatory measures were introduced, which resulted in a striking consolidation of the UK Independent Television (ITV) sector (the current proposals now open the way for a single ITV). The deregulation went beyond measures to promote the growth of UK media companies. The government justified its controversial proposal in the 2002 Communications Bill to remove the ban on non-European ownership of ITV and Channel 5 by reference to the need to attract inward investment from non-European Economic Area (EEA) countries. In France, in 1997, the government justified a proposed relaxation of its strict media ownership rules for satellite channels in terms of the “international aspect of satellite broadcasting and the ease with which an operator can move abroad if the French regulations are too strong” (Levy, 1999, p. 102). Yet again, the dynamics of (de)regulatory competition is clear.

The need to produce countervailing harmonized media ownership regulation at the EU level was expressed throughout the period of negotiation of the TWF Directive by Members of the European Parliament (MEPs), principally from the UK and Italy, who were worried that liberalization would provide a major stimulus to media concentration. However, the market opening TWF Directive remained notably silent on the issue; at the time of its negotiation, neither the Commission nor the member states had appeared interested in an EU-level response to the problem. A number of EP resolutions were tabled calling upon the Commission to prepare legislation on the theme, and in 1992, the Commission produced a Green Paper, introducing a fairly lengthy period of consultation. The Commission appeared at first rather more concerned about the need to remove regulatory barriers to the internal market than about the need to protect media pluralism, which was the MEPs’ main concern. Over time, though, the Commission clearly became interested in the pluralism dimension as well. However, media ownership regulation did not prove amenable to harmonization (positive integration). A European Commission draft directive was finally prepared but, due to intense lobbying against it both from certain member state governments and also from powerful industry interests, the draft directive was shelved before it could become the subject of any negotiation in the Council of Ministers and with the European Parliament (Humphreys, 2000, pp. 86–89; Harcourt 2000).

Nonetheless, there is at least some evidence to suggest that a degree of Commission-mediated voluntary policy transfer occurred, in the shape of a new audience share model of media ownership control. This new regulatory approach marked a move toward a more competition policy-oriented model away from the traditional “media ownership model” based on typically strict limits on shareholding and accumulations.⁸ As Harcourt (2000, p. 171) has reported, the idea of audience share as a policy instrument first surfaced when the European Commission devoted five pages in its 1992 Green Paper *Pluralism and Media Concentration in the Internal Market* to the advantages of utilizing audience share as a policy instrument at the EU level (Commission of the European Communities, 1992, pp. 106–110). Although the Commission’s media ownership policy subsequently ran into the sand, by 1996, the audience share policy instrument had indeed found its way into legislation in the UK and Germany. Harcourt (2000, p. 1999) took this as evidence that the new regulatory policy instrument had “filtered down” to the member state level through the Commission’s consultation process. Levy (1999, p. 118) echoes this view: “The most noticeable impact of EU proposals for media ownership reform was not so much in persuading countries to endorse a role for EU regulation, as in the adoption of the EU approach for measuring influence in terms of audience share rather than the number of licenses held or limitation of the percentage holding in any particular company.” Although clearly deregulatory, this new regulatory approach also has to be seen as a pragmatic technical response to the difficulty of retaining traditional mechanisms based on limiting shareholdings and accumulations in an industry undergoing dynamic technological and market change.

VII. CONVERGENCE OF BROADCASTING AND TELECOMMUNICATIONS

Currently, the telecoms and broadcasting sectors are converging. A digital “convergence” is occurring between electronic media, telecoms, and computing, making it difficult to maintain separate regulatory structures for these hitherto distinct sectors (Commission of the European Communities, 1997). This “convergence” produces pressures for more flexible regulation, particularly with regard to broadcasting, which, unlike computing and even telecoms, has historically been subject to very strict regulation. Some argue that digital convergence undermines both the rationale for, and the feasibility of, sector-specific national regulation of communication. (Why continue to regulate broadcasting, when the Internet, which can deliver TV programs, remains free from such regulation? Why continue to regulate broadcasting to provide diversity when consumers can choose from scores of digital thematic

channels?) The stakes of getting the new regulatory structures right are high because the “communications sector” is seen as being of strategic importance for European competitiveness in the global economy, something famously stated by Jacques Delors’ 1993 paper on *Growth, Competitiveness and Employment* (Commission of the European Communities, 1993) and echoed by the 1994 “Bangemann Report” on *Europe and the Global Information Society* (Commission of the European Communities, 1994). The reform of regulatory policy for the “converging” communications sectors testifies to a degree of Commission-mediated policy transfer, starting off as voluntary transfer through open discussion of the issues and alternative models in consultations surrounding the publication of a 1997 Green Paper on convergence, then the 1999 Communications Review and some draft directives, but finally taking the shape of negotiated obligated transfer through the enactment in early 2002 of five directives (to be transposed by member states by mid-2003) simplifying the regulation of all electronic communications networks and services, albeit with an exemption for broadcast content, which could remain bound by diverse national rules, subject to the internal market requirements of the TWF Directive.

The European Commission’s original regulatory policy agenda for convergence was biased by a clear transfer of ideas from industry experts and interests to policy makers, at the expense of other concerns such as cultural policy. Notably influential in informing the Commission’s 1997 Green Paper on convergence, which placed the issue of regulatory reform for the converging sectors squarely on the agenda, was a 1996 report that the commission had commissioned from the British consultancy KPMG (1996). According to Tongue (1998, p. 2), who was a member of the EP’s culture committee at the time and a well-informed participant in the debate, “...although the Green Paper was finally submitted by the European Commission’s DG XIII (Industry and Telecoms) and DG X (Culture and Media), it was largely the work of [the telecommunications directorate] DG XIII together with [industry] consultants KPMG. The initiative was headed by Commissioner Bangemann, whose main brief [was] to create a liberalized environment for industry.” Levy (1999, p. 130) notes the “intense political battle” that occurred between these two directorates, and that the final draft “was far less prescriptive and more open-ended than the original DG XIII draft.” However, in the most important section of the Green Paper, presenting three options for the future of regulation—building incrementally on present national structures, developing a separate regulatory model for new converged services, and moving toward a converged “horizontal” regulatory model for the entire communications sector—Levy (1999, p. 132) detects “a clear preference” for the latter. Close analysis of the Green Paper arguably reveals a bias toward the view that convergence requires a slimmed-down,

converged regulatory framework calculated to promote the economic benefits of convergence and conducive to Europe's global competitiveness (Humphreys, 1999b).

However, the commission's ambition to steer through a major new liberal European regulatory model to be applied horizontally across the "converging" communications sectors abutted against the reluctance of national governments and broadcasters to cede control over the politically and culturally sensitive, domestically rooted broadcasting sector. The extent of resistance to the commission's clearly favored model of across-the-board "horizontal" regulation became clear from the consultation process surrounding the 1997 Green Paper on convergence and the subsequent commission-inaugurated 1999 Communications Review. Ward (2002, pp. 111–124) has described in detail how the commission was compelled to water down its original aims. As the result, content regulation was excluded from the new "horizontal" regulatory model for communications infrastructure and services, which was produced by the commission in 2000 and adopted by the Council of Ministers in a series of directives during 2002. The new 2003 regulatory package broadens the scope of the EU regulatory framework to all electronic communication networks and services. It replaces the 1998 telecoms regulatory package's numerous liberalization directives for different telecoms networks and services with a single liberalization directive and replaces its various harmonization directives with five council and EP directives (for a common regulatory framework, access and interconnection, authorization, universal service, and data protection and privacy). Broadcasting content, it was conceded, could continue to be regulated "vertically" according to member states' preferred sociocultural models. The Framework Directive on a common regulatory framework for electronic communications networks and services recognized that: "audiovisual policy and content regulation are undertaken in pursuit of general interest objectives, such as freedom of expression, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection, and the protection of minors" (European Parliament and Council, 2002, pp. 5–6). This means that broadcasters can remain subject to strict content obligations. Thus, whereas the UK's 2002 Communications Bill, in line with the new EU regulatory framework, abolishes the current requirement to obtain individual licenses to run telecoms systems, it continues to regard broadcasting as a licensed sector, with the terrestrial "public service" broadcasters continuing to be subject to a higher level of regulation than channels carried by cable, satellite, and other telecoms systems (Humphreys, 2003a, p. 192). Furthermore, the Universal Services Directive, in the new EU communications regulation package, allows member states to impose "reasonable 'must-carry' obligations" for the transmission of public service channels (the term used is

services that meet “general interest” objectives) on providers of electronic communication networks used for the distribution of radio or television broadcasts (Article 31).

The “convergence” regulatory framework leaves scope for considerable national diversity. Despite the similarity of the reform agenda across the EU, despite the Commission’s efforts to promote its preferred model, and despite the strong pressures of (*de*)regulatory competition between member states, digital convergence did not produce similar policies nor erode the traditional policy styles of countries such as France, Germany, and the UK. As Levy (1999) has described, French economic *dirigisme* and cultural protectionism, and Germany’s federalism and special concern for pluralism, constrained broadcasting reform and complicated discussions about regulatory adaptation to the challenges presented by convergence. Consequently, in Germany, regulatory reform seemed to be guided as much by the constitutional issue of which new media services fell under the regulatory jurisdiction of the federation and which under that of the *Länder*, with new media laws produced at each level. In France, the regulatory policy debate was about how to reconcile protectionism with a more competitive market. In the UK, policy was geared toward a stricter regulation of digital TV than elsewhere (see below). Moreover, of the three cases, so far, only the UK has opted for a converged regulator, as suggested by the EC’s 1997 Green Paper on convergence, for the entire electronic communications sector (OFCOM).

There is one area of convergence where a significant element of policy transfer might have been expected between sectors: namely, the regulation of conditional access. Conditional access systems (CAS) ensure, typically by encryption and subscriber management systems, that only those consumers who have paid for a program or information service are able to receive it. CAS have been described as the “turnstiles” of digital broadcasting and they clearly raise issues (common standards, interconnection and interoperability, and fair and nondiscriminatory access) that are “familiar from telecommunications” (Levy, 1999, p. 63). Given the successful transfer across Europe of a regulatory framework for precisely these issues in telecoms, and in view of the indispensability of resolving interoperability and interconnection issues for creating a European single market for digital TV, the EU’s failure to prevent the appearance of a fragmented scenario of proprietary conditional access systems, regulated according to diverse national models, across the member states testified to the capture of regulatory policy making by those national pay-TV operators who owned the digital “turnstile” (Levy, 1999, pp. 63–79). Only in the UK, where Rupert Murdoch’s control of the digital “turnstile” gave the matter a certain political salience, were detailed guidelines allowing implementation of the fair access that had been loosely specified by EU Directive⁹ quickly developed for CAS regulation by Ofcom, the UK

telecoms regulator. Some policy learning did duly occur, though; the UK “telecoms” model informed guidelines produced by the German private broadcasting regulators, who were responsible for CAS regulation in that country.

VIII. COMPETITION POLICY IN THE CONVERGING COMMUNICATIONS SECTOR

In the policy debate about regulatory policies for convergence, economic competition policy has become the central focus. Competition policy, as mentioned at the outset, is an aspect of EU negative integration that is relatively easily achievable because of the direct powers in this field delegated to the European Commission. A number of studies have drawn attention to the commission competition authority’s increasing activism in the communications field (Pauwels, 1998; Levy, 1999, pp. 80–99; Harcourt, 2000, pp. 116–138). In a number of high-profile cases in the communications sector, the commission has blocked mergers because the combination of players in converging markets would have risked producing significant barriers to market entry harmful to the European single market. Thus, on two notable occasions, in 1994 and again in 1998, the commission blocked attempts by Bertelsmann, the Kirch group, and Deutsche Telekom to form an alliance to provide digital pay-TV and other digital communication services to the German market. Indeed, the commission’s relatively successful application of general EU competition policy to open up competition in the converging media and telecommunications sectors contrasts clearly with its aforementioned failure to progress harmonization of media-specific anticoncentration rules designed to safeguard “pluralism.” This example might be taken as highly illustrative of the EU’s liberal bias toward market-liberalizing regulation (negative integration) and the difficulty the commission has in pushing through more interventionist cultural and social policies (positive integration) that go against powerful vested economic interests and that challenge member states’ claims of sovereignty over media policy as cultural policy. Although Commission competition rulings might have the effect of protecting a minimum of media pluralism, they are no substitute for specific controls.

There have been numerous complaints from the private sector to the Commission about the alleged distortion of the media market arising from allegedly “unfair” benefits enjoyed by public service broadcasters, yet to date, Commission competition rulings have recognized that the definition of the public service remit is entirely a member state competence. On the basis of an EP resolution on public service broadcasting, and reflecting a strong political will at the member state level and in the European Parliament to protect

public service broadcasting, a protocol had been attached to the 1997 Treaty of Amsterdam stating that “[t]he provisions of the Treaty establishing the European Community shall be without prejudice to the competence of the member states to provide for the funding of public service broadcasting in so far as such funding is granted to broadcasting organizations for the fulfillment of the public service remit as conferred, defined, and organized by each member state” (Treaty of Amsterdam, 1997). So long as their funding is proportionate to their remit as defined and entrusted to them by their governments, public service broadcasters have been allowed to expand their activities. Thus, so far at least, the commission competition authority has been careful to respect member states’ sensitivities about broadcasting’s special social, cultural, and democratic roles (Humphreys, 2003b; Ward, 2002, pp. 97–110).

IX. CONCLUSION

In terms of Scharpf’s framework, cited at the outset and suitably modified to take account of the different possibilities *within* sectors, the findings may be summarized as in Figure 1.

In the communication sector, both telecommunications and broadcasting have been increasingly exposed to international regulatory competition; clearly, they are not “sheltered” sectors. In both cases, the European Commission has responded to the pressures of technological change and global competition by seeking to coordinate a harmonized response among EU member states. It has done so through employing diverse instruments of policy transfer, involving both coercive and voluntary elements. Globalization—in particular, regulatory competition—provided an important stimulus to EU-mediated policy learning and policy transfer. In both sectors, globalization pressures clearly strengthened the potential of the EU institutions for using or threatening to use “coercive” instruments of liberalization; court and competition rulings were deployed to open markets and to safeguard competition in both sectors. This “coercive” effect was particularly strong in the telecoms sector. In no other sector have Article 86 (ex 90) Commission directives, bypassing negotiation in the Council of Ministers and European Parliament, been deployed to remove the special and exclusive rights of a public monopoly. This singular fact reflected the Commission’s recognition of the strategic importance of telecoms liberalization for Europe’s competitiveness in the global information society.

Globalization pressures also had an important bearing on negotiated transfer. In responding to the challenge of adapting regulation to technological change in both sectors, there was pressure on member states to adopt a

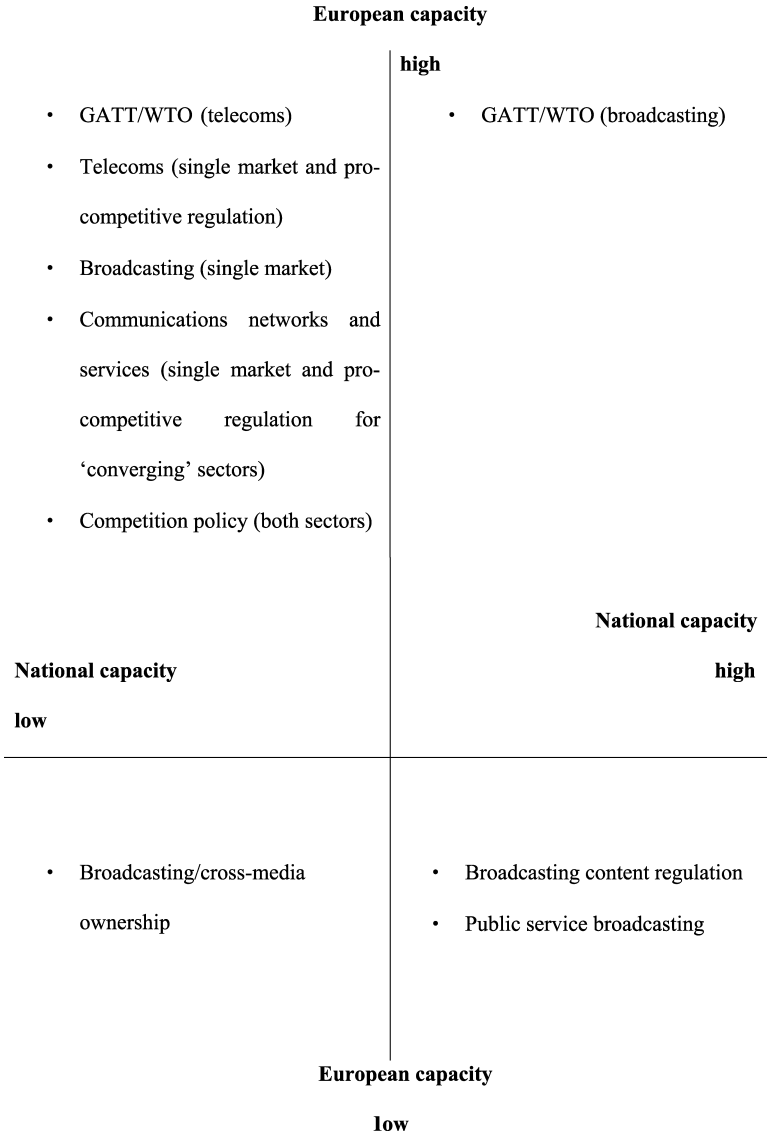


Figure 1 National and European capacity for regulation. (Adapted from Scharpf, 1997.)

pragmatic, technocratic problem solving rather than a politicized bargaining approach to negotiation. This, however, was plainly easier to achieve in telecoms than in the politically charged field of broadcasting. The case of broadcasting would appear to confirm Scharpf's observation that in the EU's system of multilevel governance, it is much easier to achieve negative integration, than positive integration. Thus, it was easier to achieve the liberalization of the internal broadcasting market prescribed in the TWF Directive than it was, for instance, to harmonize media ownership rules or conditional access rules for digital TV. Broadcasting was less amenable to EU policy transfer than telecoms mainly because of national (and *Länder*) political and cultural sensitivities about the media. Because of its more politically and culturally sensitive character, broadcasting regulation has remained much more domestically "embedded" than telecoms. Accordingly, EU member states have retained more distinctive and restrictive models of broadcasting regulation. On the one hand, this same political and cultural sensitiveness explains how France was able to transfer its cultural protectionist policy via the EU to some extent. On the other hand, media ownership rules in the sector have been exposed to strong pressures of downward (*de*)regulatory competition, without there having occurred any countervailing recovery of regulatory capacity at the EU level (see Figure 1).

With regard to the global free trade regime, the EU's stance has so far differed significantly between telecoms and broadcasting. Along with the United States, the EU has actually been a key driver of the WTO-promoted regulatory convergence around a new free trade model of telecoms regulation that has extensively eroded national autonomy and the scope for protectionism (Simpson and Wilkinson, 2002). In the field of broadcasting, by contrast, until now at least, the EU has been able to protect national broadcasting policies in the course of GATT/WTO discussions about liberalizing trade in services. Moreover, although the emerging European free trade regime for telecoms still allows some scope for nationally diverse implementation of procompetitive regulatory principles, it provides little scope for the protection or privileged support of national champions. In the case of broadcasting, on the other hand, the new EU regulatory paradigm allows member states both to promote the expansion of their public service broadcasters into new areas of activity (e.g., the British Broadcasting Corporation) as well as to place much higher regulatory requirements on their national broadcasters, so long as their markets are open to other member states' players that meet the EU's minimum regulatory requirements (in TWF). The EU's postliberalization broadcasting regime therefore allows member states to continue to protect national audiovisual production in a significant number of ways, through quotas, film support funds and through publicly funded public service broadcasting. The EU, it has been argued, has acted "both as a conduit for

global forces and as a shield against them” (Schmidt, 1999, p. 172). In both telecoms and broadcasting, EU policy transfer has helped to open up member states markets and promote competition, whereas in broadcasting, it has presented significant scope, so far at least, for resisting globalization à l’Hollywood.

NOTES

1. This article draws on ideas and findings from two Economic and Social Research Council (ESRC)-funded research projects. The research on EU policy transfer and telecoms liberalization was funded under the ESRC “Future Governance” program between 2000 and 2003, with the project being entitled “The European Union as a Medium of Policy Transfer; Case Studies in Utilities Regulation” (grant no. L 21652001). Colleagues on this project were Simon Bulmer (University of Manchester), David Dolowitz (University of Liverpool), Stephen Padgett (University of Strathclyde), and Simon Roy (research assistant). The broadcasting material draws on an ESRC project conducted between 1996 and 1999, called “Regulating for Pluralism” (grant no. L 12625109), looking at the re-regulation of media ownership rules in Britain, Germany, and at the European Commission (EC) level. Colleagues on this project were Thomas Gibbons (University of Manchester), David Young (University of Manchester), Alison Harcourt (research assistant), and Matthias Lang (research assistant).
2. Articles 30 and 36 of the EC Treaty grant exemptions from the prohibition of nontariff barriers to product standards based on national health, safety, and environmental regulations.
3. Our interviews confirm this. Notably, a well-placed interviewee in the commission indicated that France Télécom (FT) (and Spain’s Telefonica) came around first and Deutsche Telekom (DT) followed suit: “Once the monopolies had changed their minds, then the member states had to follow . . . That was the turning point [of] the 1992 review.”
4. This directive was revised in the 1997 Council and Parliament Directive of June 19, 1997 on the coordination of certain provisions laid down by law, regulation, or administrative action in member states concerning the pursuit of television broadcasting activities (97/36/EC).
5. One German media regulator interviewed referred to the “Dr. Jekyll and Mr. Hyde” character of UK policy, which retained comparatively very strict licensing requirements for its own mainstream UK broadcasters but required little in the way of regulation for satellite broadcasters.
6. This deregulation and an associated (*de*)regulatory competition dynamic were the main findings of the ESRC project mentioned in footnote 1, namely “Regulating for Pluralism” (grant no. L 12625109), looking at the re-regulation of media ownership rules in Britain, Germany, and at the EC level.

7. On this difference, see the comparison between UK and German media ownership deregulation in Humphreys (2000).
8. This was a finding of the comparative research project entitled “Regulating for Pluralism” mentioned in footnote 1.
9. The 1995 Television Standards Directive called for “fair, reasonable, and nondiscriminatory access” to CAS, but did not prescribe any detail about how this might be implemented at the national level.

REFERENCES

- Bartle, I. (1999). European Union policy-making and globalization: a comparative study of the liberalization of telecommunications and electricity. Ph.D. dissertation, Liverpool University.
- Bomberg, E., Peterson, J. (2000). Policy transfer and Europeanization: passing the Heineken test? *Queens Papers on Europeanization*, 2, at <http://www.qub.ac.uk/ies/> (accessed May 2001).
- Bulmer, S., Padgett, S. (2001). Policy transfer in the European Union. An institutionalist perspective. ESRC policy transfer project paper presented at the European Community Studies Association Biennial Conference, Madison, WI, USA, May 31–June 2.
- Bulmer, S., Dolowitz, D., Humphreys, P., Padgett, S. (2003). Electricity and telecommunications: fit for the European Union? In: Dyson, K., Goetz, K., eds. *Germany and Europe: How Europeanized is Germany?* Oxford: Oxford University Press, pp. 251–269.
- Cerny, P. (1997). Paradoxes of the competition state: the dynamics of political globalisation. *Gov. Oppos.* 32(2):251–274.
- Commission of the European Communities. (1992). Pluralism and media concentration in the internal market. *Off. J. Eur. Communities* COM (92):480.
- Commission of the European Communities. (1993). *Growth, Competitiveness and Employment: The Challenges and Way Forward into the Twenty First Century*. Brussels: European Commission. COM (93) 700 final.
- Commission of the European Communities. (1994). *Europe and the Global Information Society; Recommendations to the EC*. Brussels: European Commission.
- Commission of the European Communities. (1997). Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors and the Implications for Regulation. Towards an Information Society Approach. Brussels: European Commission, COM (97), 623.
- Commission of the European Communities. (2002). *Eighth Report from the Commission on the Implementation of the Telecommunications Regulatory Package: European Telecommunications Regulation and Markets, 2002*. Brussels: European Commission, COM (2002) 695 final.
- Council of the European Communities. (1989). Directive on the coordination of certain provisions laid down by law, regulation or administrative action in

- member states concerning the pursuit of television broadcasting activities (89/552/EEC). *Off. J. Eur. Communities*, L298(23).
- Cram, L. (1997). *Policy-Making in the European Union: Conceptual Lenses and the Integration Process*. London: Routledge.
- Dolowitz, D., Marsh, D. (1996). Who learns what and from whom? A review of the policy transfer literature. *Polit. Stud.* 44:343–357.
- Dolowitz, D., Marsh, D. (2000). Learning from abroad: the role of policy transfer in contemporary policy making. *Governance* 13(1):5–24.
- Doyle, G. (2002). *Media Ownership*. London: Sage.
- European Parliament and Council. (2002). Directive of the European Parliament and Council on a common regulatory framework for electronic communications networks and services (Framework Directive). Brussels, February 4, PE-CONS 3672/01, 5.
- Eyre, S., Sitter, N. (1999). From PTT to NRA; towards a new regulatory regime. In: Eliassen, K., Sjøvaag, A., eds. *European Telecommunications Liberalisation*. London: Routledge, pp. 55–73.
- Gibbons, T. (1998). *Regulating the Media*. London: Sweet and Maxwell.
- Grande, E., Schneider, V. (1991). Reformstrategien und staatliche Handlungskapazitäten: Eine vergleichende Analyse institutionellen Wandels in der Telekommunikation in Westeuropa. *Polit. Vierteljahresshr.* 32(3):452–478.
- Haas, P. (1992). Epistemic communities and international policy coordination. *Int. Organ.* 46:1–35.
- Harcourt, A. J. (2000). European institutions and the media industry: European regulatory policies between pressure and pluralism. Ph.D. dissertation, Manchester University.
- Harcourt, A. J. (2002). Regulatory competition in the EU: a case study in national media regulation. Paper presented to a European Forum Seminar on International Regulatory Competition and Cooperation at the Robert Schuman Center, European University Institute, Fiesole/Florence, Italy, November 21.
- Héritier, A. (1999). *Policy-Making and Diversity in Europe: Escape from Deadlock*. Cambridge: Cambridge University Press.
- Humphreys, P. (1996). *Mass Media and Media Policy in Western Europe*. Manchester: Manchester University Press.
- Humphreys, P. (1999a). Germany's "dual" broadcasting system: recipe for pluralism in the age of multi-channel broadcasting? *New Ger. Crit.* 78:23–52.
- Humphreys, P. (1999b). Regulating for pluralism in the era of digital convergence. Paper presented to the ECPR Joint Research Sessions, Mannheim, March 26–31. Workshop 24: "Regulating Communications in the Multimedia Age."
- Humphreys, P. (2000). Regulation for media ownership: issues in ownership and competition. In: Andrew, J., Malcolm, C., Diana, H., Eva, K., eds. *Why Europe? Problems of Culture and Identity*. Vol. 2. Houndmills: Macmillan, pp. 71–93.
- Humphreys, P. (2002). Europeanisation, globalisation and policy transfer in the European Union: the case of telecommunications. *Converg. J. Res. New Media Technol.* 8(2):52–79.

- Humphreys, P. (2003a). Regulatory policy and national content. In: Marc, R., ed. *L'Avenir de la Réglementation de la Radiodiffusion*. Université Laval, Québec: Centre d'Études sur les Médias, pp. 177–207.
- Humphreys, P. (2003). EU policy on state aid to public service broadcasters. Paper presented at the SMIT-CEAS-Telenor Conference on the ICT and Media Sectors within the EU Policy Framework, Brussels, April 7–8.
- Humphreys, P., Lang, M. (1998). Regulating for media pluralism and the pitfalls of Standortpolitik: the re-regulation of German broadcasting ownership rules. *Ger. Polit.* 7(2):176–201.
- Humphreys, P., Simpson, S. (1996). European telecommunications and globalization. In: Gummert, P., ed. *Globalization and Public Policy*. Cheltenham: Edward Elgar, pp. 105–124.
- Jordana, J., Levi-Faur, D., Vogel, D. (2002). The internationalization of regulatory reforms: the interaction of policy learning and policy emulation in the diffusion of reforms. Paper presented at the workshop on the Politics of Regulation, Universitat Pompeu Fabra, Barcelona, November 29–30.
- KMPG. *Public Policy Issues Arising from Telecommunications and Audiovisual Convergence. Report for the European Commission*. London: KPMG.
- Levi-Faur, D. (1999). The governance of competition: the interplay of technology, economics, and politics in European Union electricity and telecom regimes. *J. Public Policy* 19(2):175–207.
- Levi-Faur, D. (2002). On the “net impact” of Europeanization: the EU’s telecoms and electricity regimes between the global and the national. *European Integration Online Papers*, 6, ECSA Austria. Available at <http://eiop.or.at/eiop/>.
- Levy, D. (1999). *Europe's Digital Revolution. Broadcasting Regulation, the EU and the Nation State*. London: Routledge.
- Majone, G. (1997). From the positive to the regulatory state: causes and consequences of changes in the mode of governance. *J. Public Policy* 17(2):139–167.
- Morgan, K., Webber, D. (1986). Divergent paths: political strategies for telecommunications in Britain, France and West Germany. In: Dyson, K., Humphreys, P., eds. *The Politics of the Communications Revolution in Western Europe*. London: Frank Cass, pp. 56–79.
- Ohmae, K. (1991). *The Borderless World. Power and Strategy in the Interlinked Economy*. London: Fontana.
- Pauwels, C. (1998). Integrating economies, integrating policies: the importance of antitrust and competition policies within the global audiovisual order. *Commun. Strat.* 30:103–132.
- Radaelli, C. (2000). Policy transfer in the European Union: institutional isomorphism as a source of legitimacy. *Governance* 13(1):25–43.
- Scharpf, F. W. (1997). Introduction: the problem-solving capacity of multi-level governance. *J. Eur. Public Policy* 4(4):520–538.
- Scharpf, F. W. (1999). *Governing in Europe: Effective and Democratic?* Oxford: OUP.
- Schmidt, S. (1997). Behind the council agenda: the Commission’s impact on decisions. *MPlfG Discussion Paper 97/4*. Cologne: Max-Planck-Institut für Gesellschaftsforschung.

- Schmidt, V. A. (1999). Convergent pressures, divergent responses: France, Great Britain, and Germany between globalization and Europeanization. In: Smith, D. A., Solinger, D. J., Topik, S. C., eds. *States and Sovereignty in the Global Economy*. London: Routledge, pp. 172–192.
- Schmidt, V. A. (2002). *The Futures of European Capitalism*. Oxford: OUP.
- Schneider, V. (2002). The institutional transformation of telecommunications between Europeanization and globalization. In: Jordana, J., ed. *Governing Telecommunications and the New Information Society in Europe*. Cheltenham: Edward Elgar, pp. 27–46.
- Schneider, V., Vedel, T. (1999). From high to low politics in Franco-German relations: the case of telecommunications. In: Webber, D., ed. *The Franco-German Relationship in the European Union*. London: Routledge, pp. 75–92.
- Simpson, S., Wilkinson, R. (2002). Regulatory change and telecommunications governance. *Converg. J. Res. New Media Technol.* 8(2):30–51.
- Strange, S. (1996). *The Retreat of the State: The Diffusion of Power in the World Economy*. Cambridge: CUP.
- Thatcher, M. (2001). The Commission and national governments as partners: EC regulatory expansion in telecommunications 1979–2000. *J. Eur. Public Policy* 8(4):558–584.
- Thatcher, M. (2002). Regulation after delegation: independent regulatory agencies in Europe. *J. Eur. Public Policy* 9(6):954–972.
- Tongue, C. (1998). Submission on the Commission's Green Paper on Convergence of the Telecommunications, Media and Information Technology Sectors and the Implications for Regulation. Available at <http://www.poptel.org.uk/carole-tongue/index2.html>. accessed June 20, 2003.
- Vogel, D. (1995). *Trading Up. Consumer and Environmental Regulation in a Global Economy*. Cambridge, MA: Harvard University Press.
- Vogel, S. K. (1996). *Freer Markets, More Rules: Regulatory Reform in Advanced Industrial Countries*. Ithaca: Cornell University Press.
- Waesche, N. M. (2003). *Internet Entrepreneurship in Europe: Venture Failure and the Timing of Telecommunications Reform*. Cheltenham: Edward Elgar.
- Ward, D. (2002). *The European Union Democratic Deficit and the Public Sphere; An Evaluation of EU Media Policy*. Amsterdam: IOS Press.
- Weiss, L. (1998). *The Myth of the Powerless State: Governing the Economy in a Global Era*. Cambridge: Polity Press.

6

Explaining Policy Transfer Mechanisms in Small European Countries: The Case of Telecommunication Reform

Silja Häusermann, André Mach, and Yannis Papadopoulos

Université de Lausanne, Lausanne, Switzerland

I. INTRODUCTION

All over the world, the telecommunication sector has experienced radical transformation since the 1980s. The liberalization of services, the reform of regulatory frameworks through promotion of competition, and the partial privatization of former public operators were the main aspects of these profound changes. The sources of this worldwide trend toward reform can be identified at different levels. First, pressures for industrial restructuring in a context of globalized economic competition, technological changes, and the spread of ideas on “best practices” concerning the governance of network industries are factors related to globalization. Second, at the regional level, international and supranational authorities, notably the European Union (EU), intervene in the field of telecommunication policy in multiple ways. They channel pressures stemming from globalization, thus acting as mediating agents between the global and the national levels. Moreover, the EU adopted binding legislation on telecommunication reform with the intention of having a direct impact on national reforms. Finally, sources of change at the domestic level must also be taken into account. National economic structures, institutional arrangements, and power configurations determine the responsiveness to the different global and regional influences. They can explain national trajectories toward reform, which may be markedly different

despite an apparent similarity in the reform outputs. Cross-country comparative research allows to take into account these domestic factors and to give a detailed account of the relevance and the interaction of the multiple sources of change. In this article, we focus on three European countries highly exposed both to global and regional pressures.

The European countries have all radically restructured their telecommunications sector during the last decade. These policy changes followed not only global trends, but also, to a large extent, the development of an important body of EU regulations since the late 1980s, which involved the opening of national infrastructures to new operators, the complete liberalization of telecommunication services, and the establishment of national regulatory authorities clearly separated from service operators. National reforms coincided substantially and temporally among one another, as well as with the main EU regulations. They can be conceptualized in terms of policy transfer, defined as “a process in which knowledge about policies, administrative arrangements, institutions, etc., in one time and/or place is used in the development of policies, administrative arrangements, and institutions in another time and/or place” (Dolowitz and Marsh, 1996, p. 344). The literature identifies, however, more than a single form of policy transfer—these forms being located on a continuum between coercive and voluntary adaptation. We can therefore hypothesize that countries experience different paths to transfer, so that we need to investigate who transfers, why, and from where. Although much work has been done in conceptualizing and identifying the different mechanisms of policy transfer between coercion and learning*, only a few studies have tried to identify the factors that can explain why a country experiences one or another form of policy transfer in a specific policy sector. To address this question and to specify more clearly the processes of change in the context of globalization, we compare in this chapter the reforms of telecommunication policy in three small European countries: Austria, The Netherlands, and Switzerland (see below for details on case selection).

Our chapter is structured as follows. After an introductory methodological part on case selection and hypotheses, we present in more detail the analytical framework used to understand domestic adjustment to external change by discussing the main concepts of the policy transfer literature. We also draw on the recent literature on Europeanization, which we conceive largely as an application of the policy transfer approach to the case of the EU. We then provide a brief overview of the major transformations that occurred in the telecom sector during the last 20 years in order to replace our three cases

* For references, see the theoretical discussion below.

in their broader context. In a subsequent part, we provide empirical evidence on the reform processes in the three countries, before systematically comparing our findings on facilitating and constraining factors for policy transfer in the fourth part.

II. CASE SELECTION AND MAIN HYPOTHESES

The selection of our three cases follows the strategy of the most similar system design (Przeworki and Teune, 1970). Austria, The Netherlands, and Switzerland are, of course, all exposed to the same technological developments in the field of telecommunication, but they are above all small corporatist countries with well-established traditions of consociational decision making. By choosing such similar cases, it is possible to reduce the number of independent variables likely to explain the type of policy transfer in the individual national reform processes and to isolate the explanatory factors on which the hypotheses are based.

All three countries show a high degree of similarity in the basic content of telecom reforms, but differ in the mechanisms leading to them. We argue that the study of facilitating or constraining factors for policy learning helps understand such differences. We start from the Dutch case to present our main hypotheses. The Netherlands had already launched the liberalization process at the beginning of the 1980s, under pressure from domestic economic actors, and followed an ongoing and learning-based reform process that culminated in the complete liberalization of the telecom market in 1998 (for more details on the Dutch case, see below and Hulsink, 1999). In order to explain the high capacity of endogenous and voluntary policy learning observed in The Netherlands, we consider two major factors as relevant. First, we suggest that the openness of the Dutch economy, characterized by a large export-oriented sector highly exposed to the globalization pressure of international competition, enhanced the country's capacity for reform. This domestic economic structure, together with a corporatist decision making tradition and relatively weak trade unions, was characterized in Katzenstein's (1985) typology of small European democracies as representative of the liberal version of democratic corporatism. We hypothesize that such domestic structures and interest configurations have a positive impact on a country's capacity for voluntary policy transfer regarding liberalization. Because the economy is heavily exposed to international competition, companies, interest organizations, and even the administration are expected to be particularly sensitive to changes in the external economic and regulatory environment. These actors will be inclined to raise early demands for liberalization, develop international business strategies, and provide expertise. Economic openness is

thus conceived as an “endogenous” facilitating factor for voluntary policy transfer implying liberalization.* Second, as a founding member of the EU, The Netherlands was prepared to comply with the EU regulatory framework on telecommunications and to follow the European Commission’s strategy for market liberalization. Even though the EU directives do not include prescriptions on all aspects of telecom liberalization and leave a certain amount of room for maneuver for the member states, the “EU membership factor” must be considered because the EU formulates constraining legislation and pushes for liberalization (“negative integration”). EU membership is thus expected to be an “exogenous” factor enhancing the likelihood of policy transfer in this policy field where the EU Commission has been particularly active.

In order to assess the relative importance of the endogenous and exogenous factors in explaining policy transfer, we compare the Dutch case with Austria and Switzerland—two small European countries, each of them differing on one of the aforementioned explanatory factors. Austria is an EU member, too, but falls into Katzenstein’s category of social democratic corporatism, which is characterized by the absence of a strong export-oriented private sector and by the presence of strong trade unions that might oppose far-reaching market liberalization. Like The Netherlands, Switzerland is a country of liberal democratic corporatism with a strong export-oriented sector of the economy heavily exposed to international competition, and with a weak political left and unions. However, it stands outside the EU, which allows us to check for the effects of EU membership. For reasons of symmetry, it would have been nice to have a case representative of the fourth possible type: a non-EU member country embodying the social version of democratic corporatism. Unfortunately, no such country exists among the small and corporatist democracies in Western Europe. Norway would possibly have been a candidate, but preliminary research investigations in this country showed that European Economic Area (EEA) membership has equivalent effects to full EU membership on telecom policy.

The reform processes in the three countries were analyzed in detailed monographs that allowed us to identify the mechanisms of policy transfer tending to prevail in each country, as well as the country-specific actor constellations that characterized the policy process. This aspect should be emphasized because the policy transfer framework entails the risk of neglecting somewhat the influence of “politics” (Bennett and Howlett, 1992; Levi-Faur, 2003) and of conceiving policy reforms in a rather technocratic way as

* Interestingly, Katzenstein (2003, p. 16) views small states, in general, as particularly prone to learning their openness engendering vulnerability, and their smallness facilitating communication and debate. We argue that within small countries, predispositions for learning depend on domestic actors’ configurations.

functional processes of knowledge transfer serving the goal of better efficiency. By analyzing not only the type of transfer, but also the explanatory factors for a country's capacity for learning, we wish to reintroduce the "politics" dimension in the analysis.

III. POLICY TRANSFER AND TELECOMMUNICATION REFORM

A. Transfer Mechanisms: Between Learning, Coercion, and Domestic Politics

During the last decade, which has been characterized by economic globalization, technological innovations, and the growing importance of international institutions, the notion of policy transfer has gained increasing attention in comparative public policy and international relations. A large body of literature has grown, stressing the importance of learning processes and the role of ideas and knowledge in the formulation of national public policy in a globalized context.

Most authors underline the distinction between "voluntary transfer" and "coercive transfer" of policies. Dolowitz and Marsh (2000, p. 13) identify a continuum from the least coercive process of lesson drawing to the most coercive process of direct imposition. While coercion refers to formally or informally imposed change, several concepts have been developed to characterize the multiple forms of voluntary policy transfer. The notions of mimetism and normative isomorphism (Radaelli, 2000), lesson drawing (Rose, 1993), policy emulation (Levi-Faur, 2002, 2003), policy learning (Sabatier and Jenkins-Smith, 1993), or perceived necessity and external inducement (Dolowitz and Marsh, 2000) all designate processes of voluntary adaptation. However, these forms of policy transfer can vary between the mere "copying of best practices" (mimetism or emulation*) and more profound changes driven by expertise, professionalization, and socialization in (international) epistemic communities, and the redefinition of interests and policy ideas (for an overview, see Stone, 1999). Dolowitz and Marsh (2000, p. 8) raise six major questions for the study of policy transfer processes: Why

* "The distinction between emulation and learning captures the depth of considerations and seriousness of commitment in introducing policy changes. While emulation involves imitating action that occurs elsewhere, learning involves a redefinition of one's interests on the basis of newly acquired knowledge" (Levi-Faur, 2003, p. 17). Emulation has some advantages in comparison to learning in terms of costs and time, since it is less resource-demanding, quicker in terms of results, more certain with regards to outputs, and less dependent on external resources. This leads Levi-Faur (2003, p. 23) to suggest that "public officials in a weak state will be more likely to emulate than their counterparts in a strong state."

do actors engage in policy transfer? Who are the key actors? What is transferred? From where are lessons drawn? What are the different degrees of transfer? What restricts or facilitates the policy transfer process? We shall draw inspiration from this analytical framework in order to identify the specific features of policy transfer that took place in each country.

All these authors insist on the increasing importance of international institutions and cross-national learning for domestic policy makers. Evans and Davies (1999), for instance, explicitly insert their conceptualization into a “multilevel perspective” in order to stress the respective role of the global, regional, and national sources of policy transfer. Hence, when studying telecom policy reforms in The Netherlands, Austria, and Switzerland, one must also take into account the literature on the Europeanization of EU states, which has some important similarities with the policy transfer literature. Broadly defined as the “domestic assimilation of EU policy and politics,” Europeanization represents a form of policy transfer from the EU to the national states (see Héritier et al., 2001; Green-Cowles et al., 2001; Radaelli, 2001; Börzel and Risse, 2002; Knill and Lehmkuhl, 2002). While the policy transfer literature adopts a more general perspective, the Europeanization literature is centered on the impact of the EU political and institutional framework on member states. But similarly to the policy transfer literature, the focus is on what is transferred, who are the “transposing agents” pushing for the adjustment of domestic policies, what is the degree of transfer, and what restricts or facilitates policy changes (for an application of policy transfer theory to Europeanization in the electricity sector, see Padgett, 2003).

Europeanization mechanisms can be classified in two major categories: vertical and horizontal, or, in other words, “coercive” and “normative isomorphism” (Radaelli, 2001, pp. 124–125). Coercive isomorphism results from both formal and informal pressure exerted by European institutions, whereas normative isomorphism refers to mechanisms of socialization and persuasion of national elites through the development of conceptual models and policy recipes at the European level.* This conceptualization is close to that of a continuum between voluntary learning and coercive transfer by Dolowitz and Marsh (2000). Although some policies can be quite easily

* In a slightly different perspective, which more explicitly takes into account domestic political factors, Börzel and Risse (2002) distinguish two pathways leading to domestic reforms. First, changes in the international environment foster a “redistribution of resources” at the domestic level, which affects power relations among political actors and thus opens opportunities for policy reforms. Second, following a more sociological institutionalist approach, the authors stress the importance of “learning processes” among political and economic elites and the emergence of new “norm entrepreneurs,” who are expected to promote domestic reforms through an adequate “framing” of problems and solutions to them.

classified into one category or the other, most national policy reforms responding to the adoption of EU regulations generally include both dimensions. The adjustment of national telecom policies clearly involves a coercive dimension for EU member states regarding the compliance of national legislation with EU directives, but it also includes a more normative dimension, which refers to the possible learning process undergone by national political and administrative actors.

Two general remarks should be made on these two bodies of literature. First, the literature on Europeanization tends to overlook learning processes and impulses for reform that are independent of the development of EU regulation. As will be shown in the Swiss and Dutch cases, learning processes and voluntary changes can be induced by channels of policy transfer other than formal EU pressure (such as other international organizations or purely economic pressures), or by mainly domestic concerns about the competitiveness of the national economy (for a similar argument, see Levi-Faur, 2003, who compares EU member states and Latin–American countries).

Second, despite its usefulness and systematic character, the analytical framework of Dolowitz and Marsh (2000) remains mainly descriptive, and does not provide explanatory hypotheses for possible cross-national differences in policy transfer processes. In particular, domestic economic and political characteristics are often insufficiently taken into account in the policy transfer literature.* The Europeanization literature more explicitly introduces political and institutional factors as elements likely to favor or impede policy changes induced by EU regulations. Thus, international or European reforms are supposed to affect the structure of opportunities and constraints domestic actors are confronted with, and, as a result, the preferences of these actors (Héritier, 2001, p. 53). In a more cognitive perspective, the international or supranational regulations are expected to have a framing effect and to provide new ideas and understandings to domestic actors (Börzel and Risse, 2002).†

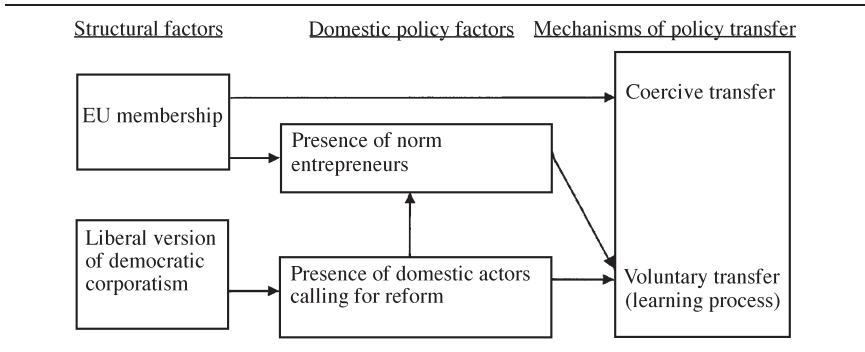
The following conceptual framework (Table 1) presents the factors we consider as mostly relevant for the understanding of policy transfer mechanisms in the telecom sector.

Two structural factors are expected to affect national actors' configurations and to facilitate policy reforms. First, besides its coercive dimension

* For a critique of lacking conceptual precision in the analytical framework of Dolowitz and Marsh, see James and Lodge (2003).

† Whether those actors whose preferences or ideas are in line with international evolutions will be able to bring about domestic policy reforms depends on the institutional structure of the decision-making process (veto points) and on the distribution of power among actors in each country.

Table 1 Explanatory Factors for the Mechanisms of Policy Transfer in the Telecom Sector



linked to the necessity of compliance of national regulations with EU directives, EU membership is supposed to facilitate voluntary domestic reforms because member states are associated with European decision making and because of the existence of “epistemic communities” at the EU level involving representatives from numerous policy sectors in the member states. Second, the varieties of democratic corporatist structures lead to different domestic political configurations. In the liberal corporatist countries, the presence of a strong export-oriented economic sector exposed to international competition is expected to favor the emergence of claims for telecom liberalization, whereas we expect such claims to remain much less important in the social version of corporatism. Such claims can, in turn, stimulate the emergence of national norm entrepreneurs. In this sense, we follow the distinction made by Börzel and Risse (2002) between domestic political and economic actors urging for reform, on one hand, and norm entrepreneurs, on the other hand. The former are defined according to a rationalist institutionalist perspective of change, and the latter according to a sociological institutionalist approach. Domestic actors calling for policy change mostly come from the political arena. They are considered as rational and goal-oriented, using their resources to satisfy clearly defined interests. Norm entrepreneurs, in turn, mostly come from the administrative arena. They do not so much pressure policy makers to initiate change, but rather seek to persuade actors to redefine their interests and to become involved in learning processes.*

* In a similar vein, Jobert (1992) distinguishes between “arenas,” where actors compete to maximize their interests, and “fora,” where actors engage into mutual learning.

B. Multilevel Processes in Telecom Sector Reforms

In Europe and more specifically in the three countries under scrutiny, public monopolies under state supervision have in the past been the central actors for the provision of telecommunication services. Since the beginning of the 1980s, however, the telecom sector has been facing profound transformations around the world. These changes, driven by technological innovations, market liberalization, and ideological shifts among political authorities, have been combined with the emergence of new regulations at the international and national levels.

In the EU, the Commission played a crucial role in giving the impulses for a “step-by-step” liberalization of the telecommunication sector, outlined in the famous green paper on the common market for telecommunications of 1987 (for an overview, see Sandholtz, 1998; Schmidt, 1998). Sandholtz (1998) speaks of the formation of a “supranational regime” in this policy field within the EU under the impulse of the Commission.* However, this supranational push for liberalization was only possible with the tacit approval of the major member states (Schneider, 2001; Thatcher, 2001). From the end of the 1980s onward, efforts to create a European market for telecommunications were concretized through the adoption of a large body of EU regulations and jurisprudence concerning mainly four aspects of telecommunication policy: the liberalization of services, the nondiscriminatory access of new operators to existing infrastructure (interconnection), the definition of the universal service, and the separation of operational and regulatory functions of the market regulator (Slominski, 2002). Even if the transposition of EU directives into national law leaves some degree of freedom to domestic adaptation, member states tend to converge in telecom policies, characterized by liberalization, partial privatization, and creation of a new regulatory framework (Eliassen and Sjøvaag, 1999).

In all three countries under scrutiny, there was initially a certain degree of “misfit” between the new EU regulations adopted since the end of the 1980s and domestic legislation. Just before the “full competition” directives came into force on January 1, 1998, the three countries had profoundly reformed their telecommunications legislation in line with EU directives. However, and despite the importance of EU regulations, the mechanisms of transfer from the EU to the national level cannot be interpreted as a simple

* In a more sophisticated analytical framework, Levi-Faur (1999, 2004) distinguishes different regimes with respect to the EU policy process: no EU regime, informal regime, inter-governmental regime, and supranational regime. These four categories highlight the different degrees of EU influence on national policies. Different regimes can coexist within the same policy domain.

“download” from the EU to the member states. Other factors independent of the European evolution, such as technological innovations, economic liberalization, learning among national elites, or domestic political impulses, also account for national telecom policy reforms. Telecom policy reform should then be primarily conceived as a “multilevel process” (Evans and Davies, 1999), which implies global, European, and national sources of policy changes. In the next part, we will show how the reform processes differed across countries and we shall focus on factors specific to each country under scrutiny to explain these different paths.

IV. DIFFERENT MECHANISMS OF CONVERGENCE IN THE THREE COUNTRIES

All three countries introduced reforms that liberalized the telecom market and created a new regulatory framework. Yet the mechanisms of adaptation leading to similar policy outputs differed significantly across countries. Table 2 gives a synthesized overview of the three cases by addressing the main questions Dolowitz and Marsh (2000) raised in order to organize the study of policy transfer processes: Who is involved? Why do actors engage in transfer? How do they operate transfer (i.e., what are the main instruments used to achieve the goals of the reform)?*

A more detailed presentation of the national characteristics of reform processes will follow and, finally, the particular policy transfer mechanisms will be identified for each case.

A. The Netherlands: An Early Mover with Hesitations

The Netherlands can be considered as an early mover concerning telecom liberalization, and especially concerning privatization of the former telecom operator. The liberalization of the telecom sector proceeded in two major steps: an initial important reform in 1989, and, thereafter, the gradual liberalization of the telecom market in the 1990s, principally with the adoption of the Interim Act in 1996 and the OPTA Act in 1997.

The first important reform of the telecommunication legislation was made as early as in 1989, at the request of domestic economic actors, and following the publications of various expert reports throughout the 1980s. During that decade, the center-right governmental coalition followed a

* The object of the reforms (What is transferred?) was very similar in all three countries.

Table 2 Policy Transfer in Telecom Reforms in The Netherlands, Austria, and Switzerland

	Who is engaged in transfer?			Why do actors engage in transfer?
	Reform acts under scrutiny	Domestic actors calling for reform	Policy entrepreneurs	
NL	1996: Interim Act 1997: OPTA Act (Initial reforms: 1989; four laws)	Early impulses from business interests for telecom liberalization (beginning of the 1980s)	CAPT and legal experts	Domestic impulses were decisive; large political support for reform; several expert reports
A	1997: Telecommunications Act (TKG) [Initial reform: 1993, Telephony Act (FMG)]	Largely absent (very lately formulated claims by industry representatives and legal experts)	Late intervention of the EU Commission and the Ministry of Economic Affairs	Formal and informal intervention of the EU Commission, alternative draft bill presented by industry representatives
CH	1997: Telecom law reform and new law on the telecom company [Initial reform: 1991, Telecom Act (LTC)]	Early impulses from business interests for telecom liberalization (beginning of the 1980s)	Federal office for communication (OFCOM)	Strong domestic support for liberalization, alignment to EU framework, and deadline; expert reports

liberal policy oriented toward privatization and downsizing of the public sector. The 1989 reform consisted in the adoption of four new laws concerning the corporatization of KPN as a holding company for PTT Telecom and PTT Post and its further privatization, as well as the liberalization of value-added services and telecom equipment. While industry representatives favored the complete separation of public utility and commercial services and the creation of an independent regulator, political parties were split on these issues. At the end, the reform was rather consensually adopted and a compromise was found between these positions (Hulsink, 1999, 190 ff.).

After this initial step toward liberalization and privatization, it was not until 1997 that the final measures of liberalization and the creation of an independent regulatory authority became effective with the adoption of the Interim Act and the OPTA Act. The Interim Act voted by the parliament in spring 1996 introduced a liberalization of infrastructures* and voice telephony (as of July 1, 1997). The OPTA Act adopted in spring 1997 set up a new independent regulatory authority for the telecom and postal sectors (the OPTA), according to which the latter and the newly created competition authority would have to cooperate on competition issues on the telecom market.

Finally, the Interim Act was replaced in autumn 1998 by a completely new Telecommunication Act, the drafting of which had started before the formal adoption of the Interim Act and OPTA Act. This new act largely consolidated the reforms of the Interim Act, ensuring full competition in all telecommunication activities and complete implementation of the European Open Network Provision principles (for more details, see OECD, 1999).

1. Early Moves in a Context of European Acceleration

As early as the beginning of the 1980s, the Dutch government, business representatives organized in the Federation of Dutch industries (VNO-NCW), and independent experts started to question the monopolistic position of the PTT and expressed their dissatisfaction with PTT services and equipment. In a context of rapid technological innovation, telecommunication services became an increasingly important element for the competitiveness of the national economy, especially for international companies. This early diagnosis of the central importance of telecommunications, simultaneously made by business representatives and independent experts who were

* In 1996, two new national licenses for infrastructure were granted to Enertel (a joint venture of different electricity companies) and Telfort (a subsidiary of the Dutch railway company and British Telecom).

particularly sensitive to the evolution in the Anglo-Saxon countries, favored the formation of a broad consensus on the necessity to stimulate public monopolistic operators. This broad political support led to the 1989 reforms, which, nevertheless, remained less pronounced than the original proposals made by expert committees (see Hulsink, 1999, 181 ff.).

The first half of the 1990s was marked by the privatization of KPN* and the gradual liberalization of some telecommunications services, such as data communication (1993) and mobile telephony (1994[†]). On the other hand, the first half of the 1990s was a time of uncertainty concerning the central elements of liberalization (voice telephony and infrastructure networks). The government initially planned in 1993 to promote a “managed duopoly” between PTT Telecom and a second Dutch operator, which would include the alternative network providers (energy, railways, and cable companies). This governmental strategy failed in 1995 because of internal divergences between operators. In parallel, the EU Commission adopted new directives, and the European Council of Ministers decided in 1993 to open all telecommunication services for full competition before January 1, 1998. Finally, the early international strategy of KPN is of relevance, too, for it largely explains its positive attitude toward further steps of liberalization. In 1992, the KPN, in alliance with the Swedish PTT, set up an international joint venture (Unisource) designed to provide services for international customers. The Swiss PTT joined Unisource a year later. Apart from Unisource, the KPN also increased its participation in several other telecom companies at the beginning of the 1990s. All these political and economic factors (early diagnosis of the role of telecommunications, the constraining dimension of EU regulations, and the international strategy of KPN) contributed to the smooth adjustment of Dutch telecom legislation to the new international environment. We will now survey in more detail the learning mechanisms that led to the final measures of liberalization in 1996 and 1997.

2. The Learning Process During the 1990s

As mentioned before, the initial steps of liberalization and privatization in The Netherlands were followed only much later by full liberalization. Nevertheless, this must be seen as the result of a continuous learning process. The issue of telecom policy remained consensual and did not lead to serious

* In 1994, the government sold a first tranche of 30% of KPN shares on the stock market, and a second tranche of 25% a year later.

† Earlier than the EU, which adopted a new “mobile directive” in 1996.

political controversies. Various actors, especially independent experts from advisory bodies, published several reports during the first half of the 1990s to push for further liberalization and made recommendations for telecom reforms. The learning process on telecom liberalization and re-regulation largely stemmed from these independent experts. The role of expert committees, standing advisory boards, and expert reports was very important for the smooth and continuous learning process experienced by the administrative and political authorities.

With the 1989 reform, several bodies for consultation, advice, and rule making were created. Let us mention first the HDTP (directorate general for telecommunications and post), a new department of the Ministry of Transport and Public Works, composed of three units in charge of regulation, policy formulation, and operational tasks. We should also mention the Commission for Advice on Postal and Telecommunication Policy (CAPT), which is composed of independent experts in order to make recommendations to the government on the broad lines of telecom policy and technological developments. In 1992, the CAPT was integrated into the advisory council of Transport and Public Works.*

As to expert reports, of note is the McKinsey report of 1993, drafted upon request of the HDTP, which advised promoting competition in the fixed telecom infrastructure and “pointed to a number of shortcomings in PTT Telecom’s service provision, especially services for large corporate users” (Davies, 1996, p. 9). Shortly thereafter, in September 1993, the CAPT published two reports in favor of further liberalization (CAPT, 1993a,b). These publications were a reaction to the presentation of the governmental strategy on telecom policy in June 1993. The CAPT report advocated further liberalization, a simplification of the former law, and the creation of an independent regulatory authority. The reports openly criticized the position of the government favoring the creation of a “managed duopoly” in the telecom sector, and pleaded for a legal framework more open to competition and for the introduction of an “asymmetric regulation” that would facilitate the entry of new competitors into the Dutch telecom market (CAPT, 1993a).

Moreover, while the Interim Act was under debate in parliament, a group of four legal experts (Dommering et al., 1995), including H. J. de Ru, vice president of the CAPT, published in June 1995 an alternative proposal to the governmental bill. Even though no consideration was given in the parliamentary debates to this draft, which proposed an important simplifi-

* Finally, again in 1992, a new consultative body, the OPT (consultative body on postal and telecom policy) was created. It was composed of equipment suppliers, services providers, customers, employees, and the PTT.

cation of the law, it contributed to paving the way for a complete reform of the telecom act. At the end of the same year, the CAPT published two further reports on request of the ministry: one on future legislation on telecommunications and one on the creation of an independent regulatory authority (CAPT 1995a, b).^{*} These reports were the result of an in-depth study made by the CAPT, including a stay of all its members in the UK to learn about the experiences of this country in telecom liberalization and re-regulation (Interview IV). This is illustrative of a form of cross-national learning from a country, which had started earlier to liberalize and privatize its telecom sector. Thus, before the Interim Act and OPTA Act were adopted by the parliament, the necessity for a complete reform of the telecom act was largely recognized, and the preparatory work for a new law had already started with the CAPT reports.

Despite clear unanimity in favor of further steps toward liberalization, especially in the parliament, which had complained several times about the slow pace of the governmental reform, the final measures concerning liberalization and regulation came relatively late. Originally designed to act as countervailing powers to the PTT's monopoly, the HDPT and CAPT lacked the necessary competencies and were too poorly equipped in terms of expertise and staff to supervise and guide the liberalization process (Hulsink, 1999, p. 219). "Since corporatization in 1989, there has been a brain drain of expertise from the government to PTT Telecom. Consequently, not only has the regulator been seriously understaffed, it also lacks the relevant expertise to establish a new regulatory regime" (Davies, 1996, p. 28; see also Hulsink 1999, p. 219 and Interviews I and IV). This helps to explain why the impulses for further liberalization did not come earlier directly from the ministry and why KPN was not particularly challenged by the political authorities.[†] Instead, it was mainly the CAPT, composed of independent experts, which played the major role in the learning process and policy recommendations.

In addition, despite the early decision of the EU to fully liberalize the telecom market before 1998, some EU directives came only very late, in 1996 (full competition directive) or even 1997 (interconnection directive). This hindered the ministry from presenting a coherent and thorough reform of the

* The first report of the CAPT contained a complete draft proposal for a new telecom act, much more liberal and in line with the EU regulatory framework. The formulation of a detailed draft proposal is very uncommon for this kind of report (Interview IV).

† In addition, the government had to react to a complaint of the association of Dutch telecommunication users to the EU Commission, according to which it would have violated ONP directives by approving leased line tariffs that were not cost-oriented. This led the Dutch Ministry of Transport and Public Works to reduce prices for leased lines without waiting for the commission's decision (Davies and Hulsink, 1997, p. 32).

old law sooner (Interview I). It also explains why the government did not follow the initial proposals of the CAPT. An additional explanation for the delay of the telecom liberalization is the early move of 1989, which made Dutch political and administrative elites feel under less pressure from the EU. Thus, the monitoring role of the EU Commission (through its annual publication on the implementation of the telecommunication regulatory package) did not play a direct role in the elaboration of the telecom reforms in The Netherlands (Interviews I and IV).

In sum, the early impulses for Dutch telecom policy reform originated mainly from endogenous initiatives. From 1989 on, a smooth learning process took place among experts and, subsequently, the administration, where the EU did not play a central role. As we shall see below, the coercive dimension of the EU remained much weaker in The Netherlands than in Austria.

B. Austria: Late Adaptation Under EU Pressure

Unlike the Dutch reform process, the liberalization of the Austrian Telecom market started late: it was triggered only by the country's accession to the EEA in 1993, which implied the adaptation of national laws to all existing directives in the field. Therefore, the old Telephony Act from 1949 had to be entirely revised. The main changes concerned the complete liberalization of value-added services and terminal equipment. Moreover, a new regulatory body for telecommunication affairs was created as a section of the Ministry of Transport.

As an EEA member, and from 1995 as a member of the EU, Austria had to implement the EU decision on full market liberalization for 1998. Even though the Commission put this deadline on the agenda in 1993, it was only in summer 1996 that the preparatory work for a new Telecommunications Act began. This new law was adopted a year later in July 1997, and included three main elements: the complete liberalization of the national telecommunication services and rules favoring the entrance of new operators on the national market; a new regulatory arrangement with an independent market regulator, the Telekom Control Commission; and the definition of the scope of universal service. The national operator's status had been reformed previously in 1996, when the new "Post und Telekom Austria AG PTA" was founded, whose shares remained entirely under governmental control.

Unlike The Netherlands and Switzerland, the reform process began late in Austria. The whole liberalization process remained always closely related to the given EU agenda. This rather reactive adaptation can be mainly explained by the quasi-absence of domestic impulses for reform until 1997.

1. The Weakness of Initial Domestic Impulses for Liberalization

Austria is a highly corporatist country with an important culture of consensus and very strong links between the government, major trade unions, and business associations.* The national operator was traditionally integrated into the Ministry of Transport, directed by a social democratic minister. Interviewees maintained that an informal agreement between the trade unions and the business chamber on the maintenance of the status quo explains, to a large extent, that no claims for a reform of the telecom sector were expressed until the first step of liberalization in 1993 (Interviews V and VI). A second explanatory factor for the lack of early demands in favor of an opening of the telecom market is the quasi-absence of a relevant industry in the field, and an overall rather weak liberal tradition of the country's business associations (Interviews VI and VII). Thus, while The Netherlands and—as we shall see later—Switzerland, too, started their liberalization processes in the late 1980s, Austria followed only with its accession to the EEA.

Even after this first adaptation, domestic claims for further liberalization remained virtually nonexistent. Moreover, unlike its Dutch and Swiss counterparts, Telekom Austria did not develop an international business strategy until spring 1997 (Braunsperger, 1998). Thus, no broad domestic debate on the need for liberalization took place until winter 1996, when representatives of the Austrian People's Party (ÖVP) pointed to the fact that Austria had fallen behind the other EU member states in the preparation of the complete market liberalization (Wolfsberger, 1998, p. 422).

It was only in July 1996 that the Ministry of Transport presented a first informal draft bill that would introduce complete market liberalization. This proposal was, however, clearly rejected by the business chamber and the industry, which criticized its lack of conformity with EU directives because the dominant position of Telekom Austria on the market would be protected and because the regulator would not be sufficiently independent. In November 1997, the Ministry presented a second draft for an entirely new Telecommunications Act. In the following consultation procedure, this second draft was, however, also rejected. The business chamber and the right-wing parties claimed that not much was changed from the first draft, and that the new project would not meet EU requirements concerning market access regulation for new operators and the independence of the regulator (Slominski, 2002).

* Mostly the chamber of labor and the business chamber, which benefit from mandatory membership of all Austrian workers and firms.

It was only at that moment (beginning of 1997) that national industry representatives and independent law experts started to intervene significantly in the policy process. Estimating that the business chamber did not represent the demands for liberalization in a sufficiently offensive manner (Interview VII), they founded an “ad hoc committee” (IWT), which issued in April 1997 an alternative, very liberal proposal for a new Telecommunications Act, suggesting a regulatory structure largely inspired by the German legislation. Doubts about the conformity of the two ministerial drafts to EU regulations thus allowed these actors to make their own proposal (Slominski, 2002, p. 133).

Given increasing domestic opposition and the growing pressure exerted by the EU Commission for a more rapid pace of reform, the Ministry of Transport started negotiations with the authors of the alternative draft bill. Interestingly, the traditional social partners, notably the Austrian business chamber, were excluded from these talks on the grounds that the reform had to be adopted rapidly. It is of note that the EU Commissioner had requested, at the moment of the presentation of the alternative draft bill in April 1997 that the Austrian government should not wait for an overall consensus to be found, but instead seize the opportunity to opt for a liberal, competition-friendly Telecommunications Act (Wolfsberger, 1998, p. 432).

In addition, the Ministry of Economic Affairs, formally not in charge of telecommunication policy, began to intervene in the reform and finally also participated in the negotiations.* This Ministry largely supported the alternative draft bill presented by the industry representatives. It was under pressure from these actors that the Ministry of Transport finally had to accept, to a large extent, the alternative project. To sum up, all interviewees confirmed that the industry representatives succeeded on the most important points in imposing their proposal on the Ministry. The final draft was adopted in less than a week by the parliament without any significant amendments.

2. Coercive Adaptation Under Pressure from the EU Commission

Several observations indicate that the reform and its reorientation into a more liberal direction were, to a large extent, influenced by external coercion rather than being expressions of voluntary policy transfer in terms of learning. Even the industry’s important intervention at the end of the process must be seen in relation to the role of the EU Commission.

* The intervention of this Ministry can also be explained by party-political reasons because it was headed by a minister from the ÖVP, whereas the Ministry of Transport was directed by a social-democratic minister.

First of all, the Ministry of Transport started the reform only after the EU Commission had formally recommended speeding up the liberalization process (Wolfsberger, 1998). The Ministry showed little general interest in the issue of telecom liberalization and the related EU directives. No consultative bodies were set up and no expert reports were mandated. In the view of the Ministry, the 1993 reform would have provided a sufficient opening of the market, and no need for rapid further liberalization was perceived. The Ministry showed a weak interest in, and poor knowledge of, the development of EU directives, which indicates that the government had little intention of engaging in a learning process and in voluntary reform (Interviews V and X). Moreover, the ministry lacked, to a large extent, sufficient knowledge of EU law when it started the reform, so that the heavily criticized proposals on the new regulatory arrangements were not only an expression of reluctance against liberalization, but also a sign of doubt concerning the exact requirements of EU law. Because the design of a regulator is not precisely specified in the EU directives, such an uncertainty finally led to mimetism, as the alternative draft bill of the industry representatives widely copied the German regulatory model (Slominski, 2002).

While in The Netherlands, the domestic claims of economic actors for liberalization found resonance among administrative actors and expert committees, who then became involved in a learning process—the quasi-absence of such claims in Austria was unfavorable ground for the emergence of powerful norm entrepreneurs in the field. As a result, the EU Commission intervened strongly in the process through formal and informal channels. It repeatedly reminded Austria to speed up the liberalization process in official or nonofficial reports, by sending a “blue letter” to Vienna in November 1996 (Wolfsberger, 1998) and by referring to this issue in conferences and interviews. The EU Commission for several times mandated its representatives to Austria, where they not only debated the reform with the government, but also met with members of the business chamber and the industrial sectors (Interviews V, VII, and IX). It seems that the EU Commission tried to support and strengthen the position of these actors who succeeded in the end in imposing their views.

Finally, the coercive (instead of consensual and learning-based) nature of transfer mechanisms is also visible in the deviation from the usually very inclusive and compromise-oriented patterns of domestic decision making. The deliberate exclusion of the business chamber from the negotiations in 1997 and the direct intervention of certain representatives of the industry, who thus circumvented the traditional corporatist organizations, highlight a more conflictual process governed rather by power relations than by persuasion and learning.

The Austrian reform illustrates a transfer mechanism, which was much more directly affected by EU pressure than the Dutch case. The Austrian

government did not try to anticipate EU law, but adopted a rather passive, attentive, and reactive attitude. One of our basic hypotheses assumed that the reform capacity of EU member states would be stronger because they would be better informed on, and prepared for, EU policy developments. However, it appears that EU membership per se is not sufficient: Even though Austria joined the EEA in 1993 and the EU in 1995, it did not engage in a learning process on telecom liberalization and lacked policy entrepreneurs eager to promote reforms at the domestic level. The Swiss case will show that, under certain circumstances, nonmember states can become involved in voluntary transfer of EU regulations, too, so that formal EU membership does not appear as a decisive precondition for policy learning.

C. Switzerland: Between Learning and Reciprocity

As in The Netherlands, the issue of telecom liberalization in Switzerland was already on the political agenda in the first half of the 1980s, quite independently from the developments at the EU level, and mainly under pressure from the major export-oriented sectors of the economy. The legislative reform concerning telecom liberalization proceeded in two major steps: an initial reform of the Telecommunications Law (LTC) in 1991, and a second one in 1997.

Even though the preparatory work on the first telecom reform had already started at the beginning of the 1980s, the adoption by the Swiss Parliament of the LTC reform in 1991 occurred only just after the adoption of the first EU directives on liberalization of the telecom sector. The major elements of that reform can be summarized as follows: first, liberalization of the value-added network services and of the terminal equipment, combined with the maintenance of public monopoly of the Swiss PTT over basic services (voice telephony and network); and second, splitting up of the activities of market regulation and services provision through the creation of the Swiss Office of Communication (OFCOM), which is responsible for the definition of technical norms, granting of concessions to private actors, and prohibition of cross-subsidization between services in the monopoly situation and those that were liberalized.

Between 1991 and 1997, several internal reorganizations of Swiss telecom, still part of the PTT, took place* and the law of 1991 was rapidly considered as obsolete in comparison to the rapid evolution of liberalization at the European level. The 1997 reform had two components. First, a new law

* These reorganizations were directed toward a more market oriented and customer-oriented strategy for the company. In addition, the possibility of developing an international strategy through cooperation was facilitated by amendments to various governmental decrees (for more details, see Pravato, 1998, 148 ff.).

on the statute of the telecom company provided for a complete separation of the post and telecom services into two distinct companies: Post and Swisscom, the latter transformed into a partially privatized public company (*Société Anonyme de Droit Public*) for which the federal state remained, however, the majority shareholder. The second dimension concerned the reform of the LTC, which completely liberalized the sector through the removal of the public monopoly over telephony services and cable-based telecommunications. With the creation of an independent Communications Commission (ComCom), which was intended to guarantee free access to the telecom market in collaboration with the OFCOM, a complete separation of regulatory functions and operational activities was introduced. In addition, the ComCom and the OFCOM would have to collaborate on competition issues with the recently reinforced Competition Commission (in charge of regulating competition in general) in order to ensure that an “efficient competition” prevailed in the telecom market.

1. Telecom Reform in its Broader Economic and Political Context: Early Impulses and International Strategy of Swiss Telecom

The preparatory work on the 1991 reform had already started 10 years earlier. A first draft was published in 1983 by the direction of the PTT itself, but some important political actors, especially the Swiss Federation of Commerce and Industry (USCI),* criticized the project for preserving the status quo and obtained the creation of an expert committee, which was independent of the PTT. This expert committee drafted a new project, which was adopted by the Ministry of Environment, Transport, Energy, and Communications (DETEC). After further approval by the whole government, the project was submitted for general consultation, and then presented to the parliament in December 1987. Thus, debates about a first step of liberalization in the telecom sector started in Switzerland even before the first concrete proposals emerged at the European level.†

The parliament amended the governmental proposal during the debates that took place between 1988 and 1991, taking into account the recent

* Already in the 1980s, the issue of telecommunications liberalization became one of the central political objectives of the USCI, which represents the most internationalized economic sectors. The major claim was to reduce costs for international communications (see various annual reports of the USCI).

† The green paper on telecommunications of the EU Commission, which contained major propositions about the liberalization of the telecom market, was published in June 1987 and approved by the European Council in 1988 (Sandholtz, 1998).

acceleration of telecom liberalization in the EU. Besides minor adjustments, the major modification concerned the creation of OFCOM, as a new partially independent regulator. OFCOM remained part of the ministry, but was independent of the PTT company and came to play a decisive role in the next reform of 1997.

In spite of rejection of the EEA Treaty by Swiss voters in 1992, the government decided to follow a strategy of autonomous implementation of EU legislation (“Autonomer Nachvollzug”) in some decisive areas, such as telecommunication. In addition, the major business associations actively urged for telecom liberalization and privatization in different broadly circulated publications at the beginning of the 1990s (see USCI, 1991, 1995; de Pury, 1992), so that a broad pro-liberalization coalition was formed (see Mach et al., 2003).

In parallel to domestic impulses for further liberalization, Swiss telecom started to develop an international strategy by participating in different telecom companies, notably in Eastern Europe. In 1993, Swiss telecom joined Unisource, which had been created by the Dutch and Swedish telecom companies a year before. During the 1997 reform, the further participation of Swiss telecom in Unisource was conditioned by the EU Commission to the liberalization of the Swiss telecom market. This conditionality imposed by the EU Commission on the further international expansion of Swisscom largely explains the positive attitude of the national operator to the 1997 reform (Interview XV). Thus, even though Switzerland was not part of the EU, the Swiss telecom operator was nevertheless directly affected by its decisions.

2. Learning Process Without EU Participation: The Rising Role of OFCOM

During the preparatory work on the 1997 reform, OFCOM came to play a central role as a policy entrepreneur in the domestic “framing” of adaptational pressure stemming from the EU and from international economic competition. Before the role of this office in the 1997 reform is presented in more detail, it is important to look back at its creation, which is particularly interesting with regard to the role of new national norm entrepreneurs.

As underlined above, the OFCOM was created as a consequence of the first 1991 telecom reform, and more precisely during the parliamentary debates. It was during the hearings organized by the parliamentary committee that, in an extremely unusual move, the representative of the Office of Foreign Economic Affairs (OFEA) and some economic experts openly criticized the governmental proposal because it contained no separation of regulatory function and services provision. The OFEA and the economic experts made direct reference to the 1987 green paper of the EU Commission, which explicitly recommended a separation of regulatory functions and services

provision (minutes of the parliamentary committee). The parliament decided to follow the proposal of its committee, itself inspired by the recommendations of the OFEA and the experts, and modified the governmental proposal by supporting the creation of a new regulatory body independent of the PTT, despite the initial reluctance of the government and of the PTT. The OFEA and the economic experts thus played a crucial role as norm entrepreneurs for the creation of the OFCOM, referring directly to EU recommendations. This new office, which received a large degree of autonomy from the Ministry (Interview XVI), became a central actor in the telecom sector, especially during the 1997 reform process.*

The preparatory work on the 1997 reform had already started in 1993 and remained largely in the hands of the OFCOM. It must be stressed that the Telecommunication Law reform was part of a global package of four laws that included the complete transformation of the Post and the Telecom companies, and the partial liberalization of the postal services.[†] In contrast to the reorganization and partial liberalization of postal services where a large expert committee composed by representatives of various interests groups (from industry to consumer associations) had been created, and unlike the previous 1991 telecom reform, in this instance, OFCOM kept the upper hand in the formulation of the telecom reform. The first draft was drawn up by a small group of high-ranking civil servants from OFCOM, mandated by the ministry. On the basis of two studies about the future of the Swiss telecom market from the English consulting group Analysys and from the Swiss consulting company Infrac (Analysys and Infrac, 1994), OFCOM drafted a reform proposal, which was endorsed by the government without any substantial modifications. This proposal was largely inspired by EU legislation[‡] and formulated in general terms in order to allow the subsequent adaptation through governmental decrees of the Swiss regulatory framework to the evolution of EU legislation (report of the government, 1996). OFCOM

* The existence of an independent regulator is considered by Thatcher (1999, p. 309) as a central element for further policy developments in the telecom sector.

[†] This “package deal” was conceived as a balanced compromise between the claims of business representatives, who were in favor of an urgent and total liberalization of the telecom sector, and the claims made by representatives of the Social Democratic Party and the trade unions, who wanted to preserve the situation of the postal sector. The postal department of the PTT was directed by a member of the Social Democratic Party, whereas the telecom sector was headed by a member of the right-wing Radical Democratic Party.

[‡] The “Swiss science council”—a consultative body of the government on scientific matters—also mandated a report on the Dutch and British experiences on telecommunications liberalization (see Davies, 1996), which is also illustrative of cross-national learning. However, according to several interviews we made, this council did not play a significant role in the decision-making process.

followed very attentively the evolution of the EU regulatory framework, which served as a point of reference for the telecom reform. Further, OFCOM was actively involved in various supranational bodies concerning telecommunications issues other than EU institutions, such as the International Telecommunications Union (ITU) and the International Regulators Group (IRG), set up in 1993 and formally institutionalized in 1997 (Interview XIII).

In contrast to The Netherlands, where the telecom reform gave rise to large discussions between different actors (legal experts, advisory bodies, administrative agencies, and members of parliament) during the 1990s, the learning process in Switzerland was concentrated among very few key actors, mainly OFCOM, in close collaboration with Swiss telecom and the representatives of the major business associations (Interviews XII and XIV). During the formulation of the law, the OFCOM largely circumvented the traditional corporatist institutions of the preparliamentary policy process.* Broadly supported by the government, OFCOM was able to prepare a project without being constrained by the positions of different actors such as the trade unions. The reform came only very late (in September 1996) in parliament, which had to accept the new laws in a very short period of time if it wanted to respect the EU agenda. No important changes were introduced during the parliamentary debates, and a very large majority in both chambers approved the four laws.†

V. FACILITATING AND CONSTRAINING FACTORS FOR POLICY TRANSFER

The presentation of the three trajectories toward the liberalization of the telecom market allowed us to identify the specific mechanisms of policy transfer at work in each country: in The Netherlands and in Switzerland, the reform process was largely initiated and guided by domestic economic and administrative actors and by legal experts, who mobilized knowledge about EU regulation or about policy developments in other countries. Although the learning process in The Netherlands was conducted on a broad basis and involved a high number of actors, the Swiss reform process for complete liberalization was more selective and technocratic, and it was clearly a single

* During the official consultation procedure, the trade unions expressed some criticisms of the draft and complained about the absence of any inclusive experts committee, but their position was not taken into account.

† An optional referendum was launched against the whole reform package by some representatives of left-wing parties and by some regional sections of the trade unions. However, they failed to collect the 50,000 signatures necessary to organize a popular vote.

administrative actor (OFCOM) that steered the process of voluntary transfer. In Austria, in contrast, change was mostly reactive to external coercive pressure. Domestic actors pushing for reform intervened only very late and with the support of the European Commission. To sum up, while Switzerland and The Netherlands fall into the category of “normative isomorphism,” Austria can be characterized as a case of “coercive isomorphism.”

How can these different mechanisms of transfer be explained? As specified in the conceptual framework summarized in Table 1, we hypothesized that two major structural factors are particularly relevant preconditions for policy learning. On the one hand, *economic openness* is assumed to influence the domestic interest configuration in favor of liberalization. Because an open economy is characterized by a strong export-oriented sector widely exposed to global pressure for competitiveness, companies, interest organizations, and even segments of the administration are expected to be particularly sensitive to changes in the external economic and regulatory environment. This pattern applies to The Netherlands and Switzerland, whereas Austria belongs to the social version of democratic corporatism with different structural conditions and a different domestic power balance. On the other hand, we suggested that *membership in the EU* would act as an exogenous facilitating factor for policy learning because it imposes compliance and provides domestic actors of member states such as The Netherlands or Austria with expertise, reform models, and legitimacy. Both of these structural factors should have an influence on the configuration of actors and interests in the telecommunication policy sector. After having applied the conceptual framework developed above to the three reforms under scrutiny, we can now assess the relative importance of these two structural preconditions for learning and synthesize the major factors explaining the distinctive mechanisms of policy transfer (see Table 3).

The relevance of formal EU membership as a facilitating factor for learning must be strongly qualified. In Switzerland, a nonmember, telecommunication liberalization had already become an issue in the mid-1980s. After the rejection of the EEA Treaty in 1992, conformity with developments in EU regulations was utilized by economic actors, the administration, and the government as an important argument for legitimizing reforms, even though no formal obligation for adaptation existed. Similarly, the reform process in The Netherlands was—at least in the beginning—to a very large extent driven by domestic political forces rather than by willingness to comply with forthcoming EU directives. The Dutch government developed an autonomous national strategy of a “managed duopoly,” which failed, however, because of internal divergences between the operators. By contrast, even though Austria as an EEA member had already been submitted to EU regulation from 1993 onward, it did only very lately follow the direction adopted by the EU. National political and administrative actors remained very passive and

Table 3 Mechanisms of Policy Transfer in The Netherlands, Switzerland, and Austria

	NL	A	CH
Favorable structural factors			
EU membership	Yes	Yes	No
Liberal democratic corporatism	Yes	No	Yes
Domestic factors facilitating policy transfer			
Presence of political actors mobilizing for reform	Yes (VNO-NCW, early demands)	No (IWT, very late)	Yes (USCI, early demands)
Presence of norm entrepreneurs	Yes (experts CAPT)	No	Yes (OFCOM)
International strategy of the national operator	Yes	No	Yes
Major mechanisms of policy transfer	<i>Voluntary, domestic learning</i>	<i>Coercive pressure of the EU and mimetism</i>	<i>Voluntary, domestic learning and conditionality</i>

CAPT, Commission for Advice on Postal and Telecommunication Policy; IWT, Interessengemeinschaft Wettbewerbsorientiertes Telekommunikationsgesetz; OFCOM, Office of Communication; USCI, Swiss Federation of Commerce and Industry; VNO-NCW, Federation of Dutch Industries.

hardly used the information disseminated by the Commission in order to prepare and implement domestic reforms. Moreover, the Commission intervened in this case more as a coercive agent than as a policy entrepreneur involved in a process of information and persuasion. These observations clearly question the relevance of formal EU membership as an explanatory factor for a specific mechanism of adaptation. This result supports findings of Levi-Faur (2004), who shows that telecommunications reform in EU member countries can, to a large extent, be understood as a direct domestic response to global economic and ideological developments, rather than as a mere adaptation to EU regulation. In The Netherlands, where powerful domestic actors pushed for liberalization, the Commission hardly ever intervened directly in the process and direct EU pressure was not necessary for reform. Nevertheless, the general importance of the EU as a catalyst for reforms channeling structural economic pressures for change and providing regulatory models must be noted. In all three countries, EU regulations were decisive for the extent and the timing of the reforms. Even in Switzerland, although a nonmember, the content of the legislative acts finally adopted clearly aimed at aligning national laws to EU directives and all three reform processes temporally converged on January 1998, the EU deadline for market liberal-

ization.* Moreover, for the Austrian case, our empirical evidence contradicts the argument that the coercive effect of EU regulations can be neglected (Levi-Faur, 2004) because the Commission directly played a crucial role in the reform process. Key actors of the Austrian policy process affirmed that without the pressure exerted by the Commission, complete liberalization and independent regulation would not have been adopted for several years (Interviews VII and IX). These findings indicate that the EU Commission played a somewhat *subsidiary* role to domestic actors: if the domestic configuration of actors and interests is unfavorable to change, the Commission can indeed come to play a decisive role in member states.† Our observations also confirm that Europeanization, as a more specific form of policy transfer, is a concept whose application should not be limited to political transformations in the EU member states. According to the distinction operated by Radaelli (2001), one can speak of “vertical Europeanization” (coercive) in the case of Austria and of predominantly “horizontal Europeanization” (through domestic learning) for The Netherlands, but for Switzerland as well.

The importance of national dynamics appears clearly in our three cases. The adaptation processes in The Netherlands and Switzerland confirm the hypothesis about the importance of economic openness—regardless of EU membership—for the willingness of national actors to promote telecom liberalization. In both countries, business associations were already pushing in the early 1980s for a liberalization of the telecommunications sector because they considered it as an important factor for the global competitiveness of the national economy. The Swiss Federation for Commerce and Industry, for instance, disseminated publications on the benefits of liberalization and privatization, and Dutch business representatives and independent experts pointed at the rapid evolution in Anglo-Saxon countries in order to place the issue at an early moment on the domestic political agenda. Similarly, the traditional Dutch and Swiss monopolistic operators engaged in the early 1990s in international business strategies by joining Unisource, whereas the Austrian telecom operator did not pursue any similar strategy until late 1996. Participation in Unisource accounts, to a large extent, for the fact that the Dutch KPN and the Swiss PTT were in favor of market liberalization.

The debate on the necessary liberalization of telecommunications markets launched by these domestic economic actors was pursued by Swiss

* Besides, Switzerland was submitted to EU conditionality regarding the international strategy of its operator.

† Schneider (2001, p. 70) comes to a similar conclusion concerning telecommunication reform in Italy compared with Germany and France. The effect of direct pressure for reform emanating from the EU Commission was enhanced because of strong domestic opposition against reforms from trade unions and parts of the administration.

and Dutch administrative and political elites. In The Netherlands, the government created several expert committees, which provided knowledge on international policy developments and thus came to act as norm entrepreneurs. The Swiss OFCOM mandated expert reports and was active in international telecommunication organizations such as the ITU and the IRG, where it took part in the collective learning process. Even though the organizational structure of the policy sector was largely similar in all three countries after 1993—all of them had created specialized bodies as parts of the administration or independent experts committees—it was only in The Netherlands and in Switzerland that these bodies really came to play the role of norm entrepreneurs. In Austria, where domestic economic claims for reform remained largely absent until 1997, the administrative actor in the field of telecommunications adopted a rather passive position toward liberalization and never autonomously mobilized external expertise on the issue. In contrast to the Dutch and Swiss cases, there was no learning process among the Austrian administration. In this case, external pressure by the EU Commission was much more decisive in accelerating the reform process, and this finally led to a form of mimetism and emulation through copying of the German legislation.

Cross-country differences in terms of economic structure, and the resulting various national configurations of actors and interests, largely explain the particular mechanisms of adaptation observed in the three countries. They cannot account, however, for all aspects of a country's trajectory. Additional elements such as partisan variables or even the specific behavior of those involved also played a certain role. In The Netherlands, for instance, the right-wing liberal coalition in government in the 1980s favored the rapid adoption of the first steps toward liberalization. Conversely, the fact that the Austrian Ministry of Transport was directed by a minister of the SPÖ, a party with very close links to trade unions and the national operator, also contributed to the Ministry's passive and reluctant attitude in the process of liberalization.

VI. CONCLUSION: FAVORABLE DOMESTIC ACTOR CONSTELLATIONS AS A PRECONDITION FOR POLICY TRANSFER

The comparison of telecom policy reform in three small European countries allowed us to show the importance of preexisting domestic structures for explaining the mechanisms of policy transfer (i.e., the ways in which these countries responded to pressure for reform stemming from globalization and the EU). Our findings indicate that policy transfer largely depends on the

broader economic and social structures of a specific country, which affect domestic actor constellations and therefore the learning capacity of national elites. Thus, it appears clearly that policy transfer and learning should not be considered as “automatic” and technocratic processes of knowledge transfer, serving a consensual goal of better policy efficiency, but rather as the result of specific interest configurations, power relations, and learning processes at a given time in a given country.

Finally, we would like to stress some similarities and differences concerning the mechanisms of policy transfer in the three countries under scrutiny. On the one hand, the existence of similar institutional characteristics of consensual democracies (corporatist institutions and multiparty governmental coalitions) contributed in all three countries to slowing down to some extent the pace of reforms by inhibiting radical reform strategies, such as the one adopted in the UK. Traditional features of “negotiation democracies” favored generally rather consensual reform processes. On the other hand, the distinction between the social (Austria) and the liberal version (The Netherlands and Switzerland) of democratic corporatism, related to the degree of outward orientation of these three economies, explains, to a large extent, the presence or absence of domestic impulses for telecom reform and of learning processes among political, administrative, and economic elites. In The Netherlands and Switzerland, adaptation to EU regulation and global pressure can mainly be explained by domestic initiatives emanating from economic actors interested in telecom liberalization, and by the emergence of new norm entrepreneurs in the national administration. In these two liberal countries, domestic elites were much more receptive on the issue of telecommunication liberalization, which was put on the political agenda very early and quite independently of the European evolution. In both countries, the national operator developed an international business strategy in order to expand its activities abroad. Similarly, national administrations were involved in different formal and informal international bodies active on telecom issues. In brief, domestic actors’ configuration and external trends were largely congruent. Therefore, the coercive impact of the EU was weak. By contrast, the absence of domestic policy entrepreneurs until the mid-1990s in Austria also explains the absence of an ongoing learning process among the administrative and political elites, as well as the more coercive pressure exerted by the EU Commission.

The central importance of domestic structures for policy transfer also tends to nuance the role of the EU as a trigger of national telecom policy reforms, as was also underlined by Schneider (2001) and Levi-Faur (2004). This statement is particularly true for The Netherlands and Switzerland, where the initial impulses for telecom reform were already on the political agenda during the first half of the 1980s. The role of the EU must therefore be

qualified. In general, it acted as an intervening force in a global context of technological changes and economic liberalization. In countries where domestic actors actively mobilized for telecommunications liberalization, the EU only played a secondary role. Nevertheless, the extensive EU legislation as well as the EU agenda were decisive for the timing and the content of telecom policy reforms in The Netherlands and Switzerland. By contrast, the less extraverted nature of the Austrian economy as well as the tight relations between political authorities and the national telecom operator prevented the early start of a learning process. It was only later during the 1990s, first with the EEA Treaty and then with EU membership, that telecom liberalization became a major issue in this country. Because of the lack of domestic support for liberalization, external coercion was much more important, and the EU Commission, partly in alliance with some domestic actors, came to play the decisive role in the reform process. The relative passivity of domestic actors also explains why in the final steps of the reform imitation, rather than genuine learning, were more important in Austria. Hence, in EU member countries, it seems that “vertical Europeanization” can compensate for the lack of “horizontal Europeanization.” In that sense, whether EU membership “matters” (i.e., whether it has an impact that is independent of more general pressures for reform stemming from globalization) mostly depends on domestic factors. Future research on this topic should continue to focus on variables at the national level, which determine the responsiveness of national economies and political systems to regional and global pressures for change.

ACKNOWLEDGMENTS

This chapter is part of the research project “Reshaping decision-making processes under external pressure,” directed by Prof. Y. Papadopoulos and funded by the Swiss National Science Foundation (grant no. 5004-058511/1) as a part of its Priority Programme “Switzerland Towards the Future.” We would like to thank Fabrizio Gilardi, Alex Fischer, and the two volume editors for helpful comments on previous versions of this chapter. The usual disclaimer applies, however.

LIST OF INTERVIEW PARTNERS

The Netherlands

- I Dijkman, Hans Willem, Directorate General for Telecommunications and Post (HDTP), policy unit, The Hague

- II (de) Graaf, Paul, Center for Information Policy/Council of Central Employers' Associations (CIB/RCO) part of VNO-NCW, The Hague
- III Hulsink, Willem, Professor at the Erasmus University, Rotterdam
- IV (de) Ru, Hendrick Jan, former Vice President of the CAPT, Amsterdam

Austria

- V Schrems, Alois, former representative of the Chamber of Labor (Arbeiterkammer), Vienna
- VI Slominski, Peter, Forschungsstelle für institutionellen Wandel und europäische Integration, Vienna
- VII Sprinzl, Michael, former representative of the Business Chamber, Vienna
- VIII Talos, Emmerich, Professor at the University of Vienna
- IX Tritscher, René, representative of the Business Chamber, Vienna
- X Weber, Karl, Ministry of Transport, Innovation, and Technology, Vienna

Switzerland

- XI Caccia, Fulvio, President of the Communication Commission, former Member of Parliament, Bern
- XII Dangel, Jürg, former President of ASUT, Swiss Association of Telecom Users, Zurich
- XIII Fischer, Peter, Federal Office of Communication (OFCOM), Director of Telecommunications Division, Bienne
- XIV Juen, Christoph, Swiss Federation of Trade and Industry (USCI), responsible for telecommunication issues, Bern
- XV Syz, Dieter, Former member of the board of directors of PTT, responsible for the Telecom Department, Zug
- XVI Werder, Hans, Director of the General Secretariat of the Ministry of Environment, Transport, Energy and Communications, Bern

REFERENCES

- ANALYSYS and INFRAS (1994). *Perspektive Telekom. Grundzüge für die Weiterentwicklung der schweizerischen Fernmeldeordnung. Resultate der Grundlagenarbeit*. Berne: OFCOM.
- Bennett, C., Howlett, M. (1992). The lessons of learning: reconciling theories of policy learning and policy change. *Policy Sci.* 25:275–294.

- Börzel, T., Risse, T. (2002). Conceptualizing the domestic impact of Europe. In: Featherstone, K., Radaelli, C., eds. *The Politics of Europeanization*. Oxford: Oxford University Press, pp. 55–78.
- Braunsperger, H. (1998). *Liberalisierung und Deregulierung im österreichischen Telekommunikationsmarkt*. Vienna: University of Vienna.
- CAPT (1993a). *De WTV in de steigers renovatie of nieuwbouw*. The Hague: Raad voor Verkeer en Waterstaat.
- CAPT (1993b). *Telecommunicatiewetgeving in een open markt*. The Hague: Raad voor Verkeer en Waterstaat.
- CAPT (1995a). *Herziening Wet op de Telecommunicatie Voorziening*. The Hague: Raad voor Verkeer en Waterstaat.
- CAPT (1995b). *Advies over het Zelfstandig bestuursorgaan*. The Hague: Raad voor Verkeer en Waterstaat.
- Davies, A. (1996). Anglo-Dutch experiences of liberalisation. Basic report for the Synthesis Le défi des télécommunications. *Technology-Assessment*. Bern: Wissenschaftsrat.
- Davies, A., Hulsink, W. (1997). Two-speed Europe? Anglo-Dutch experiences of telecommunications restructuring. *Commun. Strateg.* 27(3):11–47.
- de Pury, D., Borner, S., Hauser, H., Jaccard, P., Pozzi, A., Schmidheiny, T., Senn, N. (1992). *Rapport final du groupe de travail informel «Ordnungspolitik»*. Berne: Department of Economic Affairs.
- Dolowitz, D., Marsh, D. (1996). Who learns what from whom? A review of the policy transfer literature. *Polit. Stud.* 44:343–357.
- Dolowitz, D., Marsh, D. (2000). Learning from abroad: the role of policy transfer in contemporary policy making. *Governance* 13(1):5–24.
- Dommering, E. J., Van Eijk, N., Kemme, G., de Ru, H. (1995). *Een Interim-Regeling voor Telecommunicatienetten*. The Hague (Manuscript).
- Eliassen, K., Sjøvaag, M., eds. (1999). *European Telecommunications Liberalisation*. London: Routledge.
- Evans, M., Davies, J. (1999). Understanding policy transfer: a multi-level, multi-disciplinary perspective. *Public Adm.* 77(2):361–385.
- Green-Cowles, M., Caporaso, J., Risse, T., eds. (2001). *Transforming Europe. Europeanization and Domestic Change*. Ithaca: Cornell University Press.
- Héritier, A. (2001). Differential Europe: national administrative responses to community policy. In: Green-Cowles, M., et al., eds. *Transforming Europe. Europeanization and Domestic Change*. Ithaca: Cornell University Press.
- Héritier, A., Kerwer, D., Knill, C., Lehmkuhl, D., eds. (2001). *Differential Europe: The European Union Impact on National Policymaking*. Lanham: Rowman and Littlefield.
- Hulsink, W. (1999). *Privatisation and Liberalisation in European Telecommunications: Comparing Britain, The Netherlands and France*. London: Routledge.
- James, O., Lodge, M. (2003). The limitations of “policy transfer” and “lesson drawing” for public policy research. *Polit. Stud. Rev.* 1:179–193.
- Jobert, B. (1992). Représentations sociales, controverses et débats dans la conduite des politiques publiques. *Rev. Fr. Sci. Polit.* 4(2):219–233.

- Katzenstein, P. (1985). *Small States in World Markets*. Ithaca: Cornell University Press.
- Katzenstein, P. (2003). Small states and small states revisited. *New Polit. Econ.* 8(1):9–30.
- Knill, C., Lehmkuhl, D. (2002). The national impact of European union regulatory policy: three Europeanization mechanisms. *Eur. J. Polit. Res.* 41(2):255–280.
- Levi-Faur, D. (1999). Governing the Dutch telecommunications reform: regulation, deregulation and reregulation within the context of European policy regime. *J. Eur. Public Policy* 6(1):102–122.
- Levi-Faur, D. (2002). *Herding Toward a New Convention. On Herds, Shepherds and Lost Sheep in the Liberalization of Telecommunications and Electricity*. Oxford: Nuffield College. Working Papers in Politics (No. 6).
- Levi-Faur, D. (2003). The politics of liberalisation: privatisation and regulation-for-competition in Europe's and Latin-America's telecoms and electricity industries. *Eur. J. Polit. Res.* 42(5):705–740.
- Levi-Faur, D. (2004). On the “net impact” of Europeanization. The EU's telecoms and electricity regimes between the global and the national. *Comp. Polit. Stud.* 37(1):3–29.
- Mach, A., Häusermann, S., Papadopoulos, Y. (2003). Economic regulatory reforms in Switzerland: adjustment without European integration or how rigidities become flexible. *J. Eur. Public Policy* 10(2):301–318.
- OECD (1999). *Regulatory Reform in The Netherlands*. Paris: OECD.
- Padgett, S. (2003). Between synthesis and emulation: EU policy transfer in the power sector. *J. Eur. Public Policy* 10(2):227–245.
- Pravato, S. (1998). Libéralisation et privatisation des télécommunications, dynamique du marché et nouveau mode d'intervention étatique: le cas suisse. *Terminal* 76/77:141–169.
- Przeworski, A., Teune, H. (1970). *The Logic of Comparative Social Inquiry*. New York: Wiley-Interscience.
- Radaelli, C. (2000). Policy transfer in the European union: institutional isomorphism as a source of legitimacy. *Governance* 13(1):25–43.
- Radaelli, C. (2001). The domestic impact of European union public policy: notes on concepts, methods, and the challenge of empirical research. *Polit. Eur.* 5:107–142.
- Rose, R. (1993). *Lesson-Drawing in Public Policy. A Guide to Learning Across Time and Space*. Chatham, NJ: Chatham House Publishers.
- Sabatier, P., Jenkins-Smith, H. C., eds. (1993). *Policy Change and Learning. An Advocacy Coalition Approach*. Boulder: Westview Press.
- Sandholtz, W. (1998). The emergence of a supranational telecommunications regime. In: Sandholtz, W., Stone Sweet, A., eds. *European Integration and Supranational Governance*. Oxford: Oxford University Press, pp. 134–163.
- Schmidt, S. (1998). Commission activism: subsuming telecommunications and electricity under European competition law. *J. Eur. Public Policy* 5(1):169–184.
- Schneider, V. (2001). Institutional reform in telecommunications: the European union

- in transnational policy diffusion. In: Green-Cowles, M., et al., eds. *Transforming Europe. Europeanization and Domestic Change*. Ithaca: Cornell University Press, pp. 60–78.
- Slominski, P. (2002). *Die Implementation des EG-Telekommunikationsrechts aus rechts- und politikwissenschaftlicher Sicht*. Wien: Manz.
- Stone, D. (1999). Lesson drawing and policy transfer. *Politics* 19(1):51–59.
- Thatcher, M. (1999). *The Politics of Telecommunications*. Oxford: Oxford University Press.
- Thatcher, M. (2001). The commission and national governments as partners: EC regulatory expansion in telecommunications 1979–2000. *J. Eur. Public Policy* 8(4):558–584.
- USCI (1991). *Pour une Suisse compétitive et moderne*. Zurich: USCI.
- USCI (1995). *Un cadre libéral pour les télécommunications en Suisse*. Zurich: USCI.
- Wolfsberger, A. (1998). Das Telekom-Gesetz 1997. In: Talos, E., Kittel, B., eds. *Sozialpartnerschaft und Entscheidungsprozesse*. Vienna: University of Vienna, pp. 415–438.

7

Toward a Latin American Regulatory State?

The Diffusion of Autonomous Regulatory Agencies across Countries and Sectors

Jacint Jordana

Universitat Pompeu Fabra, Barcelona, Spain

David Levi-Faur

Australian National University, Canberra, Australia

University of Haifa, Haifa, Israel

I. INTRODUCTION

This chapter explores the sweeping restructuring of the state in Latin America, a region of the world that, since the 1990s, has been highly receptive to regulatory reforms, in general, and to the creation of autonomous regulatory authorities, in particular. We present a unique dataset on the establishment and reform of regulatory agencies in 19 countries and 12 sectors since the early 1920s. Our dataset reveals an explosive growth of regulatory agencies across different sectors and nations in Latin America. From 43 agencies in 1979 (mostly in the financial sector), the overall number grew threefold to 134 by the end of 2002. In addition, although in 1979 only 21 of those agencies were nominally autonomous, the total number of nominally autonomous agencies grew almost sixfold to 119 by the end of 2002 (see Fig. 1). Although this number represents only about 60% of total potential adoptions in these countries and sectors, and in only 53% of the potential cases is there a nominal commitment to autonomy, it still represents a sweeping success for the idea of governance through regulatory authorities. A particular institutional design of regulatory governance through autono-

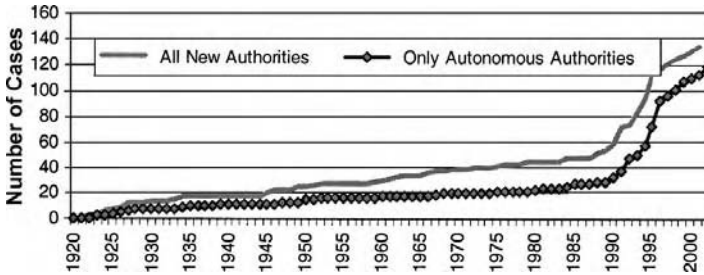


Figure 1 The growth of regulatory agencies in Latin America, 1920–2002.

mous agencies that was long confined to the United States (at the country level) and central banking (at the sectoral level) is evolving from “best practice” to a hegemonic institution grounded in a new convention in economic governance (Levi-Faur, 2002). In fact, not one sector studied here and not one country in the region, including Cuba, has remained untouched by the process. Yet countries and sectors differ in their reception of the institutional reforms, and we aim to demonstrate that these differences shed some light on globalization as a diffusion process.

We draw a major distinction between sectoral and national patterns of diffusion. This distinction is itself grounded in a distinction between the national patterns approach (NPA) and the policy sector approach (PSA) to comparative analysis (Levi-Faur, 2004b). This distinction challenges deeply entrenched research designs that treat the nation as the exclusive unit of analysis in the study of politics, in general, and of diffusion, in particular.¹ These studies that focus on decisions relating to a single sector (or issue) are often oblivious to the presence of significant sectoral variations. This paper emphasizes sectoral variations in the creation of regulatory agencies and therefore facilitates a more refined account of the process of regulatory reform without ignoring the importance of national variations. Indeed, we assert the advantages of cross-sectoral analysis on the basis of a former study of the data. After controlling for a battery of variables, we found that within-sector diffusion (i.e., from one country to another, but at the same sector) is as strong as, or stronger than, diffusion across sectors within the same country. This provides empirical support for the use of compound research designs, in general, and the combination of analysis of sectoral and national variations and similarities in the same research design, in particular (Jordana and Levi-Faur, 2003).

We ask a single, major question: What can we learn about state restructuring in Latin America by examining temporal, sectoral, and national

variations in this process of institutional change? This is a modest question that leaves many avenues open for future study, yet we believe that it is challenging enough to merit attention. We use some descriptive statistics to capture the process, and discuss three major comparative perspectives to answer the question. We first examine the process from a comparative historical perspective (the temporal patterns approach), looking at the period from the 1920s to 1978. The comparative historical perspective allows us to distinguish between a sector-centered process of diffusion up to 1979 and a mixed process of diffusion across both nations and sectors since 1979.² Second, we examine diffusion as a national process, and reveal a high degree of variation among different countries in adopting regulatory institutions. This confirms the finding of the NPA that national-level characteristics exert a major impact on policy, politics, economics, and society. Accordingly, it suggests also that nations will vary considerably in the way regulatory authorities are adapted and that sectoral variations of regulatory agencies within each country will be minimal.

A third section examines the growth of regulatory agencies as a cross-sectoral diffusion process in Latin America and demonstrates high levels of variation in the diffusion of regulatory agencies across sectors. This confirms the finding of the PSA that sector-level variables will be the major determinant of reforms, and advocates comparisons of sectors (e.g., Atkinson and Coleman, 1989; Hollingsworth et al., 1994). Accordingly, this approach proposes: “[First] that the style of policy making and the nature of political conflicts in a country will vary significantly from sector to sector. . . . [And second] that policy making in a particular sector will exhibit strong similarities, whatever its national context” (Freeman, 1986, p. 486). The concluding part examines the implications of our observations for understanding state transformations in Latin America and, in particular, the implications of the rise of the regulatory state in the region. We start, however, with a discussion of the process of diffusion, the political and economic background of the diffusion of regulatory authorities in Latin America since the 1980s, and the notions of the rise of the regulatory state and, at the global level, of the institutionalization of a new order of “regulatory capitalism.”

II. REGULATORY REFORMS AND STATE RESTRUCTURING: LATIN AMERICA AND BEYOND

The widespread liberalization of trade, finance, and ownership has rendered many explanations of policy change obsolete because they were focused on its

coercive aspects (e.g., the ability of autocracies to promote painful reforms), or on the obstacles to change (e.g., domestic opposition). Indeed, there is little evidence that either coercion or obstacles were significant enough to make sense of these systemic changes.³ Liberalization and privatization were so popular during the 1990s as responses to social and economic malaise that coercion is marginal to any explanation of this policy change.⁴ At the same time, the observed substantial and unprecedented changes rule out obstacle-centered explanations of the reforms and require a research agenda switch that views the policy change as a contagious process (Levi-Faur, 2002). It is change, rather than stagnation, that has become the theoretical challenge for scholars; and to understand it, we adopt a diffusion perspective. Instead of understanding the reforms as outcomes of independent structural factors such as changing technologies and changing economic conditions, we perceive them as interdependent. In another paper, we employed event history analysis and, after controlling for numerous independent factors, we concluded that the process of change reflects interdependencies of decisions. A decision to create a regulatory agency is a very strong predictor of the creation of additional ones, either in different sectors in the same country or in the same sector in other countries (Jordana and Levi-Faur, 2003). Our diffusion perspective derives largely from that study and from a particular interpretation that one of us labelled “herding toward new convention” (Levi-Faur, 2002).

The process of state restructuring documented here coincides with large-scale economic reforms that were intended to tackle the problems of the import substitution model—debt crisis and hyperinflation—via liberalization of the national economies and the integration of the region’s economy into the world economy (Edwards, 1995; Haggard and Kaufman, 1992; Stallings and Peres, 2000). These reforms should be understood against the background of four related characteristics of the region: the crisis of the old “developmental” model, the widespread diffusion of economic reforms, democratization, and the problems of state consolidation. During the post-war period, the Latin American states pursued, in accordance with the prevailing orthodoxy, intensive state-led industrialization in a quest for rapid industrialization and for the closing of the economic and technological gaps with the richest countries. During this period, the public sector expanded quickly and instruments of coordination were developed through the concentration of economic power (Whitehead, 1994; Vellinga, 1998). However, the economic crisis of the 1970s laid bare the fragility of the foundations of the institutional expansion of the developmental state in Latin America. To the extent that it was actually implemented, the model of the developmental state was deemed an economic and political failure due to a weak civil service,

problematic coordination mechanisms, and narrow externalities arising from state-led development.

From the late 1970s, economic crisis coincided with a transition from autocracy to democracy (O'Donnell et al., 1986). Before 1978, only Colombia, Costa Rica, and Venezuela had democratic regimes with competitive electoral processes; but over a brief period, autocracies fell like dominoes, one after another. The first transition to democracy occurred in the Dominican Republic (1978), followed by Ecuador (1979), Bolivia (1982), Argentina (1983), Nicaragua (1984), Brazil (1985), Uruguay (1985), Guatemala (1986), Chile (1990), El Salvador (1992), Honduras (1994), and Panama (1994). Indeed, the only remaining nondemocratic regime in our study is Cuba. Despite episodes of regime crisis, the legitimacy of democracy seems uncontested for the present. Based on previous democratic traditions, all new Latin American democracies adopted presidential democracy and proportional representation for their legislatures (Mainwaring and Shugart, 1997). These led to a significant level of party fragmentation, which was balanced by strong presidential powers vis-à-vis the legislature, as well as by the capacity of presidents to forge coalitions with other parties (Payne et al., 2002). It is notable, however, that neither the transition to democracy nor the political and administrative fragmentation of decision making hindered the economic reforms, as was widely presumed in much of the literature of the 1980s (Remmer, 1998, p. 4). In fact, under newly elected leaders, liberalization in Latin America went farther and faster than anywhere in the world and, indeed, as has been noted elsewhere, democracies are more likely than autocracies to privatize (Biglaiser and Danis, 2002, p. 98) and to undertake regulatory reform.

Against the background of these large-scale changes, it may not be too surprising that the rise of the regulatory state in Latin America did not receive much attention. Scholars of public administration who dealt with state reforms and restructuring focused on the reforms of the civil service (recruitment, promotion, and remuneration), public finance (downsizing), the judiciary (fairness, access, and effectiveness), public management (performance, autonomy, and accountability) as well as issues of responsiveness, transparency, and legitimacy (Ross-Schneider and Heredia, 2003; Ramió and Salvador, this volume). Political economists focused on economic adjustment, trade liberalization, privatization, foreign direct investment, financial liberalization, and labor strategies (Meseguer, 2003; Murillo, 2002; Stallings and Peres, 2000). The first major collection on regulatory reforms in Latin America by Manzetti (2000) remains the only study of regulatory reform as a major aspect of change in the governance of the region's economy. Unlike Manzetti's collection and other various studies by institutional economists

(Levy and Spiller, 1996; Rufin, 2000), which focus on a small number of cases, we present in this paper a relatively comprehensive picture of the regulatory changes, focusing on institutional change across countries and sectors. What we found surprised us, and, indeed, the diffusion of reforms across countries and sectors went far beyond our expectations.

We view the creation of regulatory authorities as the hallmark of the transformation of the service provision state into the regulatory state (cf. Majone, 1997) and, in more general terms, of the configuration of new order of regulatory capitalism (Levi-Faur, 2004a; Lutz, 2004; Braithwaite and Drahos, 2000). We observe in different contexts the extension of regulatory modes of governance to more and more spheres of life and to more and more political arenas, and suggest that regulation, as an art and craft of governance, as an institutional reality, as a field of study, and as a public discourse, is more salient and celebrated nowadays than ever before (Jordana and Levi-Faur, 2004; Loughlin and Scott 1997; Majone, 1997; Moran, 2003). The expansion of regulation is often labelled “the rise of the regulatory state” but also, depending on the context and perspective, “regulatory society” (Power, 1999) and “regulatory capitalism” (Levi-Faur, 2004c). This change in the mode of governance might best be described as a shift from taxing and spending to rule making at different but entwined levels of political action, with an emphasis on the formalization of rules around an increasing number of issues (Levi-Faur, 2004b).

Four additional developments are intimately connected with the rise of the regulatory state since the 1980s. Privatization is one of the most celebrated. The second is the establishment of specialized agencies that exert regulatory control over business entities in fields as diverse as telecoms, electricity, water, post, media, pharmaceuticals, environment, food safety, occupational safety, insurance, banking, and securities trading.⁵ These new entities, often known as independent regulatory authorities,⁶ have been granted some measure of autonomy from direct political control allegedly in an effort to increase “policy credibility” vis-à-vis domestic and international capital (Majone, 1999). The third is the formalization and codification of previously informal ways of applying law, in general, and regulation, in particular. Finally, the change from taxing to rule making is associated with the proliferation of mechanisms of regulation, meta-regulation, and enforced self-regulation. These four developments suggest a broader conception of the regulatory state than the one we capture in our study. Yet regulatory authorities are not a marginal aspect of the change and are a reasonable proxy of this larger process of change, as far as they are responsible for implementing new policies—also new policy styles. They are especially important for us because they refute, at least partly, popular and scholarly assumptions

about the decline of the state in the context of globalization. In an era in which regulation has become synonymous with red tape and in which deregulation has become a major electoral platform of the New Right, regulatory authorities have been created in unprecedented numbers and with unprecedented autonomy. The extraordinary expansion of these institutions is still little understood, both in Latin America and elsewhere, but our emphasis on the sectoral dimension of the rise of the regulatory state and on its historical origins provides new insights into the process of state restructuring.

III. HISTORICAL PERSPECTIVE: THE DOMINANCE OF SECTORAL PATTERNS OF DIFFUSION

Regulatory authorities, governance through regulation, and autonomous institutions are not new in Latin America. Indeed, there are signs of the gradual advance of this form of governance at least since the 1920s. Thus, compared with the United States, where governance through “independent” regulatory authorities had already started in the 1880s and was consolidated in a national system, in Latin America, governance through regulatory authorities started late and was confined to a few distinct sectors, rather than being adopted uniformly across many sectors. This suggests that, although one can talk of the rise of the regulatory state in United States since the late 19th century and especially from the interwar period, one can discuss these developments only as a sector-specific process in Latin America (and elsewhere). As will be demonstrated shortly, it is possible to identify some pace-setting sectors in Latin America, but up to the 1990s, there was no pace-setting country that implemented sector-specific innovations in a wide range of sectors. We elaborate on these points by presenting and analyzing the growth of regulatory institutions in Latin America since 1920.

Have a second look at Fig. 1, which covers a period of over 80 years in which specialized public organizations, separate from the ministries and focused on rule-making and enforcement rather than distribution or redistribution, gradually became a very popular organizational form of governance. It is easy to observe two periods in the graph displays: the first from the 1920s to the late 1980s, and the second from the 1990s to 2002. What is readily observable in the first period is gradual and slow growth in the number of regulatory institutions up to 1990. As mentioned in the Introduction, since the 1990s, there has been explosive growth in the number of institutions and an increasing tendency to grant them nominal autonomy. Without doubt, this second period is the one that clearly and unambiguously represents the emergence of the regulatory state in the region.

We focus now on the diffusion of regulatory agencies in the region up until 1979. To what extent was this a nationwide process? To what extent was it confined to certain sectors? Because our unit of analysis is defined as country–sector–year, any diffusion process across nations is sectoral in the sense that the basic observation is what happens in a sector in each country. A national pattern of diffusion is observable when regulatory agencies are established (or reformed) in different sectors within the same country at around the same time. Indeed, this is the reasoning that led Moran to suggest the creation of “Victorian” regulatory states in Britain between 1833 and 1850. The new institutions include: “the Factory Inspectors, the Poor Law Commissioners, the Prison Inspectorate, the Railway Board, the Mining Inspectorate, the Lunacy Commission, the General Board of Health, the Merchant Marine Department, and the Charity Commission” (Moran, 2003, pp. 41–42). These bursts of regulatory institution building also encompassed some innovations in self-regulation, such as the creation of modern patterns of self-governing professions and self-government in the critical financial markets (Moran, 2003, p. 31). Similarly, in the United States, the rise of “regulatory state” is represented as a three-stage process in which regulatory institutions were created across a number of sectors, starting with issues of competition, moving to “economic sectors” in the interwar period, and culminating in the 1960s in the establishment of “social” regulatory institutions (Bernstein, 1955; Eisner, 2000). Thus, what was observable in Britain and later in the United States was a process of agency creation marked by a “national approach,” expanding across sectors within the country. Yet what we observe up until the 1990s in Latin America is within-sector diffusion. Only a limited number of sectors are affected and these are the same sectors in all countries. Thus, our data on a within-sector process of diffusion shed a different light on the origins of the regulatory state in that region.

The pace-setting sector in which regulatory structures started to take shape in Latin America (as elsewhere) is central banking. From a “sectoral approach” it is essentially the sector that initially gave birth to the regulatory state and their distinctive autonomous institutions. The autonomy of the central banks is derived, in part, from their origins as private institutions that acted as the regulators of the money markets. Their regulatory powers were conferred by the state and involved certain rights and duties that were modelled on European arrangements. Another source of central banks’ autonomy is the fact that these private institutions were financiers of the state. A system of interdependencies ensured that contractual relations between the private concessionaires and the government that conferred on them monopoly power to issue notes and undertake other monetary responsibilities also gave these institutions a significant degree of autonomy in the

running of the public finances (De Kock, 1974).⁷ Throughout the 18th and 19th centuries, these banks gradually came under tighter public control in Europe and acquired a “public character,” in three major ways:⁸ first, through more formal and detailed contractual relations between the concessionaires and the government; second, through the institutionalization of norms that ensured that they were publicly accountable despite being privately owned; and third, through the gradual emergence of government ownership rights in the banks (De Kock, 1974). This process culminated in the nationalization of central banks during the 20th century in Europe (Elgie and Thompson, 1998). In Latin America, the issue of monetary management, in general, and central banking, in particular, became increasingly salient with national independence. Two competing models were under discussion. Under the competitive model, the different monetary functions would be distributed among a number of banks, thus avoiding the concentration of monopoly power in one institution. The second (monopolistic) model was based on British and Swedish practice. In both models, the functions of central banks were conferred on private banks (Tedde and Marichal, 1994). Gradually, in the mid-19th century, the second model came to predominate, and it was from this point of departure that central banks in the 20th century advanced in three distinct waves: the creation of a new and distinct institution, nationalization, and, since the 1980s, autonomy-enhancing reforms (see Table 3).

It is important to note that the central banks—even after nationalization—enjoyed a privileged position in the state bureaucracy that gave them strong autonomy, especially by the standards of the time. Autonomy was expressed in privileged access to the president, a concrete and specific legal framework for central banking, and an exemption from the pay scale that applied to the rest of the state bureaucracy. This autonomy was demanded, and very largely won, on grounds of the “special character” of monetary policy as well as the distinct legacy of the banks’ private origins. No less important was the fact that these institutions enjoyed considerable autonomy and prestige in Europe. (The advance of this process of reforming and institutionalizing distinct state regulatory agencies in central banking in Latin America is portrayed in Fig. 2.) The first country to reform its monetary policies and to establish a mixed public–private central bank was Colombia (1923), closely followed by Chile and Mexico in 1925 and Ecuador in 1927.⁹ Compared with Europe, this process was slow to take off and, indeed, one country—Panama—still sticks to the old model of the precentral bank era.¹⁰

Figure 2 also depicts the diffusion of regulatory authorities in two other sectors that are closely related to central banking and most probably were modeled partly on the principles of central banking. The process began in the

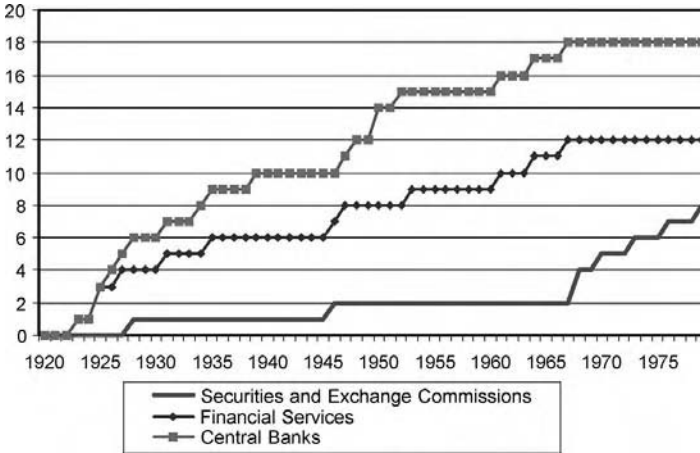


Figure 2 Sectoral diffusion before neoliberalism.

1920s, when the dominant Anglo-Saxon doctrine prescribed that regulatory commissions for financial services should remain separate from central banks because central banks were usually private at that time—or bankers were part of their executive board. Consequently, several countries, such as Colombia, Chile, Ecuador, Peru, and Bolivia, created regulatory commissions during the 1920s often at the same time as they crafted new regulatory design of their central banks (already of public nature). A departure from this model occurred in the 1940s, when Argentina and Brazil, which were less susceptible to Anglo-Saxon influence, included regulatory responsibilities for the financial sector within the central banks. Unlike in central banking and in financial services, where the diffusion process began in the 1920s, the diffusion of regulatory agencies for the securities and exchange sector took off only in the late 1960s. As can be seen in Fig. 2, there are some early adopters (Chile in 1928 and Mexico in 1946) but no followers. The Latin American Federation of Stock Market Regulatory Authorities, which was established in 1973, was probably active in the promotion of the process later on, but by 1979, only 8 of 19 countries had adopted this regulatory innovation. The real takeoff arrived only in the 1990s, in the context of liberalization.

It is remarkable that there are no clear indications of any national process of diffusion. With the exception of finance, none of the Latin American countries quickly extended regulatory principles of institutional design to other sectors. Thus, Costa Rica, which had established electricity regulation in 1928, did not extend the innovation to any of the sectors studied

here until 1950, when a public central bank was first created. We have no reason to suppose that the Costa Rican central bank was modelled on the principles of, and lessons from, the regulation of electricity in that country, and every reason to believe that it was modelled on central banking in other countries. Even if we adopt a somewhat narrow definition of “national approach” and apply the criteria only to the three financial sectors (central banks, securities, and exchange and financial services) that were discussed above, we find only one country—Chile—setting up a regulatory authority in all three sectors in one decade (the 1920s). Indeed, it was Chile that led the process of creating regulatory institutions (although with somewhat less autonomy than in the United States) up until 1990, when its eight regulatory authorities (out of the 12 sectors studied) were overtaken by Argentina’s burst of regulatory reform, which included the creation of five new regulatory authorities in one year. We can conclude from our examination of the history of regulatory authorities that the process confirms the finding of the policy sector approach rather than that of the national patterns approach. In other words, long-term patterns of diffusion are sectoral: innovation in a particular sector in one country is diffused to the same sector in other countries. The pattern of diffusion that is missing is the national pattern; in the sense that, except for Chile, none of the countries studied adopted the institution of a regulatory authority across most or even many of the three sectors studied here.

Although a general theory of diffusion is beyond the scope of this paper, it is interesting to note the existence of some remarkable episodes that shed some light on the origins of Latin American regulatory institutions during the 1920s and early 1930s. Take, for example, the role of U.S. consultant missions in several Andean countries (Colombia, Ecuador, Peru, Bolivia, and Chile). An academic economist from the United States, E. W. Kemmerer, helped to reform financial institutions to assure monetary stability and repayment of foreign debts. The establishment of new central banks responsible for monetary policy, with a mix of public and private participation (although already sought by some domestic interests), was triggered by the Kemmerer missions. Beyond the creation and institutionalization of central banking, he also promoted the establishment of a separate regulatory commission for financial services, based on the institutional designs that were dominant at that time in the United States (Drake, 1989, 1994). The influence of the Kemmerer missions shows that many countries decided adopt U.S. lines in regulatory policy in Latin America during the 1920s, and helps to explain the emergence of the first regulatory institutions in the region.

Below, we examine the similarities and differences in the process of diffusion of regulatory agencies before and after 1979. But first we examine the second period: that of the rise of regulatory state and the consolidation of

the new global order of “regulatory capitalism.” Section 3 focuses on sectoral patterns of diffusion, and Section 4 on cross-national patterns.

IV. CROSS-NATIONAL DIFFUSION IN THE ERA OF REGULATORY CAPITALISM

It is only in the 1990s, following a wave of reforms across various sectors, that it is possible to speak for the first time of national patterns of diffusion and, indeed, of the rise of the regulatory state in Latin America. In this period, regulatory change, in general, and regulatory agencies, in particular, were diffused across a large number of sectors and were no longer confined, as it was before, to a limited number of sectors, especially finance. Whether or not we observed diffusion of a single sector from one country to another in the previous period, now we observe, in addition, diffusion from one sector to another within the same country, and also more aggregate phenomena, such as diffusion from one country to another, irrespective of concrete sectors. As would be expected from the national pattern approach, countries vary considerably in the institutionalization and design of regulatory agencies. To discuss national patterns of diffusion, we should distinguish different dimensions of variation. We focus on five dimensions: countries vary in the timing of the reforms; the extent to which they apply the reforms at the same time; the extent to which they implement innovation across a large number of sectors; the degree of autonomy that they confer on their agencies; and, finally, the degree of fragmentation of their agencies. Cross-national variations are presented in Table 1, and we start our discussion with the general trend before explicating the variations.

The data in the last row of Table 1 allow us to capture some of the general dynamics of the reforms. In 2002, Latin American countries had, on average, seven sectors covered by regulatory agencies in the 12 sectors studied. Most of these agencies are autonomous (90%). The mean time of change is the last quarter of 1994 for the group as a whole and the standard variation around this year is less than 4 years. When we move from the last row to the last columns (columns 5 and 6) of the table, it is possible to see that the variation in the mean year of creation is very low for all three groups and that the standard deviation indicators practically indicate a process that affects all groups at the same time. These commonalities represent the general dynamics that allows us to suggest the rise of a regulatory state.

We now move to the variations and start with the variations in the scope of the reforms (column 1, Table 1). It is possible to divide the countries into three categories according to the number of regulatory authorities in

Table 1 Regulatory Agencies: Organizational Characteristics by Country

	Country	Total number of RA (1)	Of these autonomous (2)	Average term of office (3)	Multisector RA (number of cases) (4)	Mean year of creation/reform (5)	Temporal disparity [SD] (6)
High number	Argentina	11	9	3.9	6	1992	4
	Brazil	11	10	2.5	4	1997	7.8
	Chile	9	7	1.1	2	1985	5
	Costa Rica	9	9	4.2	5	1995.5	2.34
	Bolivia	9	9	5.1	0	1994	3.8
	Mexico	9	7	2.9	4	1993	2.2
	Group average	9.7	8.5	3.3	3.5	1992.75	4.2
	Colombia	8	4	1.25	2	1994	5.5
	Peru	8	8	4.5	2	1993	3.5
	Uruguay	8	8	4.75	7	2001	3
Medium number	Venezuela	8	7	4	0	1995.5	45
	Nicaragua	7	7	3.8	4	1995	3.2
	Panama	6	6	5	3	1996	10.8
	Ecuador	5	5	4.0	0	1992.5	1.9
	El Salvador	5	5	5.8	2	1996	2.5
	Group average	6.9	6.25	4.5	2.5	1995.4	9.4
	Cuba	4	2	0	2	1995.5	3.8
	Dominican Republic	4	4	2.5	0	2000	2
	Guatemala	4	4	3.25	0	1995.5	1.4
	Honduras	4	4	4	2	1995	0.5
Small number	Paraguay	4	4	5	0	1995	2
	Group average	4	3.6	3	.8	1996.2	1.9
	All countries' average	7	6.3	3.6	2.4	1994.8	3.7

Column 1 = the total number of agencies at the year 2002; column 2 = the total number of agencies that are nominally autonomous; column 3 = a strict measure of autonomy (cases without a defined term of were calculated as zero); column 4 = a measure of the degree of fragmentation in countries' regulatory institutions by counting the number of cases in which sectoral regulatory institutions operate under the same organizational roof; column 5 = a measure of the pace of change by calculating cases of agency creation or reforms for the period after 1979; column 6 = the standard deviation of the reforms around the mean year of agency creation.

2002 (9–12: high; 5–8: medium; 1–4: low). In the first group, those with a large number of agencies, we find six countries. Chile, which has a long history of regulatory institutions and indeed was unique in the 1920s in that it established regulatory authorities across all three financial sectors, is also the earliest of the countries to create sectorwide regulatory agencies (see column 5). These reforms clearly coincided with early privatization led by technocratic reformers under the military regime of Augusto Pinochet (Teichman, 2001; Moguillansky, 2001). By 1990, Chile's present regulatory structure was already in place and was only marginally changed the years after. The wave of reform in the 1990s starts, however, with Menem's Argentina following the success of the convertibility policy (1991) and the move toward sweeping "big bang"-type privatization. Over a period of 3 years (1990–1992), Argentina created or reformed seven regulatory authorities in the sectors discussed here. Mexico's regulatory authorities were established in 1995, coinciding with the first year in office of President Zedillo as well as with a severe financial crisis. Indeed, Mexico's new agencies can be understood as an attempt by the new president to reform and modernize different aspects of the Mexican government organization in the context of economic crisis. Brazil has one of the newest regulatory systems (the mean year of agency creation is 1997). Most of the regulatory agencies were created during the second term in office of President F. Cardoso and in anticipation of privatization (Rufin and Romero, 2002). The first agency to be set up, the telecommunication authority ANATEL, was specifically designed by an international consultancy group engaged by the communications minister, and then served as a model for the subsequent agencies that were established very quickly in that period, all with identical formal characteristics irrespective of their adaptation to the requirements of each sector (Pereira and Mueller, 2001). Bolivia introduced regulatory authorities during the mid-1990s, again in the context of large-scale privatization. In the second group of countries, those with a medium number of regulatory authorities, we find eight "foot-dragging" countries with considerable variations: within this group, Colombia, Peru, Uruguay, and Venezuela established eight agencies each, Ecuador and El Salvador established only five each. In the third group—the "laggards"—we find five countries, each with only four regulatory authorities across the 12 sectors studied.

As to the national dimension of variation related to agencies' autonomy, Table 1 presents two different measures. Column 2 presents nominal autonomy as expressed in the law that governs their operation. This is a restricted and limited indicator, which does not cover the complexities of institutional design; we use it only because no other indices exist, such as those that were developed for central banking (Cukierman, 1992) or for cross-

sectoral analysis in Europe (Gilardi, 2003). We offer, however, a limited indicator—term of office—which captures the extent to which the position of the head of the agency is independent of the executive (see Appendix A for extended discussion). The Chilean case is interesting; the first country to consolidate regulation as a system of governance across a wide range of sectors, it did not tend to grant its agencies much autonomy. In electricity and gas, for example, important controls remain in the hands of the ministry. Other agencies have no formal autonomy at all (water, environment, etc.). The case of SUBTEL, the telecoms regulator, is the most surprising of all because it has neither nominal nor organizational autonomy. Established in 1977, it is formally only a vice ministry, although it has a reputation for being one of the best regulatory authorities in the region (Stark, 2001). In most Chilean cases, agency heads are appointed by the president or the ministry, without legislative control, and there are no fixed terms of appointment. In addition, agency boards are composed of representatives of different ministerial units. Only in the case of the central bank do formal rules establish a system of strong independent authority, with a solid 10 years of tenure for the president of the bank.

Brazilian and Argentinean agencies are typically designed according to the standards of best practice that are propagated by the World Bank. Appointment processes, board composition rules, budgetary sources, and other details display relatively minor variation across sectors (Pereira and Mueller, 2001). In both countries, presidential appointments require Senate ratification. In Costa Rica, the head of the Autoridad Reguladora de los Servicios Públicos (ARESEP; a multisector regulatory agency in the utilities) is also appointed by the president of the republic subject to a legislative confirmation process, but has to resign at the end of the president's term of office. This represents a clear statement of limited autonomy and political control: direct dependence on the president. Costa Rican regulation in the financial area is also peculiar. The National Council for Control of the Financial System consists of the Ministry for Labor, the Ministry of the Treasury, the president of the central bank, and five members nominated by the central bank. This council controls the activity of three different agencies in these areas (stock exchange, pension funds, and financial services), naming the head for each one. In Colombia, except in finance where there is a tradition of regulatory governance dating back to the Kemmerer missions, most authorities were created during a short period when, after the 1991 Constitution, the country experienced a period of intense institutional innovation. Most of the agencies are formally very similar (e.g., each agency head is appointed by the ministry for a 3-year period). Ministries are members of the executive boards of most of the agencies, along with experts named by the

president. Also, the central bank does not exhibit strong independence in so far as the minister is a member of the board. We also find this model of strong governmental participation in regulatory authorities in several Central American countries, such as El Salvador or Guatemala, which suggests a certain influence of Colombian institutional models.

Yet, if we move from a case perspective to a group's average, it is clear that there is no strong correlation between the timing and number of agencies, on one hand, and the degree of autonomy, on the other hand. In terms of nominal autonomy (column 8), the group averages of nominally autonomous agencies are 88%, 91%, and 90%, respectively for the groups with high, medium, and low numbers of regulatory authorities. When we look at the average term of office, the longer terms (and therefore greater autonomy) for the medium-number group stand in somewhat ambiguous relation to the lower and rather similar average terms for the two other groups (3.3 for the high-number group and 3 for the small-number group). Regression of the two measures of autonomy against the year of creation did not suggest that autonomy is more robust for either the early or the late cases of agency creation. Although we believe that there is a general tendency to formalize autonomy through legislation and that it is increasingly institutionalized as a new convention of regulatory governance, our limited data on autonomy do not provide significant support for that hypothesis.

Column 4 supplies some indication of the degree of fragmentation in the countries' institutional designs. Here we find variations in the extent to which countries merge their regulatory agencies in "multisector" organizations or "superagencies." Thus, for example, a country may create two different agencies for gas and electricity, or decide to bring both utilities under the same organization. The choice can reflect any whim of the institutional designers, but is usually justified in terms of the size of the sector or the country's economy as well as with reference to issues of coordination and cooperation between regulators. Thus, we find small countries such as Costa Rica and Uruguay often using multisector regulatory authorities as a way of dealing with resource problems. Five out of the nine regulatory agencies in Costa Rica are under a common roof (see ARESEP). In Uruguay, only one agency out of eight (the financial services regulator) is a stand-alone organization. The others are organized in the form of multisector agencies (central bank controls also securities and exchange, the agency for communications includes telecoms and post, and a single agency covers energy and water). Multisector regulatory authorities are common also in large countries such as Brazil or Mexico. Yet, unlike the small countries, the large ones usually merge regulatory institutions only in pairs of related areas, such as central bank and financial services, or gas and electricity. Smaller countries are less selective

about the spheres of regulation that are covered by the same regulatory agency. For example, ARESEP replaced a former agency that was originally established in 1928 to regulate electricity, and regulated telecoms as well after 1963. In 1996, this regulator was subsumed under the new agency, which also regulates the post, gas, and water sectors. Finally, the Bolivian case represents another institutional variety: a horizontal second-level agency controls first-level specialist regulatory agencies.

We have observed here that diffusion processes from sector to sector within a country were very common in this period, usually taking place in a quite reduced period of time. From considering timing of reforms, we also find some indications that wide-ranging diffusion from country to country also did matter. In addition, we are now in a position to conclude positively that, although there is a general move toward the institutionalization of regulatory authorities across the countries of the region, there are significant cross-national variations in the ways these institutions are adapted to different national settings. In particular, we pointed to autonomy and scope of regulatory action as major and important dimensions of change. These national variations, however, present only part of the picture of change. To obtain a more comprehensive picture, we need to look at cross-sector variations and commonalities.

V. CROSS-SECTORAL DIFFUSION IN THE ERA OF REGULATORY CAPITALISM

Although there are indeed cross-national variations in the diffusion of regulatory authorities in Latin America since 1979, and therefore some considerable support for the national pattern approach, there are also important indications that support the policy sector approach. The indications are manifested in important variations in sectoral characteristics along five dimensions: the timing of the reforms, temporal pace of diffusion, scope of diffusion, degree to which sectors are regulated by multisector institutions, and, finally, the degree of autonomy of agencies. These sectoral characteristics are presented in Table 2. We begin with the general dynamics before moving to the variations.

The general dynamics is partly captured by the data in the last row of Table 2. In 2002, each of the sectors studied had, on average, 11 regulatory agencies across the countries studied. This is an impressive number that represents 58% of all potential cases. Almost all of these agencies were autonomous (9.9 out 11.1, or 90% on average). The mean year of change

Table 2 Regulatory Agencies: Organizational Characteristics by Sector

	Sector	Total number of RA (1)	Of these autonomous (2)	Average term of office (3)	Multisector RA (number of cases) (4)	Mean year of creation/reform (5)	Temporal disparity [SD] (6)
High number	Financial services	19	19	3.63	6	1995	3.8
	Central banks	18	18	4.06	4	1993	3.4
	Securities and exchange	17	17	3.64	4	1992	9.3
	Telecoms	18	16	3.3	6	1995	2.7
Medium number	Electricity	15	14	4.4	8	1996	3.4
	Group average	17.4	16.8	3.8	5.6	1994.2	4.5
	Competition	10	9	4.1	0	1992	6.1
	Gas	10	9	3.7	6	1995.5	4.9
Small number	Water	12	10	3.25	3	1995	4.3
	Group average	10.7	9.3	3.7	3	1994.2	5.1
	Environment	4	1	1.25	0	1993	3
	Postal services	4	4	3.75	4	1995.5	3.8
All 12 sectors' average	Pharmaceuticals	4	1	0.75	2	1990.5	7.9
	Food safety	2	1	1.5	2	1995.5	5
	Group average	3.5	1.75	1.8	2	1993.6	4.9
	Group average	11.1	10.7	3.1	3.3	1994	4.8

Column 1 = the total number of agencies in each sector for the year 2002; column 2 = the total number of agencies that are nominally autonomous; column 3 = a partial measure of autonomy (cases without a defined term were calculated as zero); column 4 = the number of countries in which the regulatory authority is included in a multisectoral organization; column 5 = a measure of the pace of change by calculating cases of agency creation or reforms for the period after 1979; column 6 = the standard deviation of the reforms around the mean year of agency creation for each sector.

for the group as a whole is 1994 and the standard variation around this year is less than 5 years. If we move from the last row to the last columns (columns 5 and 6) of Table 2, we can see that the variation in the mean of creation year is very low for all three groups and that the standard deviation indicators practically reveal a process of diffusion that affects all groups at the same time.

From cross-sectoral commonalities, we can now move to the variations. We start with variations in the scope of the reforms across the sector. We divide the sectors into three groups according to their numbers of regulatory authorities at the end of 2002 (15–19: high; 6–14: medium; 1–5: low). In the first group with a high number of agencies, we find five sectors. Three of the sectors have already appeared in our analysis of the history of regulatory authorities: financial services, central banking, and securities and exchange have been the frontrunners of regulatory change since the 1920s for financial service and central banking, and since the late 1960s for securities and exchange. Our data, which cover the timing of their creation and restructuring (usually through legal change, which grants more autonomy and responsibilities), show that they have led the process again (see Fig. 3). Closely following the three finance sectors are two new sectors that have experienced sweeping restructuring: telecoms and electricity. This group differs significantly from the others in terms of the number of regulatory authorities, but is similar to the medium-number group of authorities in terms of mean year of creation and temporal disparity (columns 5 and 6). The two groups of high and medium number of agencies are also similar in terms of the measures of

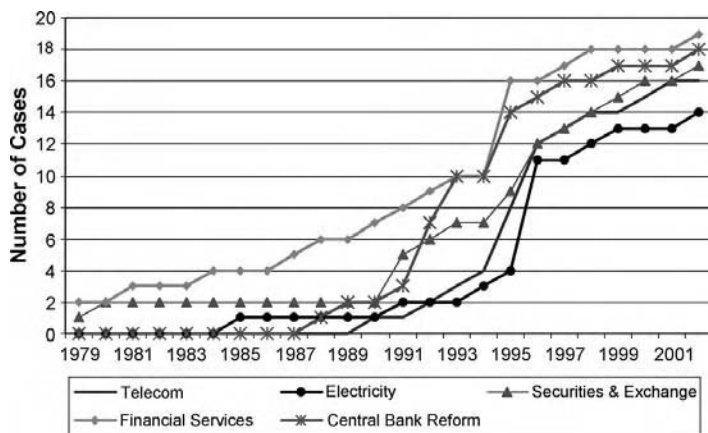


Figure 3 The diffusion of regulatory agencies and reforms in pace-setting sectors, 1979–2002.

autonomy (see columns 2 and 3). The ratio of autonomous agencies to all is 96% in the high-number group and only 87% in the medium-number group, but the measures of average term of office are about the same (3.8 and 3.7, respectively). By contrast, the sectors that have a low number of regulatory authorities (ranging from two cases for the food safety sector to five cases for the environment sector) seem to have a low measure of autonomy. A closer look at the data reveals that agencies in the postal services—the only “economic sector” in this group—enjoy similar levels of autonomy to the other groups. Low levels of autonomy are really characteristic of social regulation sectors (not unlike the United States; see Shapiro, 1997). This suggests that variations in agencies’ autonomy are significantly determined along sectoral lines and not only national ones.

Column 4 examines the variation across sectors in terms of the frequency with which agencies in a particular sector are “stand-alone” agencies. Thus, among the 19 financial services agencies, 13 are stand-alone and six (Argentina, Brazil, Cuba, Honduras, Mexico, and Nicaragua) belong to multisector agencies. A first look at the data suggests that there are significant variations across the 12 sectors in the frequency of multisector agencies. Group averages for the high-number, medium-number, and small-number groups of regulatory authorities are 4.6, 3, and 2, respectively; yet the correct way to compare these numbers is to calculate the number of multisectoral cases as a proportion of total number of regulatory authorities (column 4 data divided by column 1). Such a comparison reveals a greater ratio of multisectoral institutions in the “small number of regulatory authorities” group but a quite similar ratio for the two other groups. Looking even more closely at the sectoral proportions rather than the group data reveals a strong and clear tendency to create stand-alone environmental agencies, although this tendency is not evident in the social regulation arena as a whole. There are two extremes in our data: on one hand are the postal services and food safety agencies, which in all countries are under multisector organizations; on the other hand are the competition sector, telecoms, and central banking, which are dominated by stand-alone agencies.

We now focus on certain characteristics of some of the sectors. Combining number of regulatory authorities, the mean year of creation and the history of regulatory institutions since the 1920s reveal that central banking is the pace-setting sector in the diffusion of reforms. Some of the history of central banking in the region was given in Section 2. Table 3 summarizes these changes across time. Two issues are worth mentioning here. What central banking brings to the institutional design of the regulatory state is a tradition of autonomy and arm’s length relationships between ministries and central bankers.¹¹ This autonomy was further strengthened in the wave of

Table 3 Central Banking Reform Across Countries

	Year of creation (1)	Year of nationalization (2)	Year of autonomy-enhancing reform (3)
Argentina	1935	1935	1992
Bolivia	1928	1939	1995
Brazil	1964	1964	1988
Chile	1925	1975	1989
Colombia	1923	1973	1992
Costa Rica	1950	1950	1995
Cuba	1948	1959	1997
Dominican Republic	1947	1947	2002
Ecuador	1927	NN	1992
El Salvador	1934	1961	1991
Guatemala	1926	1945	1993
Honduras	1950	1950	1996
Mexico	1925	1931	1993
Nicaragua	1960	1960	1999
Panama	—	—	—
Paraguay	1952	1952	1995
Peru	1931	1962	1993
Uruguay	1967	1967	1995
Venezuela	1939	1939	1992
Group median	1937	1952	1993

Column 1 = institutional creation of the central bank as a regulatory authority, often as a mixed private–public body; column 2 = the year when the state took overall control of the central bank (it coincided with year of creation in a few cases); column 3 = the year in which new legislation enhanced the autonomy of the central bank.

reforms of the 1990s, Yet the new era of reform did not start with central banking, and the pacesetter in the diffusion of the reforms was the financial services sector. Countries, in general, first reformed their financial services sectors and only later their central banks—to grant them autonomy (see Fig. 3). Yet it may well be that central banks are still the leading agencies of the regulatory state in terms of autonomy, even though our measures of nominal autonomy and terms of office do not reflect it (our measures—see again Table 2—place them together with electricity and competition as the highest in respect of the measure of term of office). One indication of this expectation is the fact that even in countries such as Chile and Mexico, where regulatory

institutions generally have weak autonomy, central banks enjoy strong autonomy.

Figure 4 presents the patterns of diffusion of the three “foot-dragging” sectors with medium numbers of agencies as against the patterns of reforms in the “pacesetter” sector of central banking. Although the marginal role of gas in some countries and the fact that water is often provided by local or provincial authorities may well explain the relatively low number of regulatory authorities in these sectors, it is puzzling that competition authorities should lag behind the more sector-specific agencies in their reforms. The puzzle is explained to some extent by the size of the countries: it seems that small countries such as Ecuador, the Dominican Republic, Guatemala, and Honduras—whatever the reason may be—are less likely to establish competition authorities.

We identified four laggard sectors. All but one (postal services) are social sectors (see Fig. 5). The dynamics of diffusion in these sectors is still little understood and, whereas other countries may well soon jump on the bandwagon of regulatory reforms in these sectors, there is no guarantee that this will be the case. The fact that some of the biggest countries in the region have moved in this direction may indicate that the smaller ones will follow. Indeed, big countries are dominant in the establishment of regulatory authorities in food safety (in which only Argentina and Brazil have regulatory authorities), pharmaceutical products (in which Argentina, Brazil, Chile and Cuba have regulatory authorities), and in environment regulation (in which Brazil and Mexico are the pioneering cases). Indeed, we find social

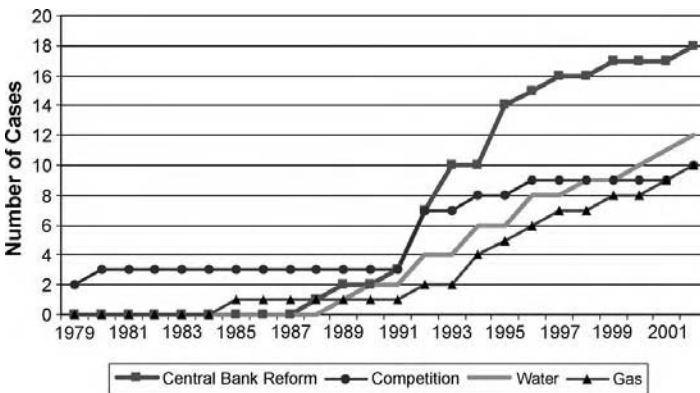


Figure 4 The diffusion of regulatory agencies in foot-dragging sectors versus central banking reform, 1979–2002.

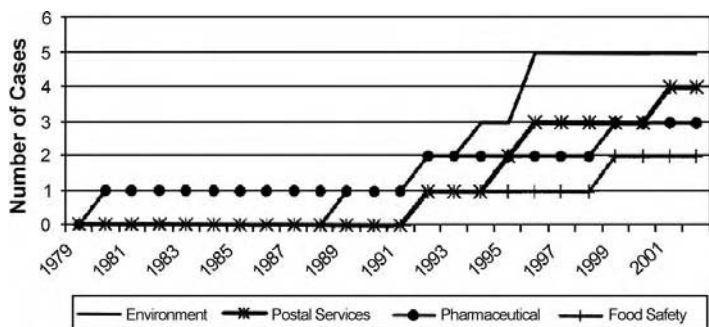


Figure 5 The diffusion of regulatory agencies in laggard sectors, 1979–2002.

regulation to be one of the most challenging arenas for state action and diffusion in the coming decade; a comparison that we undertook with the dynamics of agency reforms in Europe countries revealed that, although rates of diffusion in spheres of economic regulation are similar between the two regions, in social regulation, almost twice as many agencies have been established in Europe as in Latin America (Jordana and Levi-Faur, 2003).

All in all, we find that sectoral diffusion of the regulatory agency model within specific sectors across countries is still a very important pathway for the development of the regulatory state. The central bank “model” of diffusion that we examined before is replicated here by other “pacesetter” sectors—telecommunications being the clearest case. The importance of within-sector diffusion may be also demonstrated by the stronger similarities in patterns of sectoral diffusion and institutional variations (e.g., autonomy and fragmentation) when compared to within national diffusion.

VI. CONCLUSIONS

It is now possible to draw some conclusions from our exploration of the process of restructuring of the state in Latin America. We hope that we have set out the powerful logic that underlies the argument that the regulatory state has emerged in the region. Although our evidence for such a process is indeed limited to the creation of new regulatory authorities and to the extensive process of delegation, these are not marginal aspects of the change. So also are indications from other studies that reveal a sweeping process of

privatization in the region (Brune and Garrett, 2000, Meseguer, 2003; Levi-Faur, 2004c). These indications—important as they are—are, however, partial. For example, it is not clear whether other characteristics of the regulatory state—such as the proliferation of mechanisms of regulation and formalization of relations—are likewise diffused or, if so, whether they are as popular as in Europe. In other words, we are still in the very first stages of the study of the rise of the regulatory state in Latin America and of our efforts to capture the unique characteristics of change that distinguish Latin America from the rest of the world. We are also at the very beginning of the study of the mechanisms that propel that process of diffusion across nations and sectors. Yet, whichever way one may go in the study of diffusion, in general, and of the regulatory state, in particular, we suggest that it might be optimal to study them comparatively, using temporal, sectoral, and national variations. What we should look for in the future are concrete mechanisms that produce emulation and learning and operate across time, sector, and nations, and also examine how their variations shape the characteristics of the diffusion of agencies.

Here is a lesson for comparativists, in general. Comparative politics and policy are traditionally and mostly about countries. The number of research designs that compare countries is much greater than the number of research designs that compare sectors. Although the bias toward cross-national comparisons can be justified on several grounds, not least the remarkable studies that have been undertaken on the basis of this design, there are some grounds for believing that sectors matter and that more attention to cross-sectoral designs and, especially, combinations of cross-national and cross-sectoral designs might be productive and useful (see Levi-Faur, 2004b). Two particular insights exemplify the productivity of our approach. The first is the balance it provides to the tendency to emphasize the American origins of the regulatory state and to ignore or marginalize its sectoral origins, namely, the centuries of central bank independence in Europe. Although several scholars have challenged the “American origins” of governance by independent commissions, and have gone to some lengths to demonstrate the existence of such commissions elsewhere, their arguments have always been framed in national terms (i.e., we British/German/Swedes had it before the Americans). Yet, if one considers the effects of central bank institutional autonomy and the European origins of central banks, a different version of the origins of the regulatory state and regulatory authorities might be portrayed. This observation is especially important because, if we are to examine current diffusion processes, we should decide where to draw the line between sectoral and national processes of diffusion. Consider, for example, the use of the concept of epistemic communities. If epistemic communities are important

carriers of reforms, to what extent are they sectoral (specialists in water, for example) or national (economists or reformist groups of politicians)?

No less important is our second observation, namely, that although the first stages of the diffusion of regulatory authorities in the region display sectoral patterns, the later stages have significant national characteristics. This is a paradoxical result in an age which celebrates the demise of the nation-state. The Latin American states in the 1990s were more capable of implementing abstract ideas about best governance practice than in the 1920s onward. Could it be that this capacity represents an improvement in the transformative power of states (Weiss, 2003; Coleman, 2003, pp. 272–273)? If so, this certainly strengthens the case of those who dispute the argument about the demise of the nation state. We are delighted to note that this score was reached through a research design that combines nations and sectors.

ACKNOWLEDGMENT

We would like to thank Covadonga-Meseguer for comments on a draft of this chapter. All errors are ours.

APPENDIX A. DATABASE ON REGULATORY AGENCIES—CLASSIFICATION CRITERIA AND SOURCES

The database includes 19 countries and 12 sectors (a total of 228 sectoral cases). The unit of analysis is a country sector for 83 years between 1920 and 2002 (therefore a total of 18,924 observations). Regulatory authorities have been identified in all Latin American countries (except Surinam and Guyana in South America and Belize in Central America). In the Caribbean, Cuba and the Dominican Republic have been included, but we excluded other micro-states and countries outside the sphere of Spanish and Portuguese influence. The 19 countries that are covered comprise Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.

The public regulatory authorities in 12 different sectors have been selected for inclusion in the database. These sectors represent a wide diversity of public controls over economic and social spheres. We include nine sectors of “economic regulation,” that is, where regulation and

control activity is designed, wholly or in part, to improve the working of markets, making them more competitive, for the ultimate purpose of improving consumer satisfaction and the global efficiency of the productive system (competition, telecoms, electricity, gas, water, post, central banking, securities and exchange, and financial services). In addition, we include three sectors of “social regulation,” which is intended to mediate the social effects of the working of markets (food safety, pharmaceuticals, and environment).

A. Criteria for Inclusion

Regulatory authorities have been identified for inclusion on two conditions: 1) they consist of an organizational unit clearly separate from the ministry responsible for the sector, and 2) the main functions of the organizational unit are regulatory (i.e., they are engaged in rule making rather distribution or redistribution).

B. Dealing with Multisector Institutions

When a regulatory institution has responsibilities for more than one sector, the same regulatory authority and its characteristics are considered repeatedly for as many sectors as may apply. Thus, the number of regulatory institutions may be effectively smaller than the total number of regulatory authorities identified for each country in the database. We also count, for each country and for each sector, the number of cases in which these multisector institutions exist. For a country, we count the number of sectors that are included in multisector agencies; and for a sector, we count the number of countries in which this sector is included in a multisector institution.

C. Dealing with the Life Cycle of Regulatory Institutions

Regulatory institutions have an organizational life cycle: each year, a number of new institutions may be created, but others may disappear (the government takes back its functions) or, more commonly, there is integration (creation of a new institution from several existing ones), absorption (one existing institution absorbs another), or separation (one institution divides into two or more). We include references to those changes in the database for the year when they occur.

D. Creation and Autonomy

A regulatory authority is considered to be autonomous when autonomy is explicitly mentioned in the written rules governing its operation. Thus, we first document nominal rather than substantive autonomy. This criterion is somewhat relaxed in the case of central banks before 1979, in which we look at the organizational characteristics of the institutions and their place in the bureaucratic ladder to determine autonomy. For the period after 1979, we first inquire whether the law that establishes the agency includes a statement on autonomy. If not, we require at least a fixed term of office for the head of the agency before deciding on autonomy. These are not very demanding criteria in relation to the presumption of independence, but we believe that they allow us to tell whether minimum innovations have been introduced, even if of only a formal character, to increase the costs of government interference in the activity of the regulatory authority. Our aim is to identify to what extent decision criteria based on the supposition of delegation are to be found in the configuration of these institutions. These criteria allow us to present two different series for regulatory institutions. The first refers to the year of creation of the regulatory authority, and the second refers to the year in which the regulatory authority was granted autonomy.

E. Sources

The main source for the construction of the database has been the information available on the web sites of the regulatory authorities, where a detailed scrutiny of the available information on the characteristics of each institution has been carried out. In most cases, the information about most of the variables selected has been extracted directly from the legal provisions for those institutions (laws, decrees, regulations, statutes, etc.); in others, the general legislative framework of each country has been used. Other sources include multilateral and international organizations of regulatory agencies, and newspapers and journals.

APPENDIX B. LIST OF FIGURES AND TABLES

- Fig. 1 The growth of regulatory agencies in Latin America, 1920–2002
- Fig. 2 Sectoral diffusion before neoliberalism

Fig. 3	The diffusion of regulatory agencies and reforms in pace-setting sectors, 1979–2002
Fig. 4	The diffusion of regulatory agencies in foot-dragging sectors versus central banking reform, 1979–2002
Fig. 5	The diffusion of regulatory agencies in laggard sectors, 1979–2002
Table 1	Regulatory agencies: organizational characteristics by country
Table 2	Regulatory agencies: organizational characteristics by sector
Table 3	Central banking reform across countries

NOTES

1. We follow Rogers' (1995, p. 5) definition of diffusion. See Levi-Faur and Vigoda-Gadot (this volume) for the distinction between diffusion perspective and Dolowitz and Marsh's (2000) policy transfer perspective.
2. The choice of 1979 is clearly a convention. It refers to the year of the accession to power of Margaret Thatcher and the ascendancy of neoliberal ideas. About 2 years later, Ronald Reagan was elected President. Together, these events represent the beginning of a new period that is often captured in the notion of "neoliberalism." Our preference is for the notion of "regulatory capitalism." In addition, 1979 is the year when the oil crisis produced a strong economic crisis in many Latin American economies.
3. This was observed also by Rodrik (1996, p. 9): "What is remarkable about current fashions in economic development policy... is the extent of convergence that has developed on the broad outlines of what constitutes an appropriate economy strategy." (Rodrik, 1996, p. 9).
4. See also Remmer (1998, p. 4): "Neoliberal or market-oriented reform programs were viewed as inherently unpopular, politically hazardous, and consequently dependent upon the existence of strong and relatively autonomous authoritarian governments. Through time, these notions have been revised or at least diluted on the basis of additional evidence. Authoritarianism is no longer viewed as a critical prerequisite for the adoption of market-oriented policies..." (Remmer, 1998, p. 4), and "Prior research on the economic policy choice and performance in Latin America has placed significant emphasis upon the tension between economic and political rationality" (Remmer, 2002, p. 31). One cannot understand the "ideational turn" and indeed the institutionalist approach in comparative politics without the decline in the popularity of coercive explanations. Note that the establishment of autonomous regulatory agencies

was not a contentious matter even where privatization and regulation-for-competition were.

5. The proliferation of so-called independent regulatory agencies across the world as a “best practice” of institutional design is bewildering. A study of the rise of regulatory institutions in the telecoms and electricity industries found that, by the end of 2002, at least 120 countries had established new regulatory authorities in telecoms and 70 in electricity. The popularity of these institutions might be demonstrated more clearly when these numbers are compared with their relative scarcity up to 1989. In that year, only 11 countries had regulatory authorities in telecoms and only five in electricity (Levi-Faur, 2002).
6. The term “independent regulatory authority” is problematic as, at most, these agencies might be institutionally autonomous but in no way independent (i.e., unresponsive, unapproachable). For a discussion of the difference between independence and autonomy, see Nordlinger (1987).
7. Different countries display different trajectories for central bank development, yet the common form is of one bank gradually coming to assume more and more of the position of central bank, due mainly to its enjoying the sole or the principal right of note issue and acting as the government’s agent. Kock (1974, p. 1) suggests that prior to the 20th century, there was no clear concept of central banking and that gradual evolution had been taking place in various countries over a long period, but the process had not always been a conscious one, and a systematic and consistent technique had not yet been developed and formulated.
8. The model for many countries was the British case both before and after nationalization. The oldest central bank is the Sweden’s Riksbank, yet the Bank of England was the first bank of issue to assume the position of a central bank and to develop what are now generally recognized as the fundamentals of the art of central banking.
9. The history of the Bank of England is thus universally accepted as illustrating the evolution of central banking principles and technique’ (Kock, 1974, p. 2). The Bank of England was nationalized formally in 1946. It is interesting to note that the Latin American central banks, which were created from the 1920s (on the U.S. Federal Reserve model and also on European models), were wholly new institutions, and the formerly private banks usually continued to operate, being consolidated in many cases into the larger private banks in the country (but losing their privileged position). Thus, as new institutions, they were created as mixed public–private bodies during the 1920s, or as full public bodies from the 1940s.
10. Panama’s constitution from 1904 shapes the current situation in Panama regarding the central bank. Panama does not have a central bank or national currency and instead uses U.S. dollars. Thus, the National Bank of Panama (NBP) distributes only dollars, and is a government bank, but without any regulatory functions. Attempts to change this situation by issuing a national currency (in 1911) and establishing a central bank (in 1941) came to nothing.

11. On a scale of 0–1, the measures of central bank independence for 12 of the countries studied here was quite high: 0.36 for the period of 1972–1989 (Cukierman, 1992).

REFERENCES

- Atkinson, M. M., Coleman, D. W. (1989). Strong states and weak states: sectoral policy networks in advanced capitalist economies. *Br. J. Polit. Sci.* 19:47–67.
- Biglaiser, G., Danis, M. (2002). Privatization under democracy versus authoritarian rule. *Comp. Polit. Stud.* 25(1):83–102.
- Bernstein, M. H. (1955). *Regulating Business by Independent Commission*. Princeton: Princeton University Press.
- Braithwaite, J., Drahos, P. (2000). *Global Business Regulation*. Cambridge: Cambridge University Press.
- Brune, N., Garrett, G. (2000). *The Diffusion of Privatization in the Developing World*. Prepared for presentation at the Annual Meetings of the American Political Science Association, Washington, August 30–September 3.
- Coleman, D. W. (2003). Governing global finance: financial derivatives, liberal states, and transformative capacity. In: Weiss, L., ed. *States in the Global Economy: Bringing Domestic Institutions Back*. Cambridge: Cambridge University Press, pp. 271–292.
- Cukierman, A. (1992). *Central Bank Strategy, Credibility, and Independence: Theory and Evidence*. Cambridge, MA: MIT Press.
- De Kock, M. H. (1974). *Central Banking*. 4th ed. London: Crosby Lockwood staples.
- Dolowitz, D., Marsh, D. (2000). Learning from abroad: the role of policy transfer in contemporary policy making. *Governance* 13(1):5–24.
- Drake, P. (1989). *The Money Doctor in the Andes: The Kemmerer Missions, 1923–1933*. Durham, NC: Duke University Press.
- Drake, P. (1994). La creación de los bancos centrales en los países andinos. In: Tedde, P., Marichal, C., (coords.). *La formación de los Bancos Centrales en España y América Latina: Vol. 2. Sudamérica y el Caribe*. Madrid: Banco de España.
- Edwards, S. (1995). *Crisis and Reform in Latin America*. Oxford: Oxford University Press.
- Eisner, A. M. (2000). *Regulatory Politics in Transition*. 2nd ed. Baltimore and London: The Johns Hopkins University Press.
- Elgie, R., Thompson, H. (1998). *The Politics of Central Banks*. London: Routledge.
- Freeman, G. (1986). National styles and policy sectors: explaining structured variation. *J. Public Policy* 5:467–496.
- Gilardi, F. (2003). *Delegation to Independent Regulatory Agencies in Western Europe: A Cross-Sectional Comparison*. Paper presented at the Workshop Delegation in Contemporary Democracies, ECPR Joint Sessions, Edinburgh, March 29–April 2.
- Haggard, S., Kaufman, R., eds. (1992). *The Politics of Economic Adjustment*. Princeton: Princeton University Press.

- Hollingsworth, J. R., Schmitter, P. C., Streeck, W. (1994). Capitalism, sectors, institutions and performance. In: Hollingsworth, R., Schmitter, R., Streeck, W., eds. *Governing Capitalist Economies*. New York: Oxford University Press, pp. 3–16.
- Jordana, J., Levi-Faur, D. (2003). *The Rise of the Regulatory State in Latin America*. Presented in the American Political Science Association Annual Meeting, Philadelphia, August 28–31.
- Jordana, J., Levi-Faur, D., eds. (2004). *The Politics of Regulation. Institutions and Regulatory Reforms in the Age of Governance*. Cheltenham: Edward Elgar.
- Levi-Faur, D. (2002). *Herding Towards a New Convention: On Herds, Shepherds, and Lost Sheep in the Liberalization of Telecommunications and Electricity Industry*. Paper presented at the ECPR First General Conference, September 2001 (available from Nuffield College Working Paper in Politics, W6-2002, Oxford).
- Levi-Faur, D. (2004a). Regulatory capitalism: the dynamics of change beyond telecoms and electricity. *Governance*, submitted for publication.
- Levi-Faur, D. (2004b). Comparative research design in the study of regulation: how to increase the number of cases without compromising the strengths of case-oriented analysis. In: Jordana, J., Levi-Faur, D., eds. *The Politics of Regulation. Institutions and Regulatory Reforms in the Age of Governance*. Cheltenham: Edward Elgar.
- Levi-Faur, D. (2004c). On the net impact of the European union policy process: the EU's telecoms and electricity. Regimes between the global and the national. *Comp. Polit. Stud.* 37(1):3–29.
- Levy, B., Spiller, P. (1996). *Regulations, Institutions, and Commitment: Comparative Studies of Telecommunications*. Cambridge: Cambridge University Press.
- Loughlin, M., Scott, C. (1997). The regulatory state. In: Dunleavy, P., Holliday, I., Gamble, A., Peele, G., eds. *Developments in British Politics 5*. Basingstoke: Macmillan.
- Lütz, S. (2004). Convergence within national diversity: a comparative perspective on the regulatory state in finance. *J. Public Policy* 24(2).
- Mainwaring, S., Shugart, M., eds. (1997). *Presidentialism and Democracy in Latin America*. Cambridge: Cambridge University Press.
- Majone, G. (1997). From the positive to the regulatory state. Causes and consequences of changes in the mode of governance. *J. Public Policy* 17(2):139–167.
- Majone, G. (1999). The regulatory state and its legitimacy problems. *West Eur. Polit.* 22(1):1–24.
- Manzetti, L., ed. (2000). *Regulatory Policy in Latin America: Post-Privatization Realities*. Miami: North–South Center Press.
- Meseguer, C. (2003). *The Diffusion of Privatisation in Industrial and Latin American Countries: What Role for Learning?* Prepared for delivery at the workshop on the Internationalization of Regulatory Reforms: The Interaction of Policy Learning and Policy Emulation in Diffusion Processes, Berkeley, April 24–25.
- Moguillansky, G. (2001). *Privatizaciones e inversión: ¿Podrá el pasado repetirse en el presente?* Santiago de Chile: CEPAL.

- Mon, M. (2003). *The British Regulatory State: High Modernism and Hyper Innovation*. Oxford: Oxford University Press.
- Murillo, M. V. (2002). Political bias in policy convergence: privatization choices in Latin America. *World Polit.* 54(4):462–493.
- Nordlinger, E. (1987). Taking the state seriously. In: Weiner, M., Huntington, P. S., eds. *Understanding Political Development*. Boston: Little, Brown and Co., pp. 353–390.
- O'Donnell, G. A., Schmitter, P. C., Laurence, W. (1986). *Transitions from Authoritarian Rule*. Baltimore: Johns Hopkins University Press.
- Payne, J. M., Zovatto, G. D., Carillo, F., Allamand, A. (2002). *Democracies in Development: Politics and Reform in Latin America*. Washington, DC: Inter-American Development Bank; International Institute for Democracy and Electoral Assistance.
- Pereira, C., Mueller, B. (2001). Credibility and the Design of Regulatory Agencies in Brazil, ECPR Standing Group on Analytical Politics and Public Choice, Working Paper 2001-09.
- Power, M. (1999). *The Audit Society: Rituals of Verification*. Oxford: Oxford University Press.
- Remmer, L. K. (1998). The politics of neoliberal economic reform in South America, 1980–1994. *Stud. Comp. Int. Dev.* 33(2):3–29.
- Remmer, L. K. (2002). The politics of economic policy and performance in Latin America. *J. Public Policy* 22(1):29–59.
- Rodrik, D. (1996). Understanding economic policy reform. *J. Econ. Lit.* 34:9–41.
- Rogers, M. E. (1995). *The Diffusion of Innovations*. 5th ed. New York: Free Press.
- Ross-Schneider, B., Blanca, H. (2003). *Reinventing Leviathan: The Politics of Administrative Reform in Developing Countries*. Florida: North–South Center Press, University of Miami.
- Rufin, C. (2000). *The Political Economy of Institutional Change in the Electricity Supply Industry*. A thesis presented to the Committee on Public Policy in partial fulfillment of the requirement for the degree of Doctor of Philosophy. Harvard University: Cambridge, MA.
- Rufin, C., Romero, E. (2002). *Sustainability of Regulatory Reform in Latin America: A Comparative Analysis of Brazil, Bolivia and Panama*. Working Paper. Washington, DC: Inter-American Development Bank
- Shapiro, M. (1997). Independent agencies: U.S. and EU. *J. Eur. Public Policy* 4:276–291.
- Stallings, B., Peres, W. (2000). *Growth, Employment, and Equity: The Impact of the Economic Reforms in Latin America and the Caribbean*. Washington, DC: Brookings Institute.
- Stark, C. (2001). Regulación, agencias reguladoras e innovación de la gestión pública en América Latina. CLAD-Naciones Unidas (<http://unpan1.un.org/intradoc/groups/public/documents/clad/clad0040204.pdf>).
- Tedde, P., Marichal, C., eds. (1994). *La formación de los bancos centrales en España y América Latina, siglos XIX y XX*. Madrid: Banco de España.
- Teichman, J. A. (2001). *The Politics of Freeing Markets in Latin America*. Chapel Hill: University of North Carolina Press.

- Vellinga, M. (1998). *The Changing Role of the State in Latin America*. Boulder: Westview Press.
- Whitehead, L. (1994). State organization in Latin America since 1930. In: Bethell, L., ed. *The Cambridge History of Latin America*. Vol. VI. Cambridge: Cambridge University Press, pp. 3–95.
- Weiss, L. (2003). *States in the Global Economy: Bringing Domestic Institutions Back In*. Cambridge: Cambridge University Press.

8

Tobacco-Control Policy Instruments in a Shrinking World

*How Much Policy Learning?**

Donley T. Studlar

West Virginia University, Morgantown, West Virginia, U.S.A.

I. INTRODUCTION

Tobacco control is a relatively new issue on the international political agenda, but one whose importance has grown dramatically over the past quarter century. Before the mid-1980s, there were only a handful of countries in which tobacco-control policy was the subject of government legislation and regulation rather than voluntary agreements between the tobacco industry and the government, or sometimes only among tobacco companies themselves. Furthermore, domestic tobacco leaf-growing often was encouraged by governments through various subsidies in the form of tariff barriers, research assistance, and loans.

This situation has dramatically changed in the past quarter century, especially in advanced industrial democracies. There has been an increase in political advocacy by anti-tobacco groups, including both professional and voluntary health organizations. The latter, especially, were previously reluctant to engage in public issue lobbying. Furthermore, there has been growing acceptance of scientific findings, first widely publicized in the 1980s, about the effects of second-hand smoke and the addictive properties of nicotine.

*Earlier versions of this paper was presented at the annual meetings of the Midwest Political Science Association, Chicago, 2003, and the American Political Science Association, Philadelphia, 2003. Mark Lehman of WVU helped with the data gathering and analysis.

Governments have been more willing to take regulatory action to limit tobacco consumption, including taxation and litigation as well as education, sales, and advertising measures as well as restricting smoking venues. The specific policies, as well as their degree of enforcement, have varied by country, as has the amount of antitobacco activity by nongovernmental organizations (NGOs). But governmental tobacco-control activities have become so pervasive that they are now the subject of international initiatives and agreements, including air travel treaties, European Union directives, World Bank reports, United Nations (UN) conferences, and, most recently, the Framework Convention on Tobacco Control of the World Health Organization. The culmination of the latter is the negotiation of a Framework Convention on Tobacco Control, adopted in early 2003.

Thus tobacco control is a highly pertinent issue to examine in terms of public policy and public administration in a globalized world. To understand how much policy learning and policy emulation has occurred on this issue and the processes through which this has occurred, this paper will examine the policy instruments employed for tobacco control in several advanced industrial democracies. It will assess which instruments have been adopted, when, and with what impact on tobacco consumption. By necessity, the examination will be at a broad, aggregate level over countries and time. Nevertheless, we shall draw some conclusions about the relative importance of policy learning on tobacco control in a globalized world.

The countries under examination here are all from the advanced industrial democracies. They include a range of countries in Western Europe (United Kingdom, France, Germany, Finland, Norway, Ireland, Denmark, Italy, and Sweden), North America (United States and Canada), and the Pacific (Japan, Australia, and New Zealand). Comparable data is often difficult to gather, especially over time, even across a range of countries with highly developed communications and academic establishments. Nevertheless, these countries offer a range of variation on important variables over time, including cigarette consumption as well as utilization of different policy instruments. Thus we can be reasonably confident about any patterns discovered.

II. CONCEPTS AND MEASURES

While “policies” as a whole are difficult to compare, policy instruments are more precise and measurable (Schneider and Ingram, 1997; Jordan et al., 2000). Since the early 1960s, publication of the two widely recognized foundation documents on the need for restrictions on tobacco consumption, the Report of the Royal College of Physicians (1962) and the Report of the Advisory Committee of the U.S. Surgeon General (U.S. Department of

Health, Education and Welfare, 1964), a variety of instruments have been developed in an attempt to reduce tobacco consumption. Early instruments consisted mainly of educational campaigns, especially through the mass media, health warning labels on tobacco products, especially cigarettes, and removal of tobacco advertising from broadcast and telecast airwaves. However, from early days, even more restrictive advertising regulations and even prohibitions were advocated, and groups, often subsidized by governments, formed to combat tobacco usage. Even at this early stage, the movement for tobacco control was developing embryonic international linkages. Both of the foundation documents, but especially the U.S. Surgeon General's Report, achieved international renown, and many countries have continued to look to the periodic reports of the Surgeon General to summarize extant research, provide guidance for future policy, and justify preferred policies. The first World Conference on Tobacco and Health (later relabeled World Conference on Tobacco or Health) was held in New York City in 1967. Subsequently, it was held in other countries and became a major forum for the gathering of an ever-larger group of tobacco-control advocates, both governmental and nongovernmental. From 1971, the World Health Organization began advocating legislative action for tobacco control and has acted as a stimulus for countries to take actions, especially since the resolutions of the World Health Assembly in 1986.

While there is not generally agreed categorization of policy instruments, a fivefold division has been developed and applied in the policy and public administration literature (Schneider and Ingram, 1997) and has been previously utilized to analyze tobacco control comparatively (Studlar, 2002). Other studies (Licari, 2002; Studlar, 2003) have employed an alternative version of this categorization. The fivefold categorization is as follows:

1. Regulation, including advertising, sales, and environmental smoking restrictions.
2. Economic incentives, including subsidies, taxation, and financial penalties through litigation.
3. Public education, including health warnings and media campaigns.
4. Capacity building, the transfer of resources to enable particular groups, especially in lower-level jurisdictions, to engage in tobacco-control activities; and general learning tools, information developed for public consumption without a specific mass educational campaign or as a collateral process from other instruments, as for example tobacco industry documents released through litigation.

These categories do overlap at the margins, but for the most part policy instruments can readily be allocated to one of these, based on their design and the degree of coercion they apply. The following are some specific examples of these instruments.

Advertising and sponsorship restrictions have a long and checkered history in many countries. The easiest to legislate and enforce have been those on direct television and radio advertising. Other forms of advertising, mainly print and billboard, were for a long time governed through voluntary agreements between governments and the tobacco industry in several countries, but problems of enforcement and unilateral changes occurred. This led an increasing number of countries to legislate on the topic, but often with delays and exceptions that were either explicitly permitted or overlooked. One major exception in many countries is that print bans only apply to domestically produced publications. "Incidental" advertising on television and through corporate sponsorships of arts, sports, and charitable activities, especially international motor sports, have been much more troublesome. Even governments with bans on promotions of tobacco brands through sponsorship have frequently made exceptions for international events such as motor sports. By 2006, all such sponsorship activity is supposed to be eliminated in many countries, including those within the EU.

Point-of-sale restrictions are a relatively new but growing phenomenon in many countries. Even in countries where broadcasting, billboard, and print advertising and sponsorship have been banned, point-of-sale advertising can act as a substitute by presenting cigarette packaging displays as a "power wall" readily evident to potential customers. In some countries, stacks of cigarettes are accompanied by countertop or wall advertising, even ostensibly if it is only for price information (Fraser, 1998). In the United States, tobacco companies pay premiums known as "slotting fees" to vendors for better placement of their wares in comparison to competitors. Increasingly, this has been recognized as a form of advertising and subject to regulation although mainly at the provincial and local level. Some jurisdictions have replaced the power wall with a designated area for tobacco purchase, complete with large health warning signs. Regulation has also addressed a variety of other promotional activities, such as tobacco names on other products, free samples, and smaller "kiddie" packets.

Even at this late date, some countries (including fully half of the members of the EU) lack age restrictions on the purchase of cigarettes. But most advanced industrial democracies have either maintained or raised their ages in recent years, and some have added substantial fines and better enforcement of these provisions. The oldest age restrictions actually date from the rise of manufactured cigarettes as a mass consumption item in the early part of the 20th century. These varied, but were usually age 16. Many times enforcement was lax, and sometimes even the nominal law was repealed. However, matters began to change in the late 1980s when states began to raise the age to 18, and sometimes 19. Enforcement, however, still varies, which has led some countries to impose more systematic inspections and heavy fines for violations.

Controls on environmental tobacco smoke in public places have been ever more stringent in recent years. Outright bans have been extended from selected enclosed public transportation to government buildings, places of employment, and even restaurants, bars, and gaming facilities in some jurisdictions. These laws have especially proliferated and been enforced, largely through self-regulation, in Anglo-American countries although recently European countries have become more restrictive as well. The United States, Canada, and Australia pioneered in concluding an International Treaty for Smoke-Free Flights on their carriers flying between those three countries in 1994, a policy which other airlines and countries have also adopted.

Residual regulatory authority includes other measures. Examples include contents notices and, at its most sweeping, broad executive regulatory authority over tobacco without having to get further legislation passed.

Only in the past two decades has taxation been considered a major instrument for reduced tobacco usage as well as a revenue producer. Although the addictiveness of tobacco makes taxation of tobacco relatively inelastic, it has been widely found that an increase of 10% in price will reduce overall consumption by approximately 4%, with decreases of up to 8% possible among those with fewer financial resources, such as teenagers and people in less-developed countries (Jha and Chaloupka, 2000). Taxation will be further examined empirically below.

Not all countries in this analysis are tobacco growers, but almost all have a “domestic” producer of manufactured cigarettes, even if only a branch plant of an transnational corporation. Despite the growing popularity of tobacco control over time, this has sometimes conflicted with the desire to maintain or even enhance these economic endeavors. About half (8) of the countries examined have a domestic tobacco leaf growing economy: United Kingdom, Australia, New Zealand, France, Italy, United States, Japan, and Canada. As of 1997, only the United States, Italy, and Canada are major producers, however, ranking 2nd, 10th, and 14th, respectively, in the size of their contribution to world leaf growing (World Bank, 1999: 59–60). In some instances (Australia, Canada, and New Zealand), this economic sector has been substantially reduced because of competition from cheaper growers in the developing world and government buy-out programs. Although subjected to the same international competitive pressures as these countries, the major holdouts against reducing tobacco subsidies are the United States and the countries of the EU under the Common Agricultural Policy. In the United States, such a program has been advocated, but not yet adopted (Halbfinger, 2003). Instead, tobacco acreage has been reduced by the competition of foreign producers. In fact, some of the MSA money has been used to support tobacco farmers in some U.S. southern states. The central government in Australia has eliminated its tobacco-growing subsidies, which once made it

the most-protected economic sector in the country (Winstanley et al., 1995). Other countries, such as Canada, have reduced but not completely eliminated market stabilization and promotion practices for tobacco.

The major tobacco supporters in international trade, however, are the United States and the European Union, which controls growing through its Common Agricultural Policy and export promotion. As noted above, there has been no attempt by the EU to reduce even growers of low-grade tobacco, which is then dumped on receptive export markets. In terms of Common Agricultural Policy (CAP) subsidies, tobacco growers are treated like all other agricultural crop producers. Similarly, in the United States, tobacco continues to be subsidized through market stabilization programs underwritten by the U.S. government. United States's negotiations with foreign countries to open their markets in line with WTO principles, notably China, have included manufactured tobacco as a major component able to benefit from trade liberalization. The same is true for European tobacco companies.

Where there are high taxes and substantial differentials across nearby jurisdictions, there are opportunities for smuggling, illegal trade in cut-rate cigarettes across borders to avoid higher taxes. This has at time been a problem across U.S. states, Canadian provinces, between the United States and Canada, and in various European countries, notably as British taxes have increased in recent years. Even countries as geographically isolated as New Zealand and Australia have experienced smuggling activity. Twice within a period of about 40 years, 1952 and 1994, Canada had to roll back tobacco tax increases because of cigarette smuggling activities across the United States–Canadian boundary. Even when countries may not reduce prices, the potential for smuggling of contraband cigarettes acts as a deterrent to tax increases because of fear of lost revenue and increased costs of law enforcement. Countries are differentially exposed to smuggling because of their location, and, aside from the few cases where taxes have been reduced as a result, it is difficult to evaluate the effects of smuggling and how well countries can regulate it (Advisory Commission on Intergovernmental Relations, 1977, 1985). But some countries, notably the United States and Canada, have taken action against smuggling retroactively through criminal and civil litigation against tobacco companies and individuals allegedly involved in the process.

There has also been selective litigation by individuals and governments against tobacco manufacturers. Through state governments and individual actions, the United States has had the most aggressive litigation regime, which has succeeded in several cases in recent years and led to a substantial increase in the price of cigarettes. These actions have been extensively reported abroad. U.S. litigation experts have consulted extensively with foreign governments about the principles underlying these actions (Blanke, 2002), but, because of

different legal systems, relatively little emulation has occurred. The second most extensive approach through litigation has been in Australia, where some suits, especially regarding the effects of passive smoking on nonsmokers, have been successfully pursued. More recently, there have been successful cases in Canada and New Zealand. Litigation also appears to be an instrument gaining favor in Japan. One of the more important effects of U.S. lawsuits have been the spillover effects in the release of tobacco industry documents through the discovery process, either through the internet or in special depositories. Thus information from tobacco company files has become widely available to policymakers internationally. This might be termed a secondary “general learning tools” effect of the lawsuits rather than a direct financial effect.

Perhaps the most visible signs of tobacco control are the warning labels on cigarette packages. Warning labels were first introduced in the United States in 1965 but quickly spread elsewhere, although often initially through voluntary agreements. Increasingly, the issue has become the prominence (size, colors, strength of language) of the warning labels, along with collateral information about diseases caused by cigarettes, tar and nicotine levels, and cessation information. While the United States still has no labels indicating that “smoking causes cancer” or “smoking kills,” these are common admonitions elsewhere. The United States also still allows warnings to be printed on the sides of the package, although rotating ones since 1984, and in small print in colors that may blend with the package. Several other countries have stronger, rotating warning labels mandated to be on the top front and back of the package and in contrasting colors. In terms of size, content, and placement of warning labels, Canada’s color graphic labels, 50% on the top front and back since 2000, make it preeminent. In an earlier ranking, based only on content of messages as of 1997, Aftab et al. (1999) rate 12 of the countries (all except Germany and the United Kingdom) on a 10-point scale as follows: Norway (10); Canada (8); Finland and Australia (7); Sweden and the United States (6); Italy, Ireland, and France (5); Denmark and New Zealand (4). Japan was ranked at zero as its only warning stated, “As smoking might injure your health, let’s be careful not to smoke too much.”

Since the mid-1960s, mass media campaigns have been a major component of tobacco-control programs in several countries. Sometimes these have been national in scope, but in some federal systems, notably Australia, the United States, and Canada, there has been considerable variation. Most of these campaigns have advocated the reduction or elimination of tobacco use, and some have been specifically targeted at youth. In recent years, these campaigns have become even more aggressive in their graphic depiction of the perils of smoking. Especially in the United States, some have featured advertisements that explicitly targeted aspects of alleged corporate misbe-

havior by the tobacco industry, denormalizing the industry as “merchants of death” and similar terms. Successful television spots from domestic campaigns have circulated around the world as other jurisdictions have purchased presentational rights.

Capacity building refers to programs that enable target populations and lower levels of government to build skills allowing them to deal with a particular problem, in this case tobacco consumption. Although much policy leadership on tobacco control in the United States has occurred at lower levels of government, the federal government since the 1980s has continuously provided states with revenue to fund local tobacco-control coalitions. These groups have often been energetic in lobbying for state and local ordinances. The European Union has had a more modest program, financed by revenue diverted from agricultural assistance to farmers, since 1992. New Zealand also has developed a program of local grants, plus special programs for the Maori population, who, along with aboriginal peoples elsewhere, have disproportionately high smoking rates.

General learning tools refer to authoritative, often government-produced specialized studies, summarizing more technical work and often having a policy advocacy component. But they are not directed as specifically at behavior as are mass media campaigns, and they may not even support particular policies. Instead, conclusions about what action to take in the face of these findings may be left to the reader. The U.S. Surgeon General’s reports have been a major general learning tool summarizing the latest scientific and policy evidence on tobacco control for 40 years. The Royal College of Physicians Report of 1962 also served a similar purpose, although it was from a nongovernmental source. More recently, many governments have felt compelled to produce their own reports on health and policy in this area, and more recently have also developed elaborate tobacco-control strategy documents as guidelines for policy.

III. THEORETICAL APPROACH: CONVERGENCE, POLICY EMULATION, AND GLOBALIZATION

The theoretical approach employed here combines elements of three explanations for comparative public policy. The first is convergence theory, which examines whether countries are becoming similar, staying largely the same, or possibly becoming more divergent in their policy on a particular issue. Although an old theory, convergence theory has recently been resuscitated by the attention to globalization, which is one version of it. As Seeliger’s (1996) careful delineation of the theory outlines, convergence can occur from similar domestic sources without having elements of direct policy emulation

or international effects. The best way to examine whether convergence has occurred is to consider policy developments in two or more countries over a substantial time period.

In addition to similar internal socioeconomic conditions and domestic political processes, convergence can also occur through policy emulation, a distinctive process of policy learning. This theory often goes by such cognate terms as lesson drawing, policy transfer, policy borrowing, policy copying, and, especially in studies of U.S. state politics, policy diffusion. Although technical distinctions can be drawn among these terms, they are all conceptualizing a similar phenomenon, i.e., the direct transfer of policy ideas from one country to another (Rose, 1993). In one of the most sophisticated elaborations of the theory, Bennett (1992, 1997) has suggested that one should distinguish between the substance (content) of policies and the process through which they are developed in assessing the degree of emulation of policies. The agents of transfer of information leading to emulation can occur through a variety of mechanisms, including technological determinism, epistemic (knowledge) communities, direct lesson drawing by independent governments, international networks based on nongovernmental policy communities (NGOs) as well as intergovernmental organizations (IGOs), harmonization (authoritative action by international organizations), and penetration (international coercion).

Globalization can be one method of convergence through policy emulation. This occurs through harmonization or perhaps even coercion. While globalization has many meanings (Berger and Huntington 2002), probably the most common one involves the development of an international capitalist trade and financial system. Since the fall of the Soviet bloc, this system, based on such international institutions as the World Bank, the International Monetary System, and the World Trade Organization, has spread over almost the entire face of the globe. According to theorists of globalization, this means that, either by choice or necessity, countries have to adopt similar policies, especially in the economic realm, to attract private corporate investment, participate in the international market, and stay compliant with demands of international finance and trade agencies. While there are different varieties of capitalism (Hall and Soskice, 2001), there is little alternative to making policies more congruent with those of other countries, especially the larger and more powerful ones, participating in the international market. While there have been few studies of noneconomic globalization, the assumption exists that economic elements of a policy will tend to make them convergent, not through voluntary policy borrowing from other countries but through the demands of the international market.

The European Union stands at the crossroads of globalization. It is a unique international organization, with its authority, although it limited to

certain policy competencies, accepted as suprapstate by its members, all states themselves in the traditional Westphalian sense. On the one hand, it can be viewed as an element of globalization because it increasingly has harmonized major economic and some other policies of its member countries and is the largest trading bloc in the world, both in population and economic terms. On the other hand, it can be viewed as one actor, albeit a major one, in the larger process of globalization. Thus it is empowered to act for its members although its policies and negotiating positions can only influence the globalization process.

While there are other theories of how tobacco-control policies develop and converge (Studlar, 2002; Lieberman and Marmor, 2003), in line with the purposes of this book, the relationship of convergence, policy learning through emulation, and globalization will be the only ones considered here. The purpose is to examine how much convergence is occurring in tobacco-control policies, the processes of policy learning that are occurring, and how any patterns are related to globalization. Do similar problems lead to similar policies to deal with them, and are such policies the result of policy learning through emulation or the more coercive path associated with globalization? The recent history of comparative tobacco-control policy will indicate how plausible these theories are as contributors to the observed patterns.

IV. PROBLEMS OF COMPARISON

The assessment of the ranks of different countries in tobacco control is complex, and no fully satisfactory method has obtained. The relative position of different countries in tobacco-control ratings varies considerably, depending on what instruments and time periods are considered. Little systematic analysis has been attempted, with discussions often centering on the “best practices” offered by public health champions of that particular country (World’s Best Practice in Tobacco Control, 2000). For instance, Canada had a relatively weak tobacco-control regime until the mid-1980s, when it suddenly leaped ahead, based on both taxation and legislation. Subsequently, it usually has been rated as one of the stronger regimes by most observers, despite some setbacks in the mid-1990s (Studlar, 2002). New Zealand has followed a similar path but without any dramatic reversals (Laugesen and Swinburn, 2000). The United Kingdom and Denmark consistently have been among the highest taxing countries, but until recent years other tobacco-control measures remained relatively weak (Read, 1996). The United States pioneered in several pieces of tobacco-control legislation in the 1960s but subsequently has lagged in most financial and regulatory instruments despite high ratings on litigation, capacity building, and general learning tools, especially summary scientific information presented in Surgeon General’s

reports (Studlar, 2002). Some countries, such as Australia and the United States, have had subcentral jurisdictions, state or local, which have pushed ahead with innovative measures even when the federal government was reluctant.

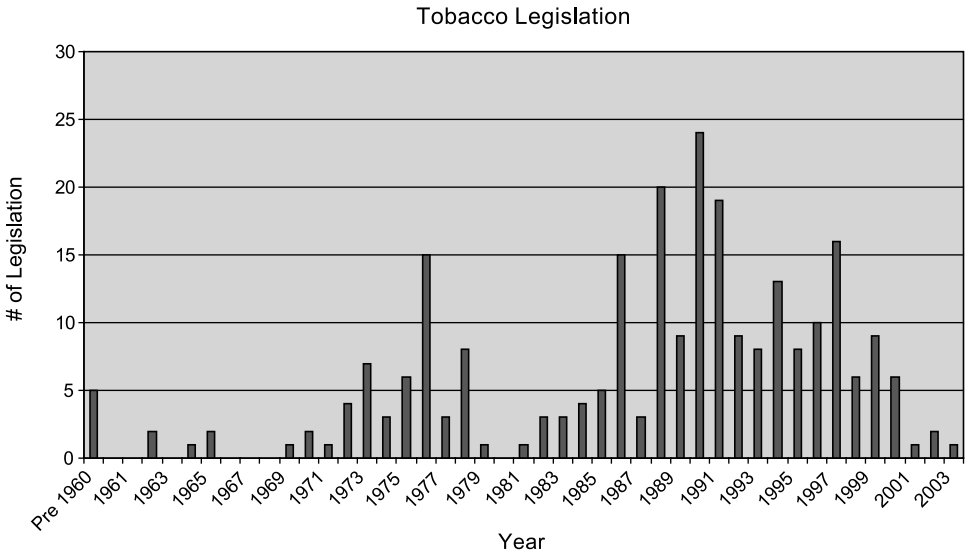
Lieberman and Marmor (2003) offer a summary analysis of tobacco-control regimes in eight advanced industrialized countries, based on a twofold table of taxation and nontax policies as of the mid-1990s. Their “high” tobacco-control regimes are Denmark, especially on taxes, and Australia, the United Kingdom, and Canada, with a better balance of both types of policies. “Medium” regimes are Germany, France, and the United States, with the former two better on taxes and the latter on nontax policies. The one “low” regime is Japan, weak on both measures. However, they admit to considerable uncertainty in the analysis.

In contrast to Lieberman and Marmor (2003), who examine only the extensiveness of tobacco-control measures in eight industrialized countries in a limited recent time period, this study employs measures of extensiveness, timing, and effectiveness across 14 countries over a much longer time period, from the U.S. Surgeon General’s Report until recently. First, it examines extensiveness and timing before turning to the question of effectiveness. The advantage of the current analysis is that it offers an evaluation of data over an extended time period in which tobacco-control measures have been accumulating in most countries. Such analyses are rare in the assessment of tobacco-control impacts, which often rely on data at one point or over a short period of time, and sometimes even on data from only one country, on which to base generalizations (see Lieberman and Marmor, 2003; Wilensky, 2002; cf. Laugesen and Meads, 1991).

V. THE DIFFUSION OF INSTRUMENTS

Figure 1 is an aggregate analysis of the extensiveness and timing of all categories of instruments, 24 in all, across 14 countries since 1965. This represents only the “face validity” of the instruments and should be considered preliminary findings. Except for those instances as specified in the table documentation (tax increases, moving from restrictions to a ban, age increases for sales), only the introduction of a particular instrument is counted. Subcentral units with more restrictive policies are not included although in some instances, notably California, their population is larger than all except a few countries in the analysis.

Figure 1 indicates that there has been a substantial growth in the adoption of these 24 instruments across 14 countries through the 1990s. The overall use of these instruments has at least doubled every decade. The major medical and scientific reports on the dangers of smoking in the 1960s



Advertising Restricted-Print	Government Facilities Banned
Broadcasting Banned	Enclosed Workplaces Banned
Billboard Advertising Banned	Restaurants Banned
Sponsorship Restricted	Broad Executive Authority over Tobacco
Point-of-sale Restricted	Health Warning Labels
Minimum Age-16	Rotating Warning Labels
Minimum Age-18	Mass Media Campaigns
Minimum Pack Size	Excise Taxation on Packs Increased
Vending Machines Banned	Litigation—Individual and Class Action
Promotions Banned	Grants Available for Local Organizations
Free Samples Banned	Cessation Services
Airlines Banned-Domestic	Overall Strategy

Figure 1 Tobacco control measures over time (14 OECD countries, 1970–2003). Voluntary agreements excluded. In some cases, multiple entries may be possible (e.g., taxation increases, overall strategy, mass media campaigns); also, in some cases, adverse court decisions necessitated multiple actions on the same instrument. (From Roemer 1982, 1993; Corrao et al. 2000; Studlar 2002.)

stimulated few countries other than the United States to take actions beyond voluntary agreements with the tobacco industry. There was more activity in the 1970s, especially among a few European countries. In general, the mid-1980s represented a major takeoff point for government tobacco-control measures, which have subsequently accelerated in most countries although the table mainly concerns the introduction of instruments. The fall-off in recent years probably indicates that there are fewer of these particular instruments to be introduced across these countries. However, other instruments may be added to the repertoire.

Table 1 shows the results for the number of measures adopted in each of the countries, both by decade and cumulatively. In the 1980s, some countries, notably Canada, Australia, and Ireland, joined the ranks of tobacco-control leaders while others rested on their laurels. Yet others, including many on the continent of Europe, remained laggards in their total efforts as in many specific measures. Only in the period starting in 1990 did the number of measures employed by several countries begin to cumulate in a manner that could be called “comprehensive.” Although this table does not indicate how these measures spread, there is other evidence pertaining to this question, as addressed below.

Table 1 Tobacco Control Measures by Country, 1970–2003

	Decades				Cumulative			
	1970	1980	1990	2003	1970	1980	1990	2003
Australia	1	2	6	16	1	3	9	25
Canada	0	0	10	21	0	0	10	31
Denmark	0	0	2	12	0	0	2	14
Finland	1	7	0	7	1	8	8	15
France	0	9	2	11	0	9	11	22
Germany	1	5	1	4	1	6	7	11
Ireland	0	2	14	8	0	2	16	24
Italy	2	0	2	6	2	2	4	10
Japan	1	0	2	0	1	1	3	3
New Zealand	2	4	2	22	2	6	8	30
Norway	0	6	4	5	0	6	10	15
Sweden	0	9	3	7	0	9	12	19
United Kingdom	1	1	3	7	1	2	5	12
United States	5	0	8	12	5	5	13	25
Total	14	45	59	138	14	59	118	256

Sources: Roemer 1982, 1993; Corrao et al. 2000; Studlar 2002.

Until the mid-1980s, a few countries employed sporadic educational campaigns, high taxation, warning labels on packages, broadcast bans, and other advertising restrictions. However, the latter three were often based on a voluntary agreement with the tobacco industry, and these agreements were often later judged unsatisfactory because of various loopholes and violations. While taxation over and above that of ordinary consumer products (often called “excise taxes” or “sin taxes”) have been an instrument long applied to tobacco, until the mid-1980s it was almost universally perceived in fiscal terms alone, as a source of revenue for governments rather than as an aid in reducing tobacco consumption. There was little government investment in tobacco control, according to the three major empirical indicators of policy: laws, personnel, and finance (Rose, 1984). Many countries lacked even one official in the health ministry working full time on the issue. Taxes on the product since the 1960s lagged behind income growth and inflation, thus making cigarettes ever more affordable. Even as overall smoking prevalence rates dropped in some countries, more cigarettes were being consumed by those who did smoke (Corrao et al., 2000).

What happened to change these patterns? Even before the second and third major Surgeon General’s reports, in 1986 on involuntary (also called second hand, environmental, or passive) smoking and in 1988 on nicotine addiction (U.S. Department of Health and Human Services, 1986, 1988), some countries passed legislation and regulations banning print advertising, enacting health warnings that were stronger, more prominent, and rotating, increasing taxation for health purposes, underwriting media campaigns, and requiring reports of cigarette ingredients. These were documented in *Legislative Action to Combat the World Smoking Epidemic* (Roemer, 1982, 1993). The total number of countries having some tobacco-control legislation increased from 57 in 1982 to 91 in 1995 (Roemer, 1995). More generally, Studlar (2002) has identified a new stage of tobacco control in some countries since the mid-1980s, an era of denormalization of smoking, tobacco, and even, in some cases, tobacco companies or their marketing practices.

In addition to the diffusion of previous measures, protection from environmental tobacco smoke (ETS) became a major concern. Countries have moved from limited restrictions on ETS to outright bans in an increasing number of public locations over the years. Cessation advocacy through the media and the availability of government-supported services became more prevalent. The United States devoted considerable resources to capacity building efforts; that is, using federal funds to assist states and communities in their local tobacco-control activities. Some countries began to focus on youth access prevention, including establishing or raising the age at which cigarettes could be legally purchased. Litigation for damages caused by

smoking took root in a few countries, notably the United States and Australia, and in the former the unusual approach of governments suing for health care cost recovery also emerged and received international attention (Blanke, 2002). From this litigation, a wealth of information, hitherto hidden, about tobacco industry marketing, legal, and political strategies became public knowledge. More jurisdictions moved toward “comprehensive” tobacco-control policies, including banning smoking even in restaurants, bars, and gaming venues and restricting advertising and accessibility of cigarettes at point of sale. Some made their warning labels more graphic and/or informative. Media advocacy became more aggressive. Forward thinkers considered altering the design of the cigarette itself. These various strands eventually merged at the international level into the WHO Tobacco-Free Initiative and the negotiations for a Framework Convention on Tobacco Control.

Although complete data over time are lacking, all countries have some form of special taxes on cigarettes (see Table 2). Most countries in our analysis tax cigarettes heavily, especially in recent years. All except the United States have a total tax incidence of between 61% and 79% of the retail purchase price. Even if the litigation costs under the 1998 Master Settlement Agreement (MSA) between the 50 U.S. states and the tobacco industry are considered a form of taxation (it is, in effect, a *national* policy, even if not mandated by the federal government), the United States lags considerably, with only a 40% average and wide variation among its subunits. Subsequently, this gap has shrunk, as over 20 U.S. states have increased cigarette taxes during the economic and fiscal downturn of 2002–2003. Federal taxation, however, continues to lag. Overall, since the mid-1980s, more advanced industrial countries have made an effort to maintain the value of cigarette taxes in line with inflation, if not economic growth, and more of them justify this taxation on health grounds.

What is the impact of these measures on the actual consumption of tobacco in these countries? Because of problems in comparing data across countries and the similar timing and interaction of various policy instruments within countries, it is difficult to calculate the relative effect of different instruments, or indeed to separate socially generated effects from governmentally induced ones. Thus there is much discussion of a multipronged “comprehensive approach” to tobacco control, with various instruments reinforcing each other. The cumulative impact of sustained and enforced measures is considered to be most effective over time. Some scholars, principally economists, however, have not been loath to disaggregate the relative impacts of instruments (Jha and Chaloupka, 2000; Licari, 2002).

There are various measures of tobacco usage available. Laugesen and Meads (1991) argue that total tobacco products consumption per adult is the

Table 2 Global Cigarette Taxes and Prices

Country	Price (\$)	Total taxes (\$)	Tax incidence (%)
Australia	4.02	2.77	68.9
Canada	3.80	2.73	71.6
Denmark	3.77	3.08	81.7
Finland	3.53	2.69	79.0
France	2.76	2.08	75.5
Germany	2.76	1.90	68.9
Ireland	4.46	3.52	79.0
Italy	1.93	1.44	74.7
Japan	2.18	1.33	61.0
New Zealand	3.88	2.89	74.5
Norway	7.56	5.99	79.2
Sweden	3.64	2.57	70.5
United Kingdom	6.33	5.03	79.5
United States	2.96	0.77	26.0 ^a

Average Retail Cigarette Price and Total Taxes per Pack (U.S. Dollars/Pack of 20), Selected Industrialized Countries, June 17, 2002.

All figures given in U.S. dollars, for 20-cigarette pack, most popular price category. Tax incidence refers to the portion of the total retail price made up of applicable taxes and fees, including excise, sales, VAT, etc.

Exchange rates as of May 31, 2002.

^a U.S. prices include approximately 46¢ per pack to cover the cost of the 1998 MSA settlement with State Attorneys General. If this amount were considered a tax, overall tax incidence would rise to 41.6%. No municipal tax was included in this tabulation.

Sources: European Union, "Tax Burden on Tobacco" (U.S.), budget/tax documents (Canada, Australia, New Zealand, Norway), Tobacco Journal International.

best indicator over time and space because it is the broadest measure. Table 3 presents results for tobacco products consumption per capita over a 30-year period, from the major recognition of the problem in 1965 until 1995. Because countries have adopted various policy instruments at different times, the findings in this table can only be suggestive of the impact of different tobacco-control policies on tobacco consumption outcomes.

Over this whole period, there was a mean reduction of 20% over these 14 countries. The range was considerable, however, from an *increase* of 35% in Japan to a 53% reduction in New Zealand. Nine countries had declines, but three countries had increases. Of the eight countries in the Lieberman–Marmor analysis, the "strong" tobacco-control regimes of Canada, the United Kingdom, and Australia had the second, third, and fifth largest reductions while the only "weak" regime, Japan, had the largest increase. Otherwise, it is difficult to distinguish the "high" regimes from the "medium" ones, with the

Table 3 Changes in Tobacco Products Consumption per Adult, 1965–1995

Country	1965–1980	1981–1995	1965–1995
Australia	–15	–25	–38
Canada	–15	–45	–49
Denmark	–13	–18	–28
Finland	–6	–29	–32
France	17	–4	10
Germany	11	–22	–13
Ireland	10	–23	–19
Italy	37	–21	9
Japan	44	–8	35
New Zealand	–11	–48	–53
Norway	13	–15	–10
Sweden	16	–28	–19
United Kingdom	1	–41	–46
United States	–18	–35	–46
Mean	5	–23	–20

Sources: Laugesen and Meads, 1991; New Zealand Ministry of Health International Tobacco Database.

United States being tied for the third largest reduction in consumption, substantially greater than Denmark or Germany, while France had an increase.

But dividing the period into two equal parts, approximately coinciding with the increase in tobacco-control activity in the 1980s, reveals two different patterns. In the first period, 1965–1980, there was a mean increase of 5% in consumption across these countries, and eight countries recorded increases while only six had decreases. In the second period, 1981–1995, the mean decrease was 23%, and every country had a decline in consumption although these varied from 4% to 48%. Further complicating the analysis is that the same seven countries ranked as having the largest overall reductions also were ranked as having the greatest reductions (or, in one case, the least increase) in both periods, despite utilizing different policy instruments, especially in the earlier period. However, once reductions started occurring, it appears that there is a cumulative process, perhaps because of the addition of more restrictive instruments, including tax increases, as time passes.

Increasingly, countries are using a similar repertoire of policy instruments for tobacco control although there remains considerable variation in the emphasis directed toward specific instruments as well as in the overall level of comprehensiveness (Corrao et al., 2000; World Health Organization

Regional Office for Europe, 2002). The data since 1980 suggest there also is increasing convergence of outcomes although measurement problems make conclusions only tentative. For instance, although New Zealand has had the largest reduction per adult in tobacco products consumption and the second largest per capita cigarette consumption, it has not experienced a similar fall in smoking prevalence (Corrao et al., 2000: 410).

Because of economics, countries had different levels of tobacco consumption even in 1965, ranging from 1649 g per adult in Italy to 4672 g in the United States. Some poorer, more agrarian countries, such as Italy and Ireland, saw consumption grow as their economic prosperity increased, a familiar relationship (Nellen et al., 1995). Also, there may possibly be biological factors at work affecting consumption, such as the ingredients in different types of cigarettes. As Licari (2002) points out, it is the less-addicted smokers who will reduce smoking first.

Nevertheless, these results also indicate the complex nature of what affects tobacco consumption and how tobacco has not only been incorporated into the economy but also the institutions and culture of different countries. Many countries in Western Europe have been weak on enforcing their own laws. Thus implementation may be a key variable that needs further exploration (Wilensky, 2002; Lieberman and Marmor, 2003).

Because policy instruments, especially those concerning environmental tobacco smoke, often rely largely on voluntary enforcement, there may be political culture factors at work as well. Countries in the Anglo-American tradition appear to be better at eliciting voluntary obedience to tobacco-control laws than their counterparts elsewhere (Nathanson, 1999). Part of the cultural factors affecting tobacco control may involve greater moralistic concerns about tobacco use in some countries, especially the United States, especially when compared to European countries (Katz, 1997; Studlar, 2002; Wilensky, 2002; Lieberman and Marmor, 2003).

VI. PROCESSES OF POLICY LEARNING AND EMULATION

What explains the increasing convergence in timing and extensiveness of tobacco-control instruments and the limited, but still significant, convergence in intensity, as measured by outcomes? Policy learning on this issue has occurred through the domestic dispersal of scientific information, the actions of government health ministries, and the agitation of antitobacco groups. But it is also apparent that there is a substantial amount of policy transfer across countries, which has increased over time. From the 1960s, many governments

and NGOs have referred to foreign sources of scientific information and policy feasibility. The Report of the Royal College of Physicians in the United Kingdom and, more frequently, U.S. Surgeon General's reports are convenient sources of this information. When new policies are under consideration, the so-called international "super-experts," government officials or NGO advocates, are often solicited to give personal testimony (Thomson and Wilson, 2001).

U.S. litigation activity has received broad international attention but so far little emulation except in Canada (Studlar, 2002). However, successful individual lawsuits for damages in passive smoking cases in Australia, New Zealand, and Canada may have encouraged the recent spread of smoking bans, extending them to such nontraditional sites as restaurants, bars, and gambling venues (Lavery, 2003). The EU has long urged its members to pass legislation on ETS but only recently has received more positive responses.

Not all countries are equally attentive to lessons from abroad. Smaller countries with limited research and policy bureaucracies are especially likely to look for evidence abroad. However, even smaller countries can be information and policy lenders as well as borrowers. When the Canadian government was bringing forward tobacco-control legislation in the late 1980s, it presented evidence and experts from the United States and Norway to buttress its case. In turn, this Canadian legislation and the lobbying by antitobacco NGOs that accompanied it were an inspiration for similar legislation in New Zealand in 1990 (Carr-Gregg, 1993; Beaglehole, 1991). The adoption of graphic warning labels in Canada in 2000 led to similar packages being introduced in EU countries. Australian litigation on passive smoking, legislation on tobacco advertising, and dedicated financing to replace tobacco sponsorship have been cited as international precedents (Pierce, 1997; Ballard, 2001). One spot from the Australian media campaign, "every cigarette does you damage," has been utilized in several other countries. Even in the United States, traditionally more self-sufficient in policy learning, there is evidence that since the 1990s, there has been increasing attention by both NGOs and governments to developments abroad, especially in Canada (U.S. Department of Health and Human Services, 2000; Studlar, 2002).

More generally, the mechanisms for transfer of information leading to emulation are varied. They include technological determinism, epistemic (knowledge) communities, direct lesson drawing by independent governments, international networks based on nongovernmental policy communities (NGOs) as well as intergovernmental organizations (IGOs), harmonization (authoritative action by international organizations), and penetration (international coercion). In some instances, these processes may overlap.

What patterns are discernible for both content and mechanisms of policy learning through lesson drawing across countries on tobacco control? Agents of transfer vary, with the policy advocates of NGOs playing a substantial role, at least in countries with more aggressive tobacco-control regimes. This is not surprising, as the reduced costs of diffusing information internationally have particularly benefited NGOs. Furthermore, some NGOs are financially supported as “public interest advocacy groups” by governments, giving them “semiofficial” or “licensed critic” status. Governments themselves have also engaged in lesson drawing across borders. This has been facilitated through the rise of electronic communication among tobacco-control organizations, the regular World Conference on Tobacco or Health (WCTOH) as well as more specialist meetings, and international journals such as *Tobacco Control*, founded in 1992 after discussions at the 1990 WCTOH. After years of minimal coverage of tobacco-control information, partially because of advertising pressures from tobacco companies, traditional print media have become more attentive to tobacco control as a policy issue. It is now relatively easy, except in terms of time, to keep up with developments elsewhere in the world through electronic access to popular media, academic journals, and policy information from governments and NGOs.

Sometimes domestic developments in one country trigger action elsewhere. An example is the 1998 decision of a judge in the U.S. state of Minnesota lawsuit against tobacco companies for health care costs establishing a depository for documents from Brown and Williamson and its international affiliate British American Tobacco (BAT) in Guildford, England. Governments and NGOs in Europe, Canada, and the United States have made numerous visits to this depository to acquire information about the activities of BAT-affiliated companies to inform policy-making. The process of negotiating the FCTC has also made governments, especially the health ministry officials who have been responsible for the negotiations, aware of instruments and developments in a broader international circle. In addition to countries and NGOs, the European Commission has also participated in the negotiations.

VII. PATTERNS OF POLICY LEARNING AMONG COUNTRIES

In this analysis, there appear to be three overlapping but nevertheless distinct “families” of countries, with convergent policies based on similar domestic institutions, cultural affinities, and lesson drawing. The first are the Anglo-American countries, especially the four that are not part of the European Union. A Canadian tobacco-control official has stated that his government

was more inclined to look toward the United States, Australia, and New Zealand for policy leads than to European countries, even those historically as closely associated with Canada as the United Kingdom and France. In two separate analyses of tobacco-control rankings, three of these four countries rated highly, with the United States having a more mixed record (Lieberman and Marmor, 2003; Wilensky, 2002). Furthermore, at least since the mid-1980s, all four countries have tended to move in similar fashion in agenda setting and policy adoption on such issues as stronger and rotating health warnings on packages, taxation, greater restrictions on advertising and sponsorship, reduction of agricultural subsidies, underage sales, restrictions on environmental tobacco smoke, and, recently, greater restrictions on point of sale advertising. Especially in the three federal systems (all except unitary New Zealand), some of this legislation has occurred at lower-level jurisdictions rather than at the central level. Several examples of policy emulation among these countries have already been cited. In at least one instance, there was policy coordination. Three of these countries—Canada, the United States, and Australia—concluded the first international treaty for smoke-free flights in 1994 (Kyle and Du Melle, 1994).

A second group, at least historically, is made up of the Scandinavian countries, especially the three that are latecomers or nonmembers of the EU (Sweden, 1994, Finland, 1994, and Norway). All of them were early leaders in the struggle against tobacco usage through such policy instruments as advertising bans, educational campaigns, strong and rotating warning labels, and taxation. Having similar problems and sharing a general cultural outlook as well as established institutions of cooperation such as the Nordic Council and close ministerial ties to aid in harmonizing laws, these countries form a readily identifiable “family of nations” in several other policies (Castles, 1998; Obinger and Wagschal, 2001). Thus is not surprising that they also have employed similar policy instruments on tobacco. Denmark is something of an oddity in this group and seems to belong more to the “EU” group described below, although not from being in the European Union longer than the others (since 1973). While it shares similar Scandinavian values and institutions and had the highest taxation of any EU country in the mid-1980s (Kagan and Vogel, 1993), Denmark only began to enact regulatory measures in the late 1980s and has been one of the more recalcitrant members of the EU on measures to restrict tobacco consumption (Bitton et al., 2002).

The third group consists of the eight members of the European Union; Norway could also be added to this group. Because these countries are from different historical-cultural parts of Europe, one would expect them to have varied policies. The European Union has taken an active role in harmonizing tobacco-control policies since 1985, with the origins of the Europe Against Cancer program (Godfrey, 2000; World Health Organization Regional Office for Europe, 2002). Six of these countries (United Kingdom, France, Ger-

many, Italy, Ireland, and Denmark) were members at that time, and subsequently two more (Sweden and Finland) joined in 1995. Starting in 1989, the EU has passed several “directives,” which individual members are supposed to transpose into their own legislation congruent with the overarching goals. The earliest ones required the banning of televised advertising and sponsorship by tobacco products, mandated two warning labels (one specific, one from a list) on 4–8% of each side of cigarette packages, listed tar and nicotine levels on the sides of packages, prohibited certain forms of oral tobacco, and set tar maximums for cigarettes. There was also a nonbinding EU “recommendation” in 1989 that member states ban smoking in many public places. In 1992, the European Union mandated a minimum taxation level on cigarettes (57%) for its members and began a program of capacity-building grants. The most controversial directive, passed in 1998 after several years of discussion, would have banned tobacco advertising and sponsorship within the EU.

The EU has been characterized as having a weak tobacco-control regime (Duina and Kurzer, 2003). The EU usually adopts policies already in force in some member states although more recently it appears to have looked across the ocean to Canada for some of its policy ideas. The first directive on advertising passed only after extended controversy and was legally challenged. The most aggressive antitobacco organization formed under EU auspices was disbanded in 1996 under pressure from tobacco companies and the Directorate-General for Agriculture, which objected to an embarrassing report by the agency pointing out the huge subsidies given to low-quality tobacco leaf under the Common Agricultural Policy (CAP). An earlier report from the same agency had described how tobacco companies were failing to comply with the package labeling directives (Bitton et al., 2002).

Nevertheless, the EU seems to be developing greater authority in tobacco control. There has been one 3-year EU-wide media campaign against tobacco use by young people. Despite the defeat for the first version of the tobacco advertising ban in the European Court of Justice in 2000, a second, somewhat less-restrictive directive was proposed by the Health and Consumer Protection Directorate of the EU Commission and enacted in 2002. The new directive outlaws tobacco advertising in newspapers and magazines, on the internet, and at international sports events as well as prohibiting free samples.

The EU also has recently issued other rules and recommendations for tobacco control in its member countries. Regulations passed in 2001, which withstood an EU court test by tobacco companies in 2002, provide for stark black and white health warnings of 30% on the front of the package and 40% on the back, allow for individual countries to introduce graphic warnings on the Canadian pattern, further limit the amount of tar, nicotine, and carbon

monoxide in cigarette emissions, and, most controversially, prohibit the use of package descriptor terms such as “light” and “mild” when these are not part of trademarks. Upon the ECJ decision upholding this directive, one Member of the European Parliament even claimed that “From today onward, Europe is more advanced than other parts of the world in combating tobacco addiction.”

European Union recommendations include sales restrictions (such as age limits, restricting vending machines, no small packs) and educational campaigns to reduce the availability of cigarettes to young people, prohibiting the promotion of tobacco products, enacting more passive smoking regulations, and monitoring tobacco industry promotions (EU Council Recommendation 2002). While there is still considerable variation on specific instruments among EU member countries (World Health Organization Regional Office for Europe, 2002), a burst of activity among EU member countries, especially on passive smoking issues, in 2002 and 2003 indicates that the EU may be in the process of becoming a touchstone for minimum standards in tobacco control.

Often overlooked among the policy repertoire employed by the EU against tobacco are their finance policies. In addition to the minimum level of taxation on tobacco, these include the abolition of duty-free sales and action against smuggling, including the filing of a lawsuit in U.S. federal district court against the affiliated companies Japan Tobacco Inc. and R.J. Reynolds Tobacco Co. for operating a money laundering scheme involving smuggled cigarettes connected to terrorists, tax evaders, drug traffickers, and organized crime. The Community Tobacco Fund, financed through deductions of originally 1%, now 3% from CAP payments to tobacco growers, finances a modest capacity-building program. The Commission, the bureaucracy of the EU, has proposed phasing out agricultural subsidies to tobacco growers, thus far without a positive response from other bodies in the EU. The Commission also has discussed incorporating tobacco control as part of its official development aid policy (European Commission, 2003).

The EU has acted as a harmonizing, if not fully coercive, body for increasing convergence of tobacco-control policy across its member countries. The EU directives are permissive, setting minimum standards although each member state is responsible for implementing the directive. When the second EU attempt at an advertising ban was approved in 2002, six of its members already had such legislation. Countries also can refer to EU directives and recommendations as justification for their domestic tobacco-control measures (World Health Organization Regional Office for Europe, 2002). The EU policy has even become a standard against which governments may be held to legal account by their own courts (Lavery, 2003). The issuance of new EU regulations and recommendations in the past few years has led to

increased activity and greater convergence of tobacco-control policies among its members (Lavery, 2003; Sciolino, 2003; Bruni, 2002).

However, challenges lie ahead in the remit for health policy in the possible development of an EU Constitution as well as in the enlargement of the EU to incorporate new members, 10 in 2004 and possibly more later. Some of the candidate members have much weaker regulations and taxes on tobacco; they also constitute new markets that tobacco companies are pursuing as smoking rates decline elsewhere. However, as part of their admission into the EU, these new members are supposed to adhere to the *acquis communautaire* (common set of laws) on all established policies, which has led some of them to raise their tobacco taxes. If the EU continues on this path of developing a stronger and wider tobacco-control regime, enforceable by the courts, there will be further convergence of policies across Europe.

Although analysts of the EU often think of globalization as something external to the organization with which it must cope, from other perspectives the EU is part and parcel of globalization. Overall, the largest trading bloc in the world, it is one of the key actors, along with the United States, in setting the world economic agenda through the World Trade Organization, the General Agreement on Trade and Tariffs, and through the power of its four largest members, the Group of Seven Industrialized Countries. The individual countries are also important in the operation of the World Bank and the International Monetary Fund, the latter traditionally headed by a European. Aside from Japan, most of the major transnational companies (TNCs) also are based in either North America or Europe, and the existence of the common external tariff of the EU has made it even more desirable for non-European companies to establish a beachhead there. Thus if globalization is a major phenomenon in the world, then Europe, and especially the suprastate economic regime of the EU, is a vital part of it. Because the EU appears to be becoming more successful in getting its tobacco-control preferences accepted by member countries, one must consider this an emerging set of policies whose adoption is influenced by globalization. No other region of the world has such an engine for policy convergence.

However, the EU is not the only institution for policy learning and convergence, even within Europe. WHO has pursued tobacco control for 30 years, and its European branch has been especially active, producing three action plans for tobacco control since 1988 and monitoring the results every few years. The WHO Regional Office for Europe works with other international networks in the area, especially through an umbrella organization called the Committee for Tobacco-Free Europe (CTE), which includes the European Commission, the World Bank, and such NGOs as the International Union Against Cancer, the Association of European Cancer Leagues, the European Network for Smoking Prevention, and the International Network

of Women Against Tobacco. Other European-based organizations concerned with tobacco control are the Council of Europe and three NGOs: the European Network on Young People and Tobacco, the European Forum of Medical Associations, and the Europharm Forum. WHO works with all of these groups to provide coordination of tobacco-control initiatives and monitoring programs (World Health Organization Regional Office for Europe, 2002). The culmination of this process has been the Framework Convention on Tobacco Control.

As indicated by its designation as the sole “weak” tobacco-control regime of the eight examined by Lieberman and Marmor (2003), Japan appears to be in a category by itself. Unlike some European countries, it has not acted to divest itself of a majority share in Japan Tobacco Inc., a major international manufacturer. Although its taxation is high, other regulatory measures have been relatively light, and the impact on tobacco consumption has been slight. The weak health warning on cigarettes in Japan is a product of the Ministry of Trade, not Health. Finding Japan to be an outlier from other OECD countries in tobacco control confirms the previous analysis of Obinger and Wagschal’s (2001) across a range of other policy variables.

VIII. THE FUTURE OF TOBACCO CONTROL UNDER GLOBALIZATION: MULTINATIONAL CORPORATIONS VS. THE WORLD HEALTH ORGANIZATION

The EU is only one part of globalization. Since the 1890s, tobacco companies have been international in their operations, as is well illustrated by the global spread of British-American Tobacco (Cox 2000). More recently, transnational tobacco companies have benefited from the opening of markets to international competition, especially in developing countries. Because parts of the world such as Central and Eastern Europe, Asia, and especially China have growing populations, few tobacco restrictions, and good prospects for economic growth, tobacco companies have been eager to establish their operations and market their products. After the fall of the Berlin Wall in 1989, tobacco companies bought aging factories, modernized them, and began heavy advertising for their products in former Communist countries. The declining consumption in many advanced industrial countries make expansion into the developing world even more attractive. International trade agreements have facilitated this expansion by removing barriers favoring domestic brands, including, as in the case of China, a state company. Any future for the tobacco industry, aided by globalization through international trade liberalization agreements, clearly lies in the developing world.

In response, tobacco-control advocates have also engaged in global activities, culminating in the Framework Convention on Tobacco Control, the first international treaty on public health. To prevent tobacco companies from exporting the morbidity and mortality associated with tobacco use by exploiting this expanded market, Gro Harlem Brundtland made tobacco control one of her priority areas upon her accession to the office of Director-General of WHO in 1998. Through a series of discussion papers, preliminary meetings, and negotiating sessions, the Tobacco-Free Initiative culminated in a Framework Convention on Tobacco Control in 2003. Tobacco-control NGOs had semiofficial status to participate in the discussions, but tobacco companies only were allowed to play a more limited role. The intention was to produce a document that as many countries as possible could sign to facilitate a coordinated international effort on such issues as tobacco advertising, warning labels, taxation, and smuggling.

The final negotiating session among representatives from the separate countries produced a document that specified a minimum size of 30% for health warning labels on packages, the reduction of deceptive advertising such as “light and mild,” a ban on cigarette advertising within the limits of a country’s laws, and encouraged government funding of tobacco-control programs, restrictions on public smoking, the imposition of higher taxes to discourage smoking, and the elimination of free samples. Opposition on some of these issues from the United States, Japan, Germany, and China in the negotiations was later withdrawn, allowing the World Health Assembly to approve the convention unanimously later in 2003. At least 40 countries must ratify the Convention for it to be operational, but it only applies to signatory countries.

There is no doubt that the FCTC provides a major challenge, on a global level, to the tobacco-manufacturing TNCs. The eventual success of the FCTC will depend on how many and which countries ratify it and how well it is enforced. But as Nadelman (1990) has pointed out, it is difficult to maintain what could be called a “moral regulatory regime” when the product (cigarettes) is not only legal and readily transportable, but also enforcement of rules is uneven. However, even the very process of negotiating the convention constitutes a learning process that could aid countries and NGOs to achieve other coordinated tobacco-control policies outside the WHO framework.

IX. CONCLUSIONS

There is a common repertoire of policy instruments for tobacco control, spreading across the globe, which allowed the FCTC to occur. Starting slowly but accelerating in recent years, a convergence of tobacco-control measures

has occurred across the industrialized democracies. Some countries have adopted more of these instruments, at earlier times, and with more assiduous enforcement. Similar domestic processes have contributed to this convergence, but it has also taken place through bilateral and multilateral policy transfer. The underlying basis of this convergence is agreed scientific information on the health hazards of smoking, but vested economic interests, cultural practices, and political factors have made the process slower than reliance on epistemic communities alone would have indicated. Certainly, policy emulation has been a major factor, aided by the global tobacco-control community, including governments and NGOs as well as the harmonizing influence of the EU and WHO.

How much policy learning has occurred? As the data in Figure 1 and Table 1 indicate, the curve for policy learning appears to have moved forward decisively, especially over the past two decades. More measures are being adopted to combat tobacco consumption and these regulations are more frequently based on investigations of the experience of other jurisdictions, either within or outside of a country, with similar legislation. There are three major complicating factors for such analyses. First, the situations of the jurisdictions may be different enough that lessons drawn from one may not be completely applicable in another, especially because the time frames will differ (Rose, 1993). Second, differences in implementation and their effects often take years to ascertain, which may result in suboptimal current choices. Third, reliance on “comprehensive” tobacco-control policies can lead to difficulties in determining the effectiveness of various elements within that process, especially those that are adopted at the same time, such as higher taxation used to finance a coterminous media campaign.

Because there are so few public policy studies of tobacco, comparisons with other issues are at early stages. Based on investigations of U.S. national policy, Lowi (1964) provided the classic categorization of policies into distributive, regulatory, and redistributive, based on the visibility and degree of conflict involved. Tatalovich and Daynes (1988) amended this categorization with a second form of regulatory policy, called “social regulatory policy,” dealing with questions of individual rights vs. social morality rather than with conflicts over material issues. Some researchers (Leichter, 1991; Nathanson, 1999) argue that tobacco-control policy is unusual because it is not just regulatory over economic production and consumption but has elements of moral controversies. Policy discouraging or restricting tobacco usage involves regulation of individual behavior that might be considered threatening to that person’s values. These moral dimensions of tobacco use were apparent in the early 20th century and have recently reappeared. Resistance to tobacco-control regulation has often been argued in terms of individual freedom of choice. Some governments, even in Western Europe,

appear to be more reluctant to engage in such social regulation, even on an issue of demonstrated individual and community public health risk.

Dominant perceptions of the nature of the tobacco-control issue have shifted in recent years from being a distributive, largely promotional issue, little regulated and often subsidized, toward greater restrictions, accompanied by more conflict over regulation (Baumgartner and Jones, 1993; Nielsen 2003). Even taxation has moved from being an issue of a “sin tax” as a reliable source of revenue toward taxes as being punitive, compensatory measures for the damage that tobacco does to health. Yet the nature of tobacco control as an issue remains somewhat mixed and problematic because of earlier policy inheritance and lack of coordination among different agencies even within the same government. Thus while governments in all countries in this study have taken action against tobacco consumption, often these policies have been more symbolic than effective. The challenge that the EU and WHO are presenting is to move beyond rhetoric into a demonstrably effective coordination of policies among countries.

Faced with the challenge of the spread of tobacco consumption and its attendant ills through globalization, governments and NGOs have responded with an international control regime, the FCTC. This is the latest phase in the process of policy learning and policy emulation on this issue over the past 40 years. Other theories may help explain the process of tobacco control, but by whatever name it is called, policy emulation helps explain why so many countries have developed convergent policies in recent years. However, the question that remains is whether convergent policy adoption will lead to more convergent administration and outcomes.

REFERENCES

- Advisory Commission on Intergovernmental Relations. (1977). *Cigarette Bootlegging: A State and Federal Responsibility*. Washington, DC: Advisory Commission on Intergovernmental Relations.
- Advisory Commission on Intergovernmental Relations. (1985). *Cigarette Taxes and Tax Avoidance: A Second Look*. Washington, DC: Advisory Commission on Intergovernmental Relations.
- Aftab, M., Kolben, D., Lurie, P. (1999). International cigarette labeling practices. *Tob. Control* 8(4):368–372.
- Ballard, J. (2001). The politics of tobacco control in Australia. *Dev. Bull.* 54:43–46.
- Baumgartner, F. R., Jones, B. D. (1993). *Agendas and Instability in American Politics*. Chicago: University of Chicago Press.
- Beaglehole, R. (1991). Science, advocacy and health policy: lessons from the New Zealand tobacco wars. *J. Public Health Policy* 12(2):175–183.

- Bennett, C. J. (1992). *Regulating Privacy: Data Protection and Public Policy in Europe and the United States*. Ithaca, NY: Cornell University Press.
- Bennett, C. J. (1997). Understanding ripple effects: the cross-national adoption of instruments for bureaucratic accountability. *Governance* 10(3):213–233.
- Berger, P. L., Huntington, S. P., eds. (2002). *Many Globalizations: Cultural Diversity in the Contemporary World*. New York: Oxford Univ. Press.
- Bitton, A., Newman, M. D., Glantz, S. A. (2002). *Tobacco Industry Attempts to Subvert European Union Tobacco Advertising Legislation*. San Francisco, CA: Center for Tobacco Control Research and Education, University of California.
- Blanke, D. D. (2002). *Towards Health with Justice: Litigation and Public Inquiries as Tools for Tobacco Control*. Geneva: World Health Organization.
- Bruni, F. (2002). Italy (Gasp!) starts to clear the clouds of smokers. *N. Y. Times*, November 12.
- Carr-Gregg, M. (1993). Interaction of public policy advocacy and research in the passage of New Zealand's Smoke-Free Environments Act 1990. *Addiction* 88(Suppl.):35S–41S.
- Castles, F.G. (1998). *Comparative Public Policy: Patterns of Post-war Transformation*. Cheltenham: Edward Elgar.
- Corrao, M. A., Guindon, G. E., Sharma, N., Shokoohi, D. F. (2000). *Tobacco Control Country Profiles*. Atlanta, GA: American Cancer Society.
- Cox, H. (2000). *The Global Cigarette: Origins and Evolution of British American Tobacco 1880–1945*. Oxford: Oxford Univ. Press.
- Duina, F., Kurzer, P. (2003). *Smoke in Your Eyes: The Struggle over Tobacco Control in the European Union*. Nashville, TN: European Union Studies Association, biennial meeting.
- European Commission (2003). Tobacco Control in EC Development Policy: A Background Paper for the High Level Round Table on Tobacco Control and Development Policy. DG Development and DG Health and Consumer Protection, Brussels. EU Council Recommendation (2002). 2003/54/EC, December 2, 2003.
- Fraser, T. (1998). Phasing out of point-of-sale tobacco advertising in New Zealand. *Tob. Control* 7(1):82–84.
- Godfrey, F. (2000). An overview of European Union tobacco control legislation. *Cent. Eur. J. Public Health* 8(2):128–131.
- Halbfinger, D. (2003). Smoking foes find opening in divided tobacco country. *N. Y. Times*, (March 4).
- Hall, P. A., Soskice, D. A., eds. (2001). *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. New York: Oxford Univ. Press.
- Jha, P., Chaloupka, F., eds. (2000). *Tobacco Control in Developing Countries*. New York: Oxford Univ. Press.
- Jordan, A., Wurzel, R., Zito, A. (2000). Innovating with “New” Environmental Policy Instruments: Convergence or Divergence in the European Union. American Political Science Association, annual meeting, Washington, DC.
- Kagan, R. A., Vogel, D. (1993). The Politics of Smoking Regulation: Canada, France, and the United States. In: Rabin, R. L., Sugarman, S. D., eds. *Smoking Policy: Law, Politics, and Culture*. New York: Oxford Univ. Press, pp. 22–48.

- Katz, S. (1997). Secular Morality. In: Brandt, A. M., Rozin, P., eds. *Morality and Health*. New York: Routledge, pp. 297–330.
- Kyle, K., Du Melle, F. (1994). International smoke-free skies: buckle up for take-off. *Tob. Control* 3(1): 3–4.
- Laugesen, M., Swinburn, B. (2000). New Zealand's tobacco control programme, 1985–1998. *Tob. Control* 9(2):155–162.
- Laugesen, M., Meads, C. (1991). Tobacco Advertising Restrictions, Price, Income and Tobacco Consumption in OECD countries, 1960–1986. *Br. J. Addict.* 86(4): 1343–1354.
- Lavery, B. (January 30, 2003). Ireland to ban smoking in the workplace (that means pubs, too). *N. Y. Times*.
- Leichter, H. M. (1991). *Free to be Foolish: Politics and Health Promotion in the United States and Britain*. New York: Cambridge Univ. Press.
- Licari, M. J. (2002). Comparative Policy Effectiveness: Smoking Regulation in 14 OECD Countries, Midwest Political Science Association, annual meeting, Chicago.
- Lieberman, E., Marmor, T. (2003). Tobacco Control in Comparative Perspective: Framing the Problems and the Puzzles, American Political Science Association, annual meeting, Philadelphia.
- Lowi, T. J. (1964). American Business, Public Policy, Case Studies, and Political Theory. *World Polit.* 16(4):677–715.
- Nadelman, E. A. (1990). Global prohibition regimes: the evolution of norms in international society. *Int. Organ.* 44(4):479–526.
- Nathanson, C. A. (1999). Social movements as catalysts of policy change: the case of smoking and guns. *J. Health Polit., Policy Law* 24(3):421–488.
- Nellen, M. E. A. H., Chapman, S., Adriaanse, H. (1995). Economic and social prosperity as a predictor of national tobacco consumption. In: Slama, K., ed. *Tobacco and Health*. New York: Plenum Press, pp. 323–328.
- Nielsen, L. B. (2003). American Tobacco Policy in the 20th Century: The Importance of Attention, Mobilization, and Causal Stories, Midwest Political Science Association, annual meeting, Chicago.
- Obinger, H., Wagschal, U. (2001). Families of Nations and Public Policy. *West Eur. Polit.* 24(1):99–114.
- Pierce, J. P. (1997). Australia's leadership role in the evolution of tobacco programs in the United States. *Health Promot. J. Aust.* 7(1):11.
- Read, M. (1996). *The Politics of Tobacco*. London: Avebury.
- Roemer, R. (1982). *Legislative Action to Combat the World Smoking Epidemic*. Geneva: World Health Organization.
- Roemer, R. (1993). *Legislative Action to Combat the World Tobacco Epidemic*. 2d ed. Geneva: World Health Organization.
- Roemer, R. (1995). Fighting Threats to Legislative Advances in Tobacco Control. In: Slama, K., ed. *Tobacco and Health*. New York: Plenum Press, pp. 979–981.
- Rose, R. (1984). *Understanding Public Policy*. London: Sage.
- Rose, R. (1993). *Lesson Drawing in Public Policy*. Chatham, NJ: Chatham House.
- Royal College of Physicians. *Smoking and Health: A Report on Smoking in Relation to Cancer of the Lung and Other Diseases*. London: Pitman Medical Publishing Co.

- Schneider, A. L., Ingram, H. (1997). *Policy Design for Democracy*. Lawrence: University of Kansas Press.
- Sciolino, E. (2003). French move toward curbs on smoking by minors. *N. Y. Times*, Feb. 12.
- Seeliger, R. (1996). Conceptualizing and researching policy convergence. *Policy Stud. J.* 24(2):287–306.
- Studlar, D. T. (2002). *Tobacco Control: Comparative Politics in the United States and Canada*. Peterborough, Ontario: Broadview Press.
- Studlar, D. T. (2003). Tobacco control and loss imposition in Canada and the United States. In: Pal, L. A., Weaver, R. K., eds. *The Government Taketh Away: The Politics of Pain in the United States and Canada*. Washington, DC: Georgetown Univ. Press, pp. 137–166.
- Tatalovich, R., Daynes, B. W., eds (1988). *Social Regulatory Policy: Moral Controversies in American Politics*. Boulder, CO: Westview.
- Thomson, G. W., Wilson, N. (2001). Tobacco Control Policy. In: Davis, P., Ashton, T., eds. *Health Policy in New Zealand*. Oxford: Oxford Univ. Press, pp. 237–254.
- U.S. Department of Health, Education and Welfare. (1964). *Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service*. Princeton: D. Van Nostrand Co. Inc.
- U.S. Department of Health and Human Services. (1986). *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*. Atlanta: Public Health Service, Centers for Disease Control, Center for Health Promotion and Education, Office on Smoking and Health.
- U.S. Department of Health and Human Services. (1988). *The Health Consequences of Smoking: Nicotine Addiction*. Atlanta: Public Health Service, Centers for Disease Control, Center for Health Promotion and Education, Office on Smoking and Health.
- U.S. Department of Health and Human Services. (2000). *Reducing Tobacco Use: A Report of the Surgeon General*. Atlanta: Public Health Service, Centers for Disease Control and Prevention, Center for Health Promotion and Education, Office on Smoking and Health.
- Wilensky, H. (2002). *Rich Democracies: Political Economy, Public Policy, and Performance*. Berkeley: University of California Press.
- Winstanley, M., Woodward, S., Walker, N. (1995). *Tobacco in Australia: Facts and Issues*. Melbourne: QuitVictoria. (<http://www.quit.org.au/quit/FandI/welcome.htm>).
- World Bank. (1999). *Curbing the Epidemic: Governments and the Economics of Tobacco Control*. Washington, DC: World Bank.
- World Health Organization Regional Office for Europe. (2002). *The European Report on Tobacco Control Policy: Review of Implementation of the Third Action Plan for a Tobacco-Free Europe 1997–2001*. Warsaw: WHO European Ministerial Conference for a Tobacco-Free Europe.
- World's Best Practice in Tobacco Control. *Tob. Control* 9(2): 228–236.

9

Children's Disability Policy in a Global World: A Question of Convergence

Dana Lee Baker

University of Missouri-Columbia, Columbia, Missouri, U.S.A.

I. INTRODUCTION

For most of the last millennium, disability was most often equated with disease (Smart, 2001, p. 41; Reinders, 2000). Under this medical paradigm of disability, the appropriate response was the quest for a cure. An individual with a disability was generally removed from society, or relieved of social participation (the “sick role”) until cured or able to function typically within society (Barnes and Mercer, 2003, p. 3). Over the course of the last generation, human ability has been redefined as distributed along continua that are differently observed in different social contexts. Abilities such as vision, hearing, mobility, emotional stability, and comprehension do not simply exist or not exist in individuals, but rather exist in relative degrees with relative significance. Adverse social or political effects of a given place on a continuum of ability are now understood as purely subjective.

As a result, disability has become a matter of external construction. This construction varies by function (what a person needs to do) and environment (what a person is expected to do) at both the social and individual levels (Smart, 2001). Furthermore, the size of the population with conditions designated as disabilities has been consistently increasing. This growing presence of individuals with influential differences calls the typical as an expectation for human ability even more into question than does the redefinition of disability alone. As the supremacy of the norm declines, adaptation on the part of societies' infrastructures is becoming a crucial component of the civil or human rights of individuals with disabilities. Given the timing of this paradigm shift, international convergence around a

dramatically more humanistic understanding of disability is an intriguing case study of the globalization of social policy.

II. WHAT IN THE WORLD DO WE MEAN BY DISABILITY?

As was demonstrated by their agreement to the United Nation's Salamanca Statement on the Education of All Disabled Children in 1994, the United States, Mexico, and Canada, along with 89 other governments, have expressed the intent to improve opportunities for children and youth with disabilities through inclusive education (Barnes and Mercer, 2003, p. 46). In the Western world, the impetus to provide special education as a means of promoting economic participation by some individuals with disabilities dates back to the Industrial Revolution (Pfeiffer, 1993, p. 724). However, what constitutes a disability is "a persistent unanswered question" (Peters, 1993, p. 4). Although the concept of disability has been relatively transcendent and universal, who is so described varied dramatically by social context (Smart, 2001, p. 3).

The current definition of disability is at a crossroads between subjective experience and technical diagnosis. Even as the ability to medically diagnose conditions has improved, policies have begun to emphasize the civil rights or pluralistic (and culturally sensitive) basis of disability (Cor Meijer et al., 1994). This constructivist philosophy has been centered on a criticism of a dominant medical approach to disability that emerged in the disability communities during the last quarter of the 20th century (Reinders, 2000, p. 2). As Barnes and Mercer (2003, p. 110) explain, "a key factor in explaining the transformation of the concept of 'disability' from an individual medical problem to a socio-political issue has been the extraordinary politicization of disabled people since the 1960s. It has generated campaigns at the local, national, and international levels." By the end of the 20th century, there were thousands of international organizations focused on disability. A basic Internet search for international disability organizations results in an excess of half a million hits. The focus and goals of these organizations vary with a marked divide between organizations "of" disability (those that tend to be more rights-based and constructivist in approach) and organizations "for" disability (which tend to be older organizations that are not generally led by individuals with disabilities). The most common goals of these organizations include the promotion of disability rights, civic education about disability, social networking for individuals with disabilities and their families, and promotion and advocacy of disability services.

The constructivist understanding of disability seeks to transform both the measurement of disability and the development and management of disability policy. As Smart (2001, p. 44) pointed out, "there are four general

categorical definitions of disability: clinical, legal, cultural, and personal. Most of the time, these four definitions of disability are in agreement, although occasionally these cross-categorical definitions may differ.” With an element of construction, they are more likely to differ. This potential for difference forces an individualized understanding of disability and, therefore, a change in recording systems and policy goals. In 2000, the Organization for Economic Cooperation and Development (OECD) published the *Special Needs Education: Statistics and Indicators*, examining how disability was described from an educational standpoint in member countries. According to the OECD (2000, p. 11), “in virtually all cases, the system in relation to special needs provision was reported to be in a state of transition.”

This transition includes figuring out how to count and classify subjective, culturally mediated experience on an internationally comparable basis. The constructivist understanding of disability moves the locus of analysis of disability from individual to society, and from place to purpose. During the late 20th and early 21st centuries, this was perhaps especially true when a census of disability was taken from the perspective of education. For example, at the end of the 20th century, the International Standard of Classification of Education (ISCED) of the OECD was revised. In the original classification, “special education was defined as the education provided in special schools; a definition wholly out of keeping with both theory and practice in many countries, and which in itself limit[s] interest in obtaining data in the area” (OECD, 2000, pp. 7–8). The new definition of special needs presented in ISCED-97 defines special needs education as any “educational intervention and support designed to address special educational needs” (OECD, 2000, p. 7). The OECD highlighted that part of the motivation for this change in definition was the spreading tendency to practice “inclusion,” that is to educate children with disabilities more or less alongside their peers by placing the responsibility for accommodation on the system rather than the student.

From the perspective of health policy and medical practice, potentially the most influential modern effort to reconstruct disability counting is the second International Classification of Functioning, Disability, and Health (ICIDH-2), which was released in its prefinal version in 2000. Somewhat ironically, given the criticism of the medical approach to disability, the first ICIDH was introduced by the World Health Organization in 1980 and this medical classification system introduced the distinction between impairment, disability, and handicap (Reinders, 2000, p. 42). Many disability activists and theorists found the distinction insufficient as it still placed the locus of responsibility for disability on the individual (Barnes and Mercer, 2003). The revision of the taxonomy is intended to serve as a tool for the diagnosis of disability that is constant enough across cultures to accommodate globalization but still subjective enough to satisfy the sensibilities of a pluralistic

disability paradigm. As is written in the explanation of the background of ICIDH-2, “the overall aim of the ICIDH-2 classification is to provide a unified and standard language and framework for the description of health and health-related states” (WHO, 2001).

At the close of the 20th century, the question of classification remained a difficult question from the perspective of a constructed understanding of disability. Although the subjectivity of disability associated with this transition is being experienced internationally, like many aspects of globalization, this focus on contexts (individual, social, political, and cultural) is in a tension of intentions with growing international interaction, behavior, and source of meaning (Barber and Schulz, 1996). As a policy arena undergoing significant redesign during the final years of the 20th century, the case of disability policy for children is being shaped around this tension. Furthermore, the relationship between disability and economics is changing. After all, “the perception [that] disabled people are ‘useless’ flows from their lack of engagement in mainstream economic activities” (Barnes and Mercer, 2003, p. 9). Because a constructivist understanding of disability rescinds the perception of uselessness, modern economics and disability are deeply intertwined.

III. GLOBALIZATION: TRYING TO THROW OUR ARMS AROUND THE WORLD

Globalization is simultaneously everything and nothing. For those that have access to a baseline of education or resources, the fact that the global experience is becoming the defining characteristic of humanity is seen as a unique characteristic of the modern era. Nevertheless, this supposedly new globalization could be considered nothing new, as it has been transcendent human habit to create separated cultures that interact with both suspicious hostility and mutually beneficial interaction. As George A. Cowan put it:

Despite occasional counter-trends over the centuries, the forces which determine the powerful actors in world affairs have, for various reasons, produced an increasing agglomeration of small groups into larger units, ranging in size from bands to clans to villages, to principalities, to nation-states, and, then, to superpowers. The size of the largest community with which individuals identify has tended to change in the same way, enlarging from the family and tribe to the nation-state, but not yet to international entities. If the historical trend continues, the next larger communities may emerge at international regional levels. (Dobell and Neufeld, 1994, p. 13)

The so-called new globalization could be seen, therefore, as nothing more than the current expression of an age-old phenomena. However, because

international trade increased 10-fold in the second half of the 20th century, the current evolutionary step is a big one (Education International and Public Service International, 2000, p. 5).

The public management of this growing trade has included both regional and more global international trade agreements that are sometimes designed with the force of law. As is often demonstrated in protest, there is concern that these international economic policies will result in accidental globalization of social policy. This is reasonable given that the connections developed through regional trade agreements are an important component of new globalization. The North American Free Trade Agreement (NAFTA) promises to be no exception. As Moran and Abbot (1994, p. 21) argued:

The NAFTA community, composed of three distinct nations, each with its own colorful history and sense of identity, was created for commercial reasons. The commercial fates of three diverse people have been united. This event presages an even greater degree of intercultural interaction between coming generations of Americans, Canadians, and Mexicans.

Whether or not these regional agreements will have a differentiable effect from globalization in general, and what effect globalization will have on social policy are not yet known. The consideration of the case of children's disability policy sheds some light on this question of convergence.

IV. METHODS FOR THE NORTH AMERICAN CASE STUDY

Constructivist disability policy is an emergent policy arena. Because the question of convergence is largely a question of experience, an interpretive methodology is advantageous (Yanow, 2000). As Yanow (2000, p. 11) explains, "the central question . . . for interpretive policy intent is, How is the policy issue being framed by the various parties to the debate?" As part of this case study, data were collected using a series of semistructured interviews with issue elites (i.e., professionals actively involved in the exercise of special education policy). The sample of elites included individuals engaged in all stages of the disability policy arena and both those who were consciously international in their behavior and those who were not.

The issue elites were asked questions about their own professional backgrounds; their perceptions and experiences of current policy, government, and politics; and international interaction. Approximately 200 interviews were conducted, with 184 responses that were both complete and given by issue elites within the policy arena in Canada, United States, and Mexico. For calibration purposes, the balance of the interviews was conducted with

individuals from other countries and, in the case of 10 early interviews, as a means of pretesting the survey instrument.

The included interviews were conducted between May 1999 and March 2001. "To ensure the anonymity of interviewees as well as the candor of responses, the author guaranteed that names and positions would not be used in reporting or in other accounts of the interviews" (Smith, 2003, p. 295), and, therefore, quotes from interviewees are not attributed to specific respondents. Because cultural, rather than individual, data were being collected in the case study, a nonprobabilistic sample of experts that included an element of snowball sampling was most appropriate (Bernard, 2002, p. 175).

A. Interview Structure

The interviews were almost all semistructured, except for three completely structured interviews that were filled out via the Internet or by fax. The template of interview questions was developed before any interviews were conducted and remained relatively unchanged despite deliberative reconsideration throughout the interviewing process. The questions are shown in Table 1.

The majority of interviews were conducted on a one-to-one basis. Some of the interviews were conducted during site visits. In two cases during the on-site interviews, individuals with the same occupation were interviewed in pairs. The interviews that were conducted on-site took place in: Austin, TX; Los Angeles, CA; Salmon Arm, British Columbia; Nanaimo, British Columbia; Edmonton, Alberta; and Mexico City. In addition, a few interviewees chose to fill out the interview template and to send responses via e-mail or fax. The rest (and vast majority) of the interviews were conducted over the telephone.

B. Focus Population and Sampling

As a result of a heightened, yet somewhat ghostly, awareness of the disability policy arena, the pool of potential interviewees was, in a sense, both vast and limited. As with any social policy arena, policies designed to address society's needs associated with children with disabilities have numerous kinds of stakeholders representing a variety of walks of life and advocating almost countless goals.

Because generalization from individuals to a larger population was not the goal of the sampling, it did not make sense to use random sampling (Bernard, 2002, p. 175). Purposive sampling was the key to getting a complete picture of how the policy arena was being framed. Snowball sampling was

Table 1 Core Research Questions for Semistructured Interviews

Core questions related to experience with special education

- 1) How long have you worked in special education and/or disability-related fields?
- 2) In what capacities have you worked with special education and/or disability policy?
- 3) What first drew you to special education and/or disability-oriented issues?
- 4) How has the environment of special education changed over the time you have worked in the area?
- 5) Do you intend to keep working in the special education and/or disability-oriented public policy area for the next 5 years? Why or why not?
- 6) What is your typical day like?

Core questions related to current policy and practice

- 1) What are the best attributes of special education and disability public policy as it is currently written?
- 2) What are the best attributes of special education as it is currently practiced?
- 3) What (if any) problems currently exist in special education and/or disability-oriented public policy formulation or practice?
- 4) Which concepts or beliefs do you consider most crucial to the development of effective special education practice?
- 5) What (if any) do you think are the most significant barriers to the implementation of special education and/or disability-oriented public policy?

Core questions related to government and politics

- 1) What do you think is the most appropriate level of government for special education and disability policy to be formulated?
- 2) What role does politics play in your job?

Core questions related to international issues

- 1) Do you consider special education and/or disability public policy or practice to be an issue of international concern? Why or why not?
- 2) What instances of international interaction in special education and disability policy or practice have you seen?
- 3) Have you ever discussed special education and/or disability policy with practitioners or policy makers from other countries? If yes, which countries and what did you discuss?
- 4) Do you use any international agreements or statements on special education or disability policy as part of your work?

Core questions related to economics

- 1) How would you characterize the relationship between special education and disability policy and the economy of your country?
 - 2) Do you think international agreements like NAFTA or the European Union will have an effect on education (particularly special education) or disability policy? If so, how?
-

also employed due to the fact that some of the issue elites might otherwise have been difficult to locate (Bernard, 2002, p. 179). Initial contacts were made via e-mail or the telephone, usually on a cold-call basis.

Several individuals were also located on-line. The publication of the telephone book for all of Mexico on the Internet in 1999 greatly facilitated connecting with individuals in Mexico via telephone. In Canada and the United States, most school districts, provincial or state governments, universities, and nonprofit organizations had, or were developing, websites during the interview period. A few people who had heard of the project from colleagues also contacted the author directly asking if they could contribute.

C. Sample Characteristics

Interviews were conducted on disability policy stakeholders from Canada, United States, and Mexico. Of these, 70 were from Canada, 68 were from the United States, and 46 were from Mexico. These interviews included people from 7 Canadian provinces, 20 states and the federal district in the United States, and 10 republic states in Mexico (including the federal district). Most of those interviewed had had long careers in disability-related fields, with an average career length of 20.5 years. The range of length in time of career was 6 months to 46 years.

Respondents' job titles were varied. Examples include: president of teacher's union, policy analyst, school president, principal, chair of department of special education at a major university, and nongovernmental organization directors and superintendents. The reasons for entering the field varied; however, most of those in the sample had entered as a result of an experience with a first-degree relative such as a sibling or child. Just under half (88) of the interviewees were current practitioners, meaning that they were currently working with children with disabilities. Of course, the vast majority had had many different types of jobs related to disability policy over the course of their careers.

V. POLICY CONVERGENCE: NORTH AMERICAN CASE STUDY

The interviews suggested a limited convergence. Convergence of policy process has yet to come to pass in children's disability policy, and yet there is significant convergence of policy intent and structure. The following is a discussion of highlights of North American children's disability policy development in the late 20th century. Summary characteristics of these policies are shown in Table 2.

Table 2 Characteristics of Rights-Based Special Education Policy

	Lead level of government	Pioneering inclusion policy	Date	Rule governing access to special education
Canada	Province	Bill 85 (New Brunswick)	1986	Varies by province; generally individual assessment
United States	Federal	Education for All Handicapped Children (PL 94-142)	1975	Based on diagnosis followed by individualized planning
Mexico	Federal	Amendment to Article 3 of Constitution	1993	Observed inability to manage federally established lesson plan

A. Children’s Disability Policy in Canada in the Late 20th Century

Whereas in the United States acceptance of a federal dimension of education has preceded acceptance of a federal dimension of health care, social policy development in Canada has taken the opposite federalist course (Puttee, 2002). Canada committed to a system of socialized medicine that establishes the expectation of federation-level policy innovation in health care. Philosophical underpinnings and policy expectations are federally established. Provinces and territories have increasing fiscal responsibility implementation and have an interpretative role in policy.

When it comes to the other major arena in which policies addressing needs associated with children with disabilities is formulated—education policy—Canada has been emphatically nonfederal. The Constitution of Canada established the management of education as the almost exclusive right of the provincial governments. There is no federal policy regarding the education of children with disabilities. As one special educator from Alberta explained, “in Canada, we don’t really have a choice, it is going to be provincial. That’s what we’ve got; and it is fair enough. It needs to be regional like that. I mean, it would be better if we could have national policy, but it isn’t a choice.” A teacher’s union member from British Columbia agreed, saying that the most appropriate level for the formulations of special education policy is “definitely the provincial level.” Another British Columbian concurred by saying “in our case, it needs to be the provincial level. There is no alternative.” A policy analyst for a community living group responded to the

same question by saying “that is a real interesting question. There is a real role for the provincial government because they currently hold so much power. It is the best place for it to be worked out now.” This expectation is, in fact, so ingrained that several Canadian respondents answered the question about space for an international policy in special education by speaking of the potential (or lack thereof) for national policy. Due to this reality, the elements of recent special education policy histories of the four case provinces that highlight the main thrusts of children’s disability policy in Canada are discussed: humanistic innovation into inclusion, testing the limits of inclusion, accountability, and facing inequality.

1. Innovation in Inclusion: Special Education Policies in New Brunswick

In 1986, Bill 85 mandated the integration of children with disabilities into public schools in New Brunswick. This bill established New Brunswick as a philosophical leader in special education (Government of New Brunswick, 2000). The policy was not immediately popular. According to Mazurek and Winzer (1994, p. 376), “although the law and policy in New Brunswick are clearly the most supportive of integration of any Canadian province, the continuing controversy over integration and intense pressure from the province’s teacher’s union prompted the minister of education to review the integration process in 1989.”

The fundamental tenet of the protest against the integration was that the classrooms would be rendered incapable of providing education to any students (Mazurek and Winzer, 1994, p. 376). Despite this protest, the trend of New Brunswick’s special education policy has remained firmly inclusion-oriented. A new education act was assented to in February 28, 1997.

2. Inclusive Growing Pains: Special Education Policies in British Columbia

According to the 1999 review of special education in British Columbia conducted for the Ministry of Education, “educating students with special needs has a long history in British Columbia . . . the first recorded legislative appropriation to provide for the education of ‘handicapped children’ in British Columbia was made in 1890 for deaf children who were sent to attend the Institution for the Deaf and Dumb in Winnipeg Manitoba” (Minister of Education, British Columbia, 2001). In 1955, provincial grants for handicapped children were introduced. In 1970, the system was expanded to include a special education division of the Ministry of Education that issued its guide for the provision of special education in March 1970. The system established through this policy remained in place until 1982.

During the 1980s, a paradigm shift in the provision of special education began to take form in the special education policies in the province (Minister of Education, British Columbia, 1995). As is described in the 1999 provincial review, "the 1980–1981 document was much more comprehensive, and there was an increase in the provision of program specifics compared with earlier versions . . . the 1981–82 version placed emphasis on the need for Individual Education Plans and included a section on program evaluation" (Minister of Education, British Columbia, 2001). The *School Act* required that every child be provided with free and appropriate education.

Along with the creation of the Canadian constitution, the *Canadian Charter of Rights and Freedoms*, more individually centered focus on special education was deemed necessary. According to the provincial review, "in March 1987, the BC government established a Royal Commission on Education . . . in relation to special education, the commission recommended: that rights of special needs learners and their parents be clarified in the *School Act*, together with provisions by which any disputes between parents and school authorities would be referred to, and settled, through appropriate third-party action" (Minister of Education, British Columbia, 2001). In addition to this increased focus on the individual, the commission recommended that mandates for the provision of special education be clarified. Part of the difficulty lies in a perceived lack in coordination of programs. As one respondent from British Columbia put it, "the problem is that there are so many bureaucratic documents. They could use streamlining . . . the philosophy is that it would be far more supportive of practice if the ministry were to develop something more streamlined." In response to these recommendations, the *School Act* was revised in 1989 to state that all school-aged children were entitled to a public education program "designed to develop the potential of the learner" (Minister of Education, British Columbia, 2001). As is the case across North America, implementation of current special education is challenged by funding limitations, as one representative from a teacher's union put it, "up until last year when we polled our members, we found that support for mainstreaming was declining. Many teachers were saying, 'I believe in it, but I am not coping'." The perception, as one respondent from British Columbia put it, was that when it came to integration, "the policy does not allow for a continuum. The impetus has been to try to aim for full integration but with a concern about how, which subjects, and what good is done . . . the crucial question is the level of inclusion." When asked what the most significant barriers to effective implementation were, this respondent went on to say, "generally, it is scarce resources. British Columbia has some of the best funding in Canada. It has been increasing, but not at a rate of inflation and not enough to serve the need."

3. The Ascendancy of Accountability: Policies for Children with Disabilities in Alberta

The end of the 1990s ushered in an era of relative political conservatism in Alberta and a deliberate movement toward the business style of governance. The language of accountability and debt reduction was key to much of the political rhetoric at the close of the second millennium. A member of the Alberta government explained, when asked about problems with special education policy in Alberta, “the whole area of accountability. There is no good database with respect to outcomes and other data related to accountability. Most of the problems are related to the issues of accountability.” A special educator facilitator concurred by saying, “the accountability thing is really a problem. Nothing in the accountability measures really get to how successful we are.” Education spending dropped in Alberta during the late 1990s. As was pointed out in the October 1999 issue of the Alberta Teachers Association (1999, p. 4), “in 1993/94, Alberta spent \$29.53 per student per school day. By 1998/99, that expenditure had dropped to \$28 per student per day in constant 1993/1994 dollars . . .” This conservatism has affected both special and general educational services in Alberta.

As part of these cost-cutting measures, special education policy was folded into the general education policy. One educator from Alberta explained, “in Alberta, the fact is that the policy is very succinct as written. It says we know where children belong and that they belong together.” A member of the Alberta government explained, “we don’t have a single policy—we have two or three of them . . . In Alberta, it is all policy-driven—due process and all other elements are embedded in the policy.” The *School Act* was supported by two policies: the *Educational Placement of Students with Special Needs* (Policy 1.6.1, January 9, 1996) and *Special Education* (Policy 1.6.2, January 9, 1996). These policies “address the procedures for identifying students with special needs, the manner in which programs are developed, the documentation required, and the role of parents and of the department” (Horowitz et al., 1997, p. 2). Despite these mandates, the *School Act* established that school boards are responsible for providing special education services and for most program development. There was no formal vision statement and, as was reported in a 1997 Blue Ribbon report, “without a statement of philosophy and standards, decisions about integration and resources are often made in isolation and with reference only to budgetary considerations . . . as a result, integration is sometimes viewed as a way of cutting costs rather than as an educational opportunity available to all students with special needs” (Horowitz et al., 1997, p. 4).

Inclusion was central to special education in Alberta in the late 1990s. The Associate Health and Wellness Minister said “I share their (*Albertans*)

commitment to the principle of inclusion as well as individual choice. . . our aim is to improve a system of supports that is already a leader in Canada and throughout the world” (Alberta Teachers Association, 1999, p. 4). During the last third of the 1990s, however, concern arose in Alberta that administrative dictates were making it too difficult to teach in Alberta. Special education was one of the areas faulted for creating barriers to learning. A committee from the Alberta Teachers Association wrote, “the concerns identified in *Trying to Teach* were often connected to the provision of resources in various forms—necessary support for the integration of children with special needs; appropriate class size to allow for individualization; and time for professional development, for meeting with parents, health care workers, and psychologists and for the many other tasks identified” (Alberta Teachers Association, year unknown, p. 1). It seems that the cost of providing for the needs of children with disabilities is more noticed when the costs are associated with programs for the general population.

Furthermore, in the last few years of the 20th century, inclusion of children with disabilities into the general education classroom became less popular with some parents. As one special education teacher who had recently returned to the classroom explained, “when I came back this year, the first thing that I heard the first day from the parents of some of my students was ‘my kid does not get integrated.’ I had never heard that before. The motivation seemed to be that the parent had ‘been there, done that’ with integration and found that it did not provide appropriate services for their child.” The wave of development of special education policy was actively unfinished at the end of the 1990s in Alberta.

4. Facing Exclusion: Special Education in Québec

Québec and Saskatchewan were the only two provinces in the federation with a right to education during the late 20th century. The guiding policy for special education in Québec was the “Plan d’Action en Matière d’Adaptation Scolaire: Une École Adaptée A Tous Ses Éléves,” or, in a less-than-exact translation in the English version release, “Adapting Our Schools to the Needs of All Students: A New Direction for Success.” The Plan d’Action was written in 1999. The policy replaced a policy written in 1992 because, according to the Minister of State for Education and Youth, “in order to truly lead these students to success, we must go further than the current policy . . . and provide Québec schools that are really adapted to the needs of all students” (Ministry of Education, Québec, 1999, p. 5).

The policy came about as part of a general reform of Québec’s education system, began in the fall of 1996. Linguistic school boards came in the wake of the near-successful succession movement of 1995. According to the Ministry

of Education, Québec (1999, p. 16), “the key idea of the reform is that the education system should take a new direction for success: success for as many students as possible.” The special education policies in Québec, are, therefore, part of a reform within a reform within a province with a long and deep history but a somewhat tenuous recommitment to the federation.

The *Education Act* was as much a special education act as it is an act for general education in Québec. The Ministry of Education summarized the changes to the *Education Act* in several key aspects, of which special education is the fourth. Special education includes: students’ rights, adaptation of services, Individual Education Plan, and an organization of services that maximizes the potential for integration of the student with his or her age peers and favors a proximity of the location of the education service delivery to the student’s home. The rights-based standard in the 1996 reform for students with special educational needs was “the right of the student with special needs to receive educational services is reaffirmed; for students with handicaps, this right extends to the age of 21” (Ministry of Education, Québec, 1999, p. 5). Furthermore, integration was favored, so long as it makes sense for the student and the educational rights of other students are not undermined.

This statement on integration (or inclusion, depending on translation) reflects an experienced-based understanding (especially in terms of the balancing of rights) of the philosophy that is present in much of the North American policies. Finally, *Adapting the Schools to the Needs of All Students* requires that school boards establish both an advisory committee and a parents’ committee. These committees encouraged more local input to the development of policy and its implementation than is expected given the central role of local school boards.

In spite of progressive philosophy and efforts, Québec was perceived, particularly by those in the province working in the field, as being behind much of North America in special education philosophy and service delivery. Part of the reason for this is the delay in translation of research. For many in Québec, a monolingual French lifestyle is a matter of tradition and choice. Although the discrepancy is not obvious in the policies themselves, it is a perception of a cause for a lack of an ideal system and may well have hindered the implementation of special education policy in Québec.

B. Children’s Disability Policy in the United States

The first federal policy written from the perspective of a civil rights-based approach to disability policy was Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in federally

funded activities. The origins of the statement are largely unknown. As is described in *No Pity*:

When sociologist Richard Scotch later studied the act's legislative history, he found that congressional aides could not even remember who had suggested adding the civil rights protection. But the wording clearly was copied straight out of the Civil Rights Act of 1964, which ruled out discrimination in federal programs on the basis of race, color, or national origin. There had been no hearings and no debate about Section 504. Members of Congress were either unaware of it or considered it 'little more than a platitude' for a sympathetic group, says Scotch. Professional and charitable groups representing disabled people were sophisticated in winning multibillion-dollar federal funding, but had not focused on civil rights legislation. (Shapiro, 1993, p. 65)

In the United States, the policy point of origin for the rights-based paradigm was not specifically education (Barnes and Mercer, 2003, p. 1).

Nevertheless, it was with education policy that the civil rights-based paradigm of disability policy made its first powerful rupture with the dominant paradigms of the past. The Education for All Handicapped Children Act of 1975 (PL 94-142) fundamentally changed the American public school system. According to the National Council on Disability (2000), "by the early 1970s, parents of children with disabilities in 26 states had initiated litigation asserting their children's right to attend public schools under the 14th Amendment of the U.S. Constitution and the same equal protection arguments used on behalf of the African-American school children in *Brown vs. Board of Education*." By the mid-1970s, the ability to attend public schools despite disability was a right established at the federal level of government. By the end of the 20th century, there was near-universal tacit acceptance of a federal role in education among those involved in the special education policy arena. As one respondent put it, "there has to be a federal level . . . it is a civil rights policy designed to protect people and that must be the same across the country." The majority of respondents described this individualized right as one of the best attributes of special education policy (as written) in the United States. For example, a project director from Minnesota described the best attributes of special education policy as "that every child has an individual plan, that parents are expected to be involved, and that there is a set process to use."

Unlike provisions for other minority groups, these rights were to be consistently monitored on an individual level. This individual monitoring was motivated by a sense that children with disabilities were an invisible minority. As a national project director explained, "when I started it was before the federal law. At that time special education was very much the stepchild of

regular education. It was viewed as a holding action for kids who probably should not be in school anyway. A lot of kids were not even in school.” As was accidentally discovered by the Children’s Defense Fund, prior to the passage of PL 94-142, there were approximately 1 million children with disabilities not attending public school because the schools refused to serve them. Furthermore, 200,000 children with disabilities were institutionalized and 3.5 million were in schools, but not receiving appropriate services (National Council on Disability, 2000). Many states had laws that explicitly excluded students with disabilities from public schools. The right to public education, especially as established at the federal level of government, was a significant cultural change.

PL 94-142 is the point of origin of much of the special education lexicon in the United States (and North America). Phrases such as “least restrictive environment” and “free and appropriate education” were made famous with this law. Education is not a federal right for all children in the United States, and no other group has been as explicitly protected except children experiencing homelessness. Although perhaps an accident of history, this technicality lays out a constructivist philosophical position that the safeguarding of civil rights of individuals with disabilities requires explicit effort at accommodation (if not sacrifice) on the part of the society at large.

The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990. The ADA was the first broad-based federal law in the United States that was not tied to a specific location or activity. When the ADA was first being implemented, Individuals with Disabilities Education Act (IDEA) was both a phenomenal success and a hotly contested disappointment. When compared to where children with disabilities were prior to 1975, the children with disabilities in the United States had been given and achieved a far better position in society. A respondent from Massachusetts explained, “we need to continue to remember that all means all. A lot of people are drawing lines in the sand on inclusion in ways that continue to amaze me. We need to stay on the policy path we are on. It is very productive.”

However, by the end of the 1990s, there was growing dissatisfaction with IDEA. States were routinely out of compliance with the federal policy and the federal government never delivered on the promised 40% matching rate for the state’s expenses. Furthermore, there was a growing sense that the civil rights-based approach to special education was privileging children with disabilities. As a respondent working on policy at the national level put it, “there is an old saying that today’s problems are yesterday’s solutions. The policy is good and well intentioned. A lot of problems are the result of the way in which the policy was implemented.” Another policy maker explained, “schools don’t understand the policy completely. Teachers don’t understand it. It is not an easy problem—there is not a simple answer, there is a lot of complexity.” Finally, there was what one teacher and policy maker from

Arizona described as “a blur in the line between special education and social policy.” As she explained, “for example, there are court cases based on who should be paying for medical services to medically fragile students. The school is having to pay for them when in the past it would have been a social welfare concern. There will be court cases for a long time working that out. That debate will go on for a long time.”

Such policy tensions around the right of the individual child with the disability vs. the rights of the community at large stalled the 1997 reauthorization of IDEA. For example, the discipline of children with disabilities became a major focal point of debate. Under IDEA, a child with an Individual Education Plan could not be disciplined without consideration of their plan. Prior to this provision, disciplinary procedures such as expulsion were used as de facto means of excluding children with disabilities from public schools (OSERS, 2000, p. 1). Some felt that this provision meant that children with disabilities who were a danger to their communities could not be efficiently removed from public schools. This perceived danger was underpinned by the historical coincidence of several widely publicized school shootings. The issues of such extreme school violence and the discipline of children with disabilities were linked in the minds of many despite the fact that, as one respondent working on special education policy at the state level put it, “none of the trigger children were special education kids.” Discipline was so hotly contested during the reauthorization and the subsequent formulation of the implementation regulations that the issuance of the regulations was delayed until the spring of 1999 (OSERS, 1999).

The major structural changes made during the 1997 reauthorization included: a commitment to high educational expectations for children with disabilities implemented, in part, through participation in standardized tests and standard curriculum; a promise and expectation of a strengthening of the role of parents in the education of children with disabilities; an increased effort at coordination of services across both level of government and with noneducational services provided to children with disabilities; the promise of the provision of appropriate support for classrooms in the incorporation of children with disabilities; and, finally, an increased commitment to the professional development of educators who work with children with disabilities. A key component of the federal implementation of the IDEA reauthorization was Section 674(b), which “mandates a systemic evaluation of the impact of the law, first assessing progress in implementing the provisions of the Act and ultimately evaluating progress toward achieving the objectives of the Act” (OSERS, 2000, p. 5). This requirement is important because it could be the first systematic, federal reconsideration of the effect of the policy shift toward civil rights-based policy addressing the needs of children with disabilities in the United States.

The last landmark United States policy addressing the needs of children with disabilities during the 20th century was the 1999 United States Supreme Court decision in *Olmstead vs. LC*. This decision upholds a commitment to the philosophy of community inclusion. The core of the *Olmstead* case was the question of whether or not states should be obligated to provide community-based, rather than institution-based, care to those individuals for whom community-based care is medically understood to be the preferable option (Rosenbaum, 2000). According to the court's decision, unjustified isolation of individuals with disabilities is a violation of civil rights. Reports of horrendous conditions in institutions—especially institutions serving children—began in the 1960s. The awareness of these atrocities, along with the benefits that have been observed through the successes of the inclusive education system, has led many to believe that the institutional setting is never appropriate for children. Community inclusion movement holds that children have a right to grow up in families. At the end of the 20th century, it was not yet clear how this right would be manifested over time, or whether further changes in children's disability policy would be necessary to exercise this right. Through quick establishment of State *Olmstead* commissions (Texas, for example, commissioned several studies and convened official bodies less than a year after the *Olmstead* decision), states signaled some understanding of the changes in policy and social infrastructure necessary under this expanded understanding of disability-related rights.

C. Children's Disability Policy in Mexico

In most discussions about disability policy in Mexico, the resounding theme is that disability was historically a source of shame (Fletcher and Bos, 1999; Sabio, 1999). There was some mediation of this effect in rural culture when individuals with disabilities were able to find useful occupation in the context of a less complex culture and where the extended family was available for constant support. In the urban and developing centers of the 20th century, however, disability tended to be associated with familial hardship and embarrassment (Sabio, 1999, p. 1).

This traditional attitude remained entrenched in Mexican society and public policy longer than in the rest of North America. Mexico's disability policy development has been arguably slower than necessary given the abilities and resources of the country. As a language therapist from Mexico City explained:

We are still in diapers in special education. Compared to Canada, where some of my friends went to work, we are very far behind. Here it is very segregated. You have schools for kids with each disability. Or they have

schools where they throw together all sorts of kids. It depends on who the current director of special education is. Often when they speak of integration, it just means that they have the child with the disability in the room just hanging around.

However, disability policy development progressed more rapidly over the course of the 1990s (SEP, USAER, 2000). The main thrust of the new policy is the integration of children with disabilities traditionally excluded from Mexican public education (SEP, 2000).

This policy development is somewhat unsurprising. At the end of the 20th century, Mexico began to emerge from a relatively authoritarian regime that had lasted over 70 years. There is wide acceptance of a federal level of policy. For example, as one respondent from Mexico City answered when asked about the best level for policy formulation, "I believe that general policies should be formulated at the national level, but with space for adaptation and application at the state level." Also, Mexico has a long history of commitment to education, at least to the philosophical assumption that education is valuable. The oldest university on the American continent is in Mexico and its Ministry of Education was established in 1921. Mexico is the only North American country in which the right to education is established in the federal constitution. In Article 3 of the Public Constitution of the United Mexican States, it is stipulated that "every person is entitled to receive education and it likewise decrees that attendance to elementary and lower secondary schools is mandatory and that the state is bound to provide preschool, elementary, and secondary education" (SEP, Profile of Education in Mexico, 2000). It is further stipulated that the education must be free, secular, and directed by the results of scientific progress. Although this policy intent has never been close to being realized in Mexico, its existence matters in the context of both democratic and globalized state building.

Special education has deep, if thin, roots in Mexico. According to Sofialestia Morales:

The tradition of special education in Mexico goes back to 1867 and the presidency of Benito Juárez, who issued decrees that resulted in the founding of the National School for the Deaf and the National School for the Blind in 1870. Since then, many services have been established to meet the needs of minors with disabilities. (Fletcher and Bos, 1999, pp. 110–111)

Special education policy began to be developed in the mid-20th century and the Normal School of Specialization was created in 1943 to train teachers to work with children with mental retardation and other learning difficulties (Fletcher and Bos, 1999, pp. 110–111). The federal special education office was not created, however, until 1970. Although early special education policies were created in Mexico around the same time that they were created

in other countries in North America, they were not replaced as quickly. In addition, the policies acutely lacked full implementation, especially in rural arenas.

By the end of the 20th century, however, “special education in Mexico, in keeping with international trends, is in the process of transformation” (Fletcher and Bos, 1999, p. 121). As one school director explained, “the atmosphere has changed a lot because it used to be very closed, there wasn’t a lot of change in special education . . . it is in the last couple of years [that] there is more attention put on special education and more emphasis on having kids interact with normal kids.” Another director from Guadalajara explained, “when I first started working with special education, people with disabilities were isolated and left out of society. Now they are much more accepted. The government now offers much more assistance to people with disabilities.” The transformation was also connected to a general educational reform. As the Secretariat of Public Education explained:

In 1993, an amendment was passed to Article 3 of the Constitution, which gave it its current status . . . in addition to establishing the right of every Mexican to an education and [in] addition [to] the government provision of the lower secondary education as mandate, it now enshrined the right of the Federal Government to determine the study plans and programs of elementary, lower secondary, and teacher education for the entire Republic. (SEP, 2000, p. 11)

Furthermore, the 1993 *General Education Law* was the “first time in Mexico’s history [that] a law was passed encompassing special education and defining its sphere of action and participation as a modality of basic education” (SEP, 2001, p. 52). The policies were rooted in the philosophy of human rights. Within the special education policy, a student is considered to have special needs if he or she has difficulty keeping up with the study plans. Access to special needs education is not diagnosis-based. According to SEP, “we must stress that this concept does not refer to the handicap of a particular student, rather to the difficulty faced both by the student in the learning process as well as by the teacher who has to develop a method for teaching the different academic context” (SEP, 2000, p. 53). Another policy created during the 1990s addressing specifically children with disabilities is the *First National Register of Minors Showing Some Indication of a Handicap*, which was created in 1995. This initiative was essentially a health and welfare policy initiative designed to help Mexico define and measure and thereby come to successfully manage disability in the country. A policy designed to require changes to the physical infrastructure contained in *The Acquisitions and Public Works Act* of 1995 was also designed to increase the accessibility of buildings (including schools) in Mexico.

The special education policies in Mexico developed in the late 1990s were somewhat different from others in North America. First, the implementation plan for the new special education policies in Mexico involved both integrated and separate systems. Also, the supportive systems are designed in a top-down structure that involves not only the philosophical approach to special education, but day-to-day program management and delivery. Finally, the two systems were seen as a choice that is not necessarily or solely based on the student's diagnosis. According to SEP (2000, p. 53), "mechanisms for facilitating this access can be enrollment in an ordinary school (with the required assistance), or a special institution. . . choosing between these two options depends upon the situation of the student, his or her family, and on the education conditions available to them."

In the basic education system, these two options were offered through the Regular Education Support Units (USAER) for the former and the Multiple Attention Centers (CAM) for the latter. In 1998, there were 1523 USAERs and 980 CAMs in Mexico, which served close to 111,800 students. SEP (2000, p. 54) explained that of the students served, "94 percent. . . showed special educational needs while the remaining six percent showed some kind of handicap." Many of these programs were offered through the same facilities that existed prior to the introduction of the new policies. According to SEP (2000, p. 54), however, "it is important to state that all special education professionals who used to work with the former clinical rehabilitation approach have gained awareness and their activities have been brought in line with the new educational integration approach."

A USAER is "a special educational operative body that uses regular school as a work base . . . its sphere of action covers an average of five basic education schools and receive[s] the attention and support of expert personnel: educators; psychologists; specialized teachers; social workers; and language therapists" (SEP, 2000, p. 54). The role of the USAER staff is to evaluate students with special needs attending the schools that are part of their sphere of action and then design a program for these students on the individual level, in coordination with the regular education teacher and the student's parents. According to SEP (2000, p. 54), "the operation of this system represents a change in scholastic dynamics and demands considerable effort for motivating and updating the teaching staff of the schools that participate . . . in rural areas, the USAERs are installed in peripheral networks to support the process of integration."

The CAMs, on the other hand, are essentially separate special education schools that existed prior to the introduction of the new policy. As SEP (2000, p. 54) explains, "these receive children and juveniles with every kind of handicap and place them in the grades or levels best suited to them . . . by providing access to the basic curriculum, these centers make the necessary

adaptations to the methodology and teaching and learning techniques so as to follow the free textbooks and other educational materials.” The CAMs also provide job skills training.

Much of the disability policy intent in Mexico is still the stuff of dreams. The nascent system faces many obstacles. As one therapist and psychologist from Puebla explained about the changes in policy, “in Mexico, not much has changed because it remains the same educational structure.” Lack of resources is a consistent challenge. As a chairperson of a national disability organization put it, “public schools are required to accept all children, but the teachers are not educated about various diseases or disabilities and don’t know how to deal with children who suffer from these diseases or disabilities as a result. Children don’t learn as much and the teachers become uncomfortable.” One difficulty was professional salaries. As a psychologist from Tampico explained, “a psychologist in an official school receives maybe \$100 dollars in three months. In the U.S., a psychologist makes \$100 in one hour. I make about \$100 a day in 12 hours of work. With salaries like these, most don’t dedicate themselves to special education.” Mexico has a potentially tougher job to accomplish with (currently) less financial resources than in many parts of the United States or Canada (Rosenthal, 2000, p. iii).

Mexico is also more challenged by inequality of services than either the United States or Canada. As Werlin (2003) points out during the late 20th century, “only half of Mexican children made it through primary school” (338). An accountant from a school explained, “integration into public schools is good for the children who can actually integrate, as well as for the normal children, so that they can learn to accept the special education children, but Mexico doesn’t have the infrastructure in place to be able to accept all children.” It is not so much that the extremes are different—there is extreme poverty in parts of Canada (especially the furthest north among the first Canadian populations and in fishing communities in the east) and in the United States (e.g., in the urban centers documented by Jonathan Kozol) and wealthy citizens in Mexico, especially in the federal district, have access to services that are among the best in the world. The relevant difference is the distribution of the population along the continuum. Policies being created and implemented to address needs associated with children with disabilities are necessarily affected by inequalities extant in the infrastructure of services generated through social policy:

The different initial education services do not provide for all the existing demand[s] for services. With respect to children with disabilities, a limitation of the model is that when children with disabilities are identified, parents are only made aware of the need to adequately attend and rehabilitate these children through the Programa Nacional para el Bienestar y la Incoorporación al Desarrollo de las Personas con Discapaci-

dad (DIF) but are not given instructions as to how to do it. (Fletcher and Bos, 1999, p. 22)

As a result, as was the case in other parts of North America, the new rights-based policies are contested by some issue stakeholders. When asked about the best attributes of the new special education policies, a respondent from Puebla said, "the policy of integration. Students now go to school with everybody. However, there is a strong syndicate of teachers who don't feel that integration is such a good idea."

In spite of these challenges, however, the change in policy in Mexico remains promising. Unlike the case in Canada and the United States, Mexico is undergoing the shift toward a civil rights-based approach to the management of disability all at once. It is possible that this approach, along with contemporaneous building of increased infrastructure in general education that will begin by being inclusive, will prove successful in the long run.

VI. CONCLUSION

Policy arenas are marked by occasional paper revolutions. The North American countries were in revolutionary eras of policy formulation in the special education policy arena in the last years of the 20th century. Policy makers began using the language and expectation of inclusion, and there was much tinkering around the edges of these policies to ensure their continued entrenchment. This tinkering is affected by the changing world for which students are being prepared. Countries that bring their economic destinies deliberately into closer tandem are likely, over time, to coordinate social practices such as policies for children with disabilities.

Delineating the changes to social infrastructures necessary for the successful incorporation of children with disabilities in society is an arena of co-concern for nations brought into close economic relationships. When developed into public policies, the modern understanding of disability forces a seismic change in the nature of political participation and the social contract. Evidence of the beginnings of deliberate convergence of children's disability policy appeared in policy in North America in the late 20th century. Somewhat differently from the policy responses seen in other parts of the world, rights-based policy was the near-exclusive entrenched policy response to the emergent constructivist understanding of disability. This is important in the context of globalization because constructivist-oriented disability policy tends to reconstruct political and social participation as a positive, rather than negative, right, which implies that democratic systems are taking on new roles of ensuring (rather than just protecting) the potential for participation by citizens. The expression of this right will be shaped by the

fact that society's infrastructures (both public and private) are becoming less restricted to single nations. As Barnes and Mercer (2003, p. 149) explain, "overall, the politics of impairment is inseparable from the politics of global poverty and inequality, and the social, economic, political, and cultural changes resulting from capitalist industrialization and globalization."

Disability was radically reconceived in the late 20th century in that a cure is no longer expected to precede the participation in the community. Disability policies in the modern era have included many nonincremental leaps of faith. At base, in terms of the nature of the policy movement, this is similar to the steps being taken in the era of new globalization and in the creation of regional ties.

Most respondents seemed to operate under the assumption that the children's disability policy arena is likely to continue to converge in the coming era into a coherent philosophical suprafederalism combined with a public management style that is idealized as highly local. Philosophy and format for measurement of outcomes are likely to become increasingly similar in the region; however, the operationalization of these outcomes is left largely up to the local levels of authority. The region of North America is at a very early moment in this convergence—a quite earlier moment than might be expected given the similarity of the buzz words used to characterize the recent policy development in the arena. The policy harmonization expected in social policy as represented by this case is one in which the center will likely hold, but one in which, for the time being, there is significant centripetal force.

For example, the national approaches to federalism and the development of suprafederalism are expressed in disability policy of the late 20th century. In a content analysis using a group of words chosen to be indicative of the theme of federalism, for all three countries, the word "local" appeared most frequently, but for Canada, the second runner up was "power," whereas for the United States and Mexico, it was "federal." This finding suggests an ironic element of convergence in this arena of social policy—toward more local control over the arena. For example, the word "local" appears a remarkable 249 times in the text of the IDEA reauthorization. The words "central" and "decentralization" were, however, distinctly absent from latest 20th century children's disability policies in North America. The only places where these words appear more than once are in two provincial receivers of special education (for Alberta and British Columbia), in Mexico's profile of its education system and in the United States' *Olmstead vs. LC*.

In his examination of innovation in the public sphere in Canada and the United States, Borins (2000, p. 69) found that "the most frequent initiators of public management innovation are local heroes, visionary middle-level and frontline public servants, who, despite the disincentives, are willing to take risks." Perhaps ironically, this type of local hero innovation has tended to

contribute to, rather than take away from, the convergence of social policy in Canada, United States, and Mexico. Such leaders tend to be deeply in tune with, and able to manipulate, their social and political contexts. Because being in tune in this way increasingly implies facility with electronic communication and a broadly cast search for best practices and innovative ideas, explicitly or not, these leaders tend to contribute to the convergence of disability policy in the three countries.

Convergence does not imply assimilation. As Moran and Abbot (1994, p. 22) put it, "NAFTA does not mean that Canada and Mexico will become or should want to become commercial annexes of the United States." However, as a respondent from the United States stated, "any kind of international agreement has an effect on society as a whole and so I expect that it would have an impact." Similarly, a program administrator from the United States stated, "as we move into a more global economy, there will be a greater need for attention on the international level and more widespread interest in what is going on in special education." Many of the respondents expressed concern about NAFTA. A policy analyst from eastern Canada explained, "one of the big concerns in Ontario is privatization. Our organization is watching for privatization and is very worried about it at this time. The NAFTA system is such that we were worried that privatization is a one-way street."

Part of this fear or hesitancy is motivated by the suspicion that despite recent policy innovations in globalization, the national policy makers are not duly conscious of what is going on and therefore are not protecting the national interests of their countries. Some are. As a superintendent of principals from Canada put it, "how a community treats its children has an impact on the next community and how a country treats its children has an impact on how the next country treats its children. We are forever looking at what the United States is doing. Examples of best practices is an international concern." Similarly, a Canadian special education coordinator explained, "the problem with NAFTA is that so much of it is driven by the international trade agenda. They keep saying that the government needs to cut back and cut back. It is getting harder and harder on social programs." The details and technicalities of these agreements are, however, often largely unknown to policy makers directly involved in their creation or adoption (Mander and Goldsmith, 1997, p. 92).

Given this, the best strategy is to approach social policy convergence with due caution despite the potential for enthusiasm on the part of issue stakeholders. Continued convergence of the guiding philosophies first is a natural way to do this. Disability policy is an arena of social policy with the ultimate goal of making itself less necessary. A policymaker from the United States explained, "my personal bias is that it is education first. Special education is a fallout, if there had been better decisions made in the past,

then it would not be necessary.” A respondent from California concurred by saying, “this is going to sound really Polly Anna but the day that we do not need disability policy is the day that we will have been successful.” Inclusion is, at base, a question of tolerance—not as a virtue, but as a baseline fact of allowing for the presence of socially constructed others into (usually) an extant social infrastructure. With an international spread of progressive education, medicine, and technology, there are fewer absolute reasons for disabilities to become handicaps in the global context, particularly when the conception of disability as expressed through policy is similar across nations. Causing an arena of social policy to regionally converge in a global world is an activity akin to herding cats given the level of energy invested into, and of the number of, directions in which stakeholders might want to take this policy arena. It is not, however, a case of trying to herd trees (a policy arena in which there is unlikely to be movement) or herding cows (a policy arena with one clear, relatively uncontested direction exits).

REFERENCES

- Alberta Teachers Association. (1999). *Current Issues in Politics, October 1999*. Edmonton: Alberta Teachers Association.
- Barber, B., Schulz, A. (1996). *Jihad vs. McWorld: How Globalism and Tribalism Are Reshaping the World*. Toronto: Ballantine Books.
- Barnes, C., Mercer, G. (2003). *Disability*. Cambridge: Blackwell Publishers.
- Bernand, H. R. (2002). *Social Research Methods*. Thousand Oaks, CA: Sage Publications, Inc.
- Borins, S. (2000). What border? Public management innovation in the United States and Canada. *J. Policy Anal. Manage.* 1:69.
- Cor Meijer, J. W., Pijl, S. J., Hegarty, S., Abbring, I. (1994). *New Perspectives in Special Education: A Six-Country Study of Integration*. New York: Routledge.
- Dobell, R., Neufeld, M. (1994). *Trans-Border Citizens: Networks and Institutions in North America*. Lantzville, British Columbia: Oolichan Books.
- Education International and Public Services International. (2000). *The WTO and the Millennium Round: What Is at Stake for Public Education?* <http://www.ei.ie.org/pub/english/epbeipsiwto.html> (accessed June 19, 2000).
- Fletcher, T. V., Bos, C. S. (1999). *Helping Individuals with Disabilities and Their Families: Mexican and U.S. Perspectives*. Tempe, AZ: Bilingual Press.
- Government of New Brunswick. (2000). *Education Act, Chapter E-1.12*. www.gov.nb.ca/acts/acts/e%2D01%2D12.htm (accessed December 2000).
- Horowitz, M., Datlon, P. A., Doherty, G. H., Donner, S. E., Middleton, M. E., Savage, F. M., St-Onge, R., Vargo, F. *Report of the Blue Ribbon Panel on Special Education*. Edmonton: Alberta Teachers Association.

- Mander, J., Goldsmith, E. (1997). *The Case Against the Global Economy*. San Francisco: Sierra Club Books.
- Mazurek, K., Winzer, M. A. (1994). *Comparative Studies in Special Education*. Washington, DC: Gallaudet University.
- Minister of Education, British Columbia. (1995). *Special Education Services: A Manual for Policies, Procedures, and Guidelines*.
- Minister of Education, British Columbia. (2001). *Special Education Review*. www.bded.gov.bc.ca/specialed/review/report.hist.htm (accessed on February 2001).
- Ministry of Education, Québec. (1999). *Adapting Our Schools to the Needs of All Students: A New Direction for Success*. Québec, Québec: Government of Québec.
- Moran, R. T., Abbot, J. (1994). *NAFTA: Managing the Cultural Differences*. Houston: Gulf Publishing Company.
- National Council on Disability. (2000). *Back to School on Civil Rights: Advancing the Federal Commitment to Leave No Child Behind*. www.ncd.gov/publications/backtoschool_1.html (accessed February 2000).
- Office of Special Education and Rehabilitation Services (OSERS). (2000). *IDEA '97: General Overview*. www.ed.gov/offices/OSERS/IDEA/overview.html (accessed September 2000).
- Office of Special Education and Rehabilitation Services (OSERS). (1999). *IDEAs that Work: IDEA '97 Final Regulations*. www.ed.gov/offices/OSERS/IDEA/regs.html (accessed November 2000).
- Organization for Economic Cooperation and Development (OECD). (2000). *Special Needs Education: Statistics and Indicators*. Paris: OECD.
- Peters, S. J. (1993). *Education and Disability in Cross-Cultural Perspective*. New York: Garland Publishers.
- Pfeiffer, D. (1993). Overview of the disability movement: history, legislative record and political implications. *Policy Stud. J.* 21:724.
- Puttee, A. (2002). *Federalism, Democracy and Disability in Canada*. Montreal: McGill-Queen's University Press.
- Reinders, H. S. (2000). *The Future of the Disabled in Liberal Society*. Notre Dame: University of Notre Dame Press.
- Rosenbaum, S. (2000). *Olmstead vs. LC: Analysis and Implications for Medicaid Policy*. Princeton, NJ: Center for Health Care Strategies, Inc.
- Rosenthal, E. (2000). *Human Rights and Mental Health: Mexico*. Washington, DC: Mental Disability Rights International.
- Sabio, M. R. (1999). *La Integración Educativa: Un Cambio Conceptual Hacia la Persona Con Discapacidad y su Socialización*. Mexico, DF: Universidad de las Américas, AC.
- Secretaría de Educación Pública, Educación Especial (2001). www.sep.gob.mx/estadisticas2/ (accessed March 2001).
- Secretaría de Educación Pública, Evaluación del Avance en pos del Cumplimiento de las Metas Educativas Del Programa Nacional Para el Bienestar y la Incorporación al esrrrollo de las Personas Con Discapacidad. (2000). www.sep.gob.mx/oete/ especial/esp4.htm (accessed December 2000).

- Secretaría de Educación Pública. (2000). Profile of Education in Mexico. www.sep.gob.mx/Perfil_Ingles/index_english.htm (accessed April 2000).
- Secretaría de Educación Pública, Unidades de Servicio de Apoyo a la Educación Regular (USAER). (2000). www.sep.gob.mx/oete/especial/esp2.him (accessed December 2000).
- Shapiro, J. P. (1993). *No Pity: People with Disabilities Forging a New Civil Rights Movement*. New York: Random House.
- Smart, J. (2001). *Disability, Society and the Individual*. Gaithersburg, MD: Aspen.
- Smith, R. W. (2003). Enforcement or ethical capacity: considering the role of state ethics commissions at the millennium. *Public Adm. Rev.* 63:283–295.
- Werlin, H. H. (2003). Poor nations, rich nations: a theory of governance. *Public Adm. Rev.* 63:329–342.
- World Health Organization. (2001). *International Classification of Functioning, Disability and Health*. www.who.int/icidh/prefinaldec2000.htm (accessed March 2001).
- Yanow, D. (2000). *Conducting Interpretive Policy Analysis*. Thousand Oaks, CA: Sage Publications, Inc.

10

Urban Policy in the Global Era

Arie Hershovich

Yezreel Valley College, The Yezreel Valley, Israel

I. INTRODUCTION: CITIES AND GLOBALIZATION

Globalization has become an all-encompassing mantra, used to describe or explain many phenomena, often being accused for them; social injustice, environmental damage, or too many immigrants in the neighborhood. As an analytical term, globalization refers to a threefold process: the emergence of a global economy, global polity, and global culture (Short et al., 2000, pp. 317–318).

Globalization is an ongoing process of connecting different parts of the world through the exchange of goods, capital and information, and enlarging the span of movement of populations. Such a process can be seen to take place wherever there is an integrating agent to link different regions into one system; political, economical, or cultural.

An integrating agent could be the Nile, the Mediterranean Sea, or the Atlantic Ocean. However, to facilitate their role, these natural integrators require certain technological (steam liners or the rail system), organizational (the stock market), or political (Egyptian Empire, state subsidies of infrastructure) developments to occur (Abu-Lughod, 1999, pp. 399–404). At the outset, these integrating agents each created its own local “world” system, until the discoveries of the 16th century brought these different worlds together into a system that now encompasses the entire globe, enabling a significant worldwide movement of people, capital, and cultures (Abu-Lughod, 1999, pp. 399–404).

The globalization process develops in pulses, whereby each pulse weaves a thicker and more complex global network, leaving fewer places and people outside of it. The most recent of these pulses began during the 1970s, brought

about by what can be described as the new technological paradigm of information technology. Any technology is based on applying knowledge to transform raw material into useful products but, in the case of information technology, the information is both the raw material and the outcome (Castells, 1996, pp. 77–79).

“The new technological paradigm has fundamental social consequences linked to the specific logic of its basic characteristics. Yet, the new technologies are themselves articulated into a broader system of production and organization. . . . It is this complex interacting system of technology and organizational processes, underlying economic growth and social change, that we call *mode of development*.” (Castells, 1996, p. 83).

This new mode of development has many aspects, among them, the possibility of decentralizing production while integrating management functions, through the use of telecommunications and flexible manufacturing systems; the positioning of capital in a powerful position vis-à-vis labor, enabling it to automate or move elsewhere should the labor unions insist on costly wages or benefits, and the concentration of knowledge-generation and decision-making processes in high-level organizations in which both information and the capacity of processing it are concentrated (Castells, 1996, pp. 94–97). These aspects are also the essence of globalization.

The libertarian spirit of capitalism finely found itself at home at the last frontier where organizational network and information flows dissolve locales and supersede societies (Castells, 1996, p. 98).

The local consequences of globalization have brought with them a renewed interest in cities, especially those endowed with certain common characteristics that entitle them to be called “Global Cities.” According to the Global City paradigm, a limited number of cities have the role of managing and controlling the global system. These cities have a concentration of multinational headquarters, communications firms, international organizations (such as the United Nations, the World Bank, or the IMF) banks, law firms, accountancy firms, advertising agencies, and insurance brokers. One can describe Global Cities as the nodes in the global network, through which a disproportionately large share of the flux of people, capital, goods, ideas, and information is being channeled (Friedmann, 1986; Knox, 1995, pp. 3–20). The capability of transmitting and processing huge amounts of information enables firms and organizations located in these cities to take advantage of the economies of scale (regional or worldwide), while maintaining the flexibility of a small business (Castells, 1996, p. 97). Company headquarters, R&D activities, and financial and legal services tend to be located within a

limited number of Global Cities, because of their dependence on the face-to-face exchange of information and, therefore, agglomeration (Sassen, 1998, pp. 4–7).

“...the combination of spatial dispersal and global integration has created a new strategic role for major cities. Beyond their long history as centers for international trade and banking, these cities now function in four new ways; first, as highly concentrated command points in the organization of the world economy; second, as key locations for finance and for specialized service firms, which have replaced manufacturing as the leading economic sectors; third, as sites of production, including the production of innovations, in these leading industries; and fourth, as markets for the products and innovations produced. These changes in the functioning of cities have had a massive impact upon both international economic activity and urban form: Cities concentrate control over vast resources, while finance and specialized service industries have restructured the urban social and economic order. Thus a new type of city has appeared. It is the global city.” (Sassen, 1991, p. 2)

Beaverstock et al. (1999) categorized cities into three categories of Global Cities, and three more categories of cities that exhibit some evidence of “going global.” Their analysis is based on Sassen’s (1991) argument that advanced producer services are the distinctive feature of contemporary Global City formation, and is focused on four key services: accounting, advertising, banking, and law.

Global cities are not the only cities affected by globalization. The search for a broader common denominator, which would enable a wider analysis of the interaction between the local and the global, has led to the concept of the “Gateway City” (Grant and Nijman, 2000; Short et al., 2000). While gateway cities are not necessarily in the top echelon of cities, they too are influenced by and exert an influence on globalization. The term reflects the acknowledgment that it is not only world-class cities that influence global trends, while the rest are just swept by the tide, but that other places may contribute their own input while experiencing their own version of globalization (Short et al., 2000, Davis and Tajbakhsh, 2003). One may say that the perspective of the “gateway cities” approach is cultural or anthropological, as opposed to the more economic one of the “global city.” Therefore cities such as Cairo or Mumbai, which have vast film industries, should be considered very influential, even on a global scale, although not fulfilling the criteria to be entitled “Global Cities” (Stanley, 2003). These two approaches are not exclusive because Global Cities usually have large tourism and cultural industries and these, like producers’ services (accounting, advertising, banking, and law), “are leading edges of urban economic growth in the global era” (Lin, 1997).

II. THE URBAN REGIME IN THE GLOBAL ERA

Friedmann (1986), Castells (1996), and others consider the combination of informational society and globalization a historical change.

“Informationalism and capitalism historically merged in a process of technoeconomic restructuring whose social consequences will last far beyond the social events and political circumstances that triggered the decision leading to its development in the 1980s” (Castells, 1996, p. 98)

This change in the regime of accumulation has a profound and much faceted effect on every locality. However, according to this point of view, there is very little local policy makers can do in the face of such a sweeping tide (Fainstein, 1996, p. 174).

“Localities are forever in the position of adjusting to forces beyond their control. The oil crisis of the 1970s, the rise of manufacturing economies of the far east, the management failure of Western oligopolistic industries, the rationalization of firms through decentralization of their various components into least-cost locations, global sourcing and modern telecommunication have all had profound effects on urban economic structure” (Fainstein, 1996, p. 174).

Nevertheless, there are examples of local policies that have successfully coped with these changing circumstances: The city of Houston, having been completely dependent on its unpredictable oil industry, became the world’s biggest medical center and NASA’s hometown; Baltimore changed from a declining port to a successful tourist center; Hamburg became a high-technology center from an economic base of traditional industries (Fainstein, 1996, p. 171).

Janet Abu-Lughod, among others, maintains that the differences between cities should be considered: Differences due to geographical and historical circumstances, and also due to the actions taken by local players whose values and interests are embedded in the city. Her impressive research focuses on the development of New York, Chicago, and Los Angeles. It shows, in a very tangible manner, how location, historical circumstances, and the policies adopted by city leaders (such as mayors, planners, business people, and others) affect the fate of the city (Abu-Lughod, 1999, pp. 399–426).

The process of adjusting to a globalized environment has forced cities to change their patterns of policy formation and actually their urban regime. When local government was simply the lower rank of the governmental hierarchy, it tended to act mainly in the regulation realm, closely monitored by the relevant state agencies. The main policy tools were land

use regulation, fiscal policy, and the supply of public infrastructure (transportation, water, sewage, etc.) and services (welfare, education, etc.). The principal local government goals were associated with balanced and sustainable development whereas the regulation coalition consisted of city and government bureaucracy, environmental organizations, and neighborhood residents.

However, the need to compete in the global arena has since shifted the balance of development to favor entrepreneurial interests. To enhance the city's competitiveness, the entrepreneurial city is now deregulating land use, lowering environmental restrictions, giving tax relief to investors, and defining "Free Trade Zones" where labor regulations do not apply. The entrepreneurial coalition consists of real estate developers, politicians, the business sector, tourism-related organizations (museums, stadiums, theaters, etc.), utility companies, universities, and professional sport teams. These groups also form a powerful "Growth Coalition" that favors continuous economic development and relates to the city as a "Growth Machine" (Logan and Molotch, 1996, pp. 300–315). Municipalities that were formerly part of the regulating bureaucracy have become increasingly entrepreneurial; assisting in the development of new markets for local business, offering vocational training, and developing infrastructure and services (Fainstein, 1996, p. 176; Logan and Molotch, 1996).

Elkin (1987) has constructed an analytical framework in an attempt to analyze the urban regime. He too points to the disproportionate influence that businessmen have on city politics, while his analysis also sheds light on some internal structural characteristics that forge the bonds between business and local governments: Local governments depend on the tax revenues paid by businesses; politicians depend on donations made by business people; the ease with which capital can relocate spurs local politicians and authorities to appease business people by adopting policies that create an attractive business atmosphere (Elkin, 1987, p. 37). Harding (1994) sees globalization as a force that compels local authorities to adopt supply-side policies, whose aim is to compete for investors, who themselves have been made footloose by globalization (Harding, 1994, pp. 369–372).

Even so, portraying the urban political system as a prisoner of the business sector is somewhat simplistic. As Elkin points out, while urban institutional structure is inclined to favor business, it also enables a considerable amount of control over the business–politics relationship (Elkin, 1987, p. 103). The urban regime consists of a set of official and unofficial arrangements, by which public and private organizations initiate and accept policy decisions (Stone, 1989, p. 6). These organizations maintain a network of interdependency that shapes the urban regime. The network consists of governmental agencies, both central and local, nongovernmental organizations,

quasi-governmental organizations, civil associations, and public–private partnerships of all kinds. According to Stoker and Mossberger (1994), this network can be one of three types: “Organic”—where common interests preserve the current state of affairs and exclude new interests from the policy formation process; “Instrumental”—which is developmental and project oriented; or “Symbolic”—where players share few common interests and the resulting conflict induces change (Stoker and Mossberger, 1994).

In this vast array of organizations that compose the urban regime, traditional institutions of representation and accountability are just a few among many players. Urban management becomes the art of facilitating and coordinating, rather than ruling. The urban regime must rise to the challenge of creating a synergy that incorporates all social groups, giving them equal access to resources and an equal opportunity to have an input in shaping the city’s fate (Jessop, 1998). This challenge is further complicated by the profound social change induced by globalization: Demographic changes as a result of large numbers of immigrants; longer life expectancy and changing patterns of family life; social and economical polarization; and cultural changes that are induced by immigration, tourism, and the media. Immigrants are forming separate frameworks for cultural, educational, welfare, and other services, partially because of the state’s inadequacy and partially because they wish to maintain their separate identity. Meanwhile, the more affluent are closing themselves in gated communities, providing their own services and withdrawing from political activity. Both these approaches endanger democracy, creating the need for an adjustment in the mechanisms of political participation, better suited to the new reality and better equipped to adhere to the fundamental principles of democracy (Scott et al., 1999, pp. 9–10).

III. THE URBAN ISSUES OF THE GLOBAL ERA

This section presents some of the challenges and policies mentioned above. While these issues are very much interconnected, they will be separately discussed for analytical reasons.

A. The Issue of Economic Polarization and Social Segregation

Sudjik (1999) describes the overwhelming feeling of threat experienced by someone walking through downtown Rio De Janeiro past the entrances to

the Favellas, where machine gun-carrying drug dealers threaten to storm the boulevard lit by Coca Cola signs. Fast growth creates deep social cleavages, which in turn bring about feelings of paranoia.

A fear of large cities and romantic notions of small intimate places have been common place in urban thought since the time of Ebenezer Howard, at the close of the 19th century. In the global era, big cities do justify these fears to a great extent. Friedmann (1986) describes three types of polarization associated with global cities: Between global cities in the core countries and the rest of the world; between global cities in semiperipheral countries (Buenos Aires, San Paolo) and their immediate surroundings; and that within the global city, between the elite of the “international class” and the personal services workers, who are mostly immigrants.

While polarization in global cities is very conspicuous, it has also been accentuated in most big cities of the global era. Unlike organized capitalism and the welfare state, that enlarged the middle class and narrowed social gaps, the world economy of today erodes the middle class and brings about a growing inequality in income. The number of unionized industry workers and of “state-made, middle class” public service workers has become smaller, while business service and high-technology employees earn increasingly high incomes, creating a demand for personal services supplied by low-income (part-time, agency, etc.) workers. In many cases, these low-income workers are immigrants, some of them illegal, who struggle to survive, without any occupational security (Freidmann, 1986).

A typical result of the “Growth Coalition” approach is the large investments made in public resources for the renewal of the CBD (Central Business District) and the development of business infrastructure, resulting in the diminishing ability of government (central and local) to invest much-needed sums in residential neighborhoods and social services. The authorities’ desire to maintain a “good business climate” actually means lower taxes, and a further limitation on their ability to finance those social services that are now needed even more, because of the process of downsizing underway in many branches of traditional industry and the high unemployment rate that follows.

Another argument suggests that because the growing informational sectors mainly focus on production inputs, as opposed to consumer goods, they are not interested in the purchasing power of the city’s residents, and therefore not interested in their welfare (Sassen, 1991, pp. 333–338; Friedmann, 1995).

The polarization between global cities and those countries that are being pushed to the margins of the “Fast World”, places global cities at the front of Huntington’s (1993) clash of civilizations. The “Slow World,” with its abandoned villages and collapsing mega-cities, sees these global cities as

the physical symbols of what it lacks and as a target for its anger and frustration (Knox, 1995).

B. The Issue of Economic Growth

Economic growth has the status of “motherhood and apple pie”: Almost everybody agrees that it is desirable. To generate growth, cities must compete for investments. In the era of globalization, capital has become extremely footloose, whereby both local and foreign investors seek all over the world for the highest profit opportunity. This requires that cities actively market themselves and compete with other cities worldwide for these investments.

Cities compete with location factors such as labor force, infrastructure, accessibility, culture, and image. As with other products, big events are an excellent opportunity for image promotion, especially those broadcast worldwide such as the Olympic Games or the World Cup. Famous sights, historical, architectural, or cultural, are also major selling promoters. As a result, cities rediscover their history, hire famous architects to build impressive (and preferably controversial) projects, and convert old power plants into museums (Logan and Molotch, 1996; Short et al., 2000).

However, a more critical examination of the issue shows that there is a price to be paid for this type of growth. Business-sector-driven growth depends on a “good business climate,” which requires low taxes, the deregulation of the labor market, the deregulation of land use, high investments in communications and transportation infrastructure, the development of luxurious neighborhoods for corporate management and senior employees, and the promotion of a prestigious image (through public relation offices, advertisements, events, and high-profile projects), all of which leave the public budget with a lower income and higher expenses.

The largest investment made by a municipality is the development of physical infrastructure that needs to be made in a “leapfrog” manner. One cannot build sewage and water pipes, lay underground lines, and communication cables incrementally. These projects need to be undertaken in large portions. Initially, this creates a large “oversupply” of infrastructure and a need for considerable advance investment. By the time the demand for infrastructure approaches the supply, there is already a need to invest in the next portion. Municipalities find themselves in a never-ending race of large-scale investments in infrastructure to generate growth. Having finally attracted business capital, they must continue investing so as not to lose these footloose residents to the ever-developing competition. These investments come at the expense of a downsizing in physical and social programs for the local population (Logan and Molotch, 1996, pp. 318–320).

Much of a city's infrastructure, utilities, and services may be privatized in an attempt to transfer part of the investment required to the business sector. Thus, a considerable burden is removed from the public sector, while the potential for private sector profits then determine the investments that will be made. As a result, the residents of the more affluent quarters, with a higher ability to pay, will be able to purchase high-quality services such as toll highways, optic communication networks, clean water supplies, and even private policing in "gated communities," while the rest of city is congested and collapsing with traffic jams, power failures, etc. (Graham, 2001).

In spite of all this, most people would opt for economic growth because of the promise of more jobs. However, only about 10% of the new jobs created are occupied by previously unemployed residents of the city. The museum that replaced the power plant, for example, offers jobs to a completely different type of worker. Moreover, growth attracts workers from other places: other cities and other countries. The cycles of expansion and recession that characterize growth also aggravate unemployment at the recession phase, whereby many of the unemployed workers actually immigrated to the city with the last tide of economic growth (Logan and Molotch, 1996, pp. 321–324).

C. The Issue of Urban Sprawl

Metropolitan areas are going through a process of spatial dispersion. Until the Second World War, metropolitan regions tended to be monofocal, with the central business district in the middle surrounded by the residential neighborhoods and the industrial zones. Most people would walk to work or use public transportation if they had some business at the city center. The widespread ownership of private cars after World War II accelerated the development of lower-density residential suburbs beyond the range of public transportation. This was followed by industrial and commercial development attracted by lower land prices, high-technology firms seeking the environmental amenities, and back offices taking advantage of the manpower (or rather womanpower) available in the suburbs. This resulted in cities with a diameter of more than 100 mi with many overlapping commuting zones, such as New York, London, and Los Angeles. In these massive city regions, the municipality, after which the entire area is named, is often only a small part of the region. The city region is divided into many authorities, in some instances lacking territorial continuity and in others overlapping (Sudjik, 1992, pp. 305–309, 1999; Hall, 1997).

This pattern of spatial spread has several implications: The expanding area cannot be serviced effectively and efficiently by public transportation and

therefore fosters a dependency on private car ownership; the countryside is pushed further and further away, leaving the city-center residents and those in the inner suburbs without direct access to green open areas; infrastructure needs to be built over ever-increasing distances consuming an increasing share of the public budget; the separate commuting zones facilitate segregation between communities, on the basis of class, ethnic, religious, or other differences; the suburban communities develop their own interests, just as legitimate as the interests of the city-center communities, which by now have become only a small part of the city region (Hall, 1997; Sudjik, 1999). Urban sprawl has especially harsh environmental consequences: The built areas prevent the absorption of water into the ground and therefore cause a greater quantity of water runoff and possibly flooding; the intensive use of private cars creates safety hazards, air and noise pollution, enhances the greenhouse effect and acid rain, and consumes vast areas for roads and parking lots (Deelstra, 2000).

The issue of urban sprawl should be addressed by developing a spatial concept of the metropolitan area as a whole. Because the geographical area involved is usually divided between several municipalities, the development of such a concept depends on the capability of establishing an effective urban regime or on the intervention of central government. While such government involvement is common in Europe, where urban sprawl is directed to a limited number of satellite towns, it is less common in the United States, where a large number of “Edge Cities” are often scattered at growing distances from the metropolitan centers (Hall, 1997).

We should note that to refer to the suburbs as a mere nuisance would be erroneous. In the city region of London, more than 17 million people live within a radius of 50 mi from Trafalgar Square. Santa Monica and Pasadena are an integral part of Los Angeles, just as Yokohama is an integral part of metropolitan Tokyo. The suburb should be seen as an integral part of the spatial alignment that characterizes metropolitan regions and as an important contributor to their power. The problems related to urban sprawl should be addressed, while respecting the significant role played by suburbs in global cities (Sudjik, 1999).

After World War II, the British began experimenting with Ebenezer Howard’s concept of the “Garden City” (Howard, 1902). The plan was for a town of around 30,000 inhabitants, in which most working places and services could be accessed by foot. Such towns were intended to be built in clusters around the outskirts of a metropolitan area, thus fostering a form of hierarchy in which the large city is at the center and a number of smaller suburban towns form a buffer between the city and the rural region. While towns such as Hatfield, Welwyn Garden City, and Stevenage were built with the intention of following this model, the “Walk-to-Work” theme was lost along the

way (Hall, 1997). Contemporary researchers have suggested some new approaches, following Howard's tradition. Owens (1992) suggests clusters of small settlements that together amount to about 200,000 inhabitants. The development is intended to be of a high density and to comprise a mixture of land uses, laid along linear axes, thus enabling multipurpose trips. Calthorpe (1993) has actually built waking-scale suburbs in San Jose, the capital of the Silicon Valley, and his Transportation Oriented Development (TOD) is embedded in the General Plan of Sacramento, California's capital.

Another significant pattern of spatial development that makes urban sprawl more sensible is the corridor, where development is concentrated along the axis of a highway or a railway. This pattern seems to be most effective in enabling agglomeration along the corridor, while being a connective element to other cities or countries. Examples of this trend are the M4 north of London, "Aerospace Alley" (I-405) in Los Angeles, the E4 corridor from Arlanda airport to Stockholm, and "Dulles Airport Corridor" near Washington DC. East of London, leading to the Channel tunnel, "The Thames Gateway" corridor is being developed (Hall, 1997).

D. The Issue of Urban Regeneration

The rehabilitation of distressed neighborhoods has been a part of urban policy since the late 19th century. In the modern era, urbanization was always accompanied by problems of poverty, crime, and physical deterioration. The globalization process, with its economic and social polarization, high unemployment rates and large numbers of immigrants, aggravates these problems still more. The response of large-scale intervention by governments and municipalities can be traced back to the 1930s and has employed mainly two types of policy: "Urban Renewal" and "Neighborhood Rehabilitation."

"Urban Renewal" is associated, in most cases, with the practice of bulldozing old houses and the construction of shopping centers, office buildings, and residential developments for upper class population in their place. This enables a more profitable use of the land at the location, but comes at the expense of the original population. No provision is made to solve the problems at the source of the distress of the original population, who are simply relocated to new neighborhoods, which in turn become distressed neighborhoods (Priemus and Metselaar, 1992). The realization that the relocation of distressed populations, to attract more affluent residents, is neither a clear-cut, elegant solution, nor a morally sound one, has led to the development of the softer strategy of "Neighborhood Rehabilitation."

The principles of "Neighborhood Rehabilitation" include a comprehensive, physical, and social approach to rehabilitation, as opposed to a

purely physical one. The process involves the active cooperation of the original population in the development of a solution, as opposed to their dislocation (Carmon and Hill, 1988).

Since the beginning of the 1980s, the need to lower taxes to maintain a city's competitiveness has led to the abandonment of the costly neighborhood rehabilitation approach in favor of a revival of the urban renewal approach. However, this time around, urban renewal is a public-private venture: Entrepreneurs have been invited to build projects such as malls, convention centers, hotels, and luxurious housing projects.

The business partners are attracted to participate in such ventures with the offer of preferable conditions including the relief of land-use regulations, tax breaks, and a large array of amenities provided by the public side of the partnership. Such projects are usually located at the center of global or "going global" cities where the high land values make the investments worthwhile. For their part, the business partners provide the capital and the management expertise lacking in the public sector.

To prevent the exclusion of the original neighborhood residents or workers from such projects, "linkage agreements" are sometimes drawn up between the authorities and the entrepreneurs. In these agreements, provisions can be made for the employment of local residents and the supply of affordable housing and social services (Alterman, 1988).

There are many examples of this type of strategy, among them are the Quincy Market in Boston, the Horton Plaza in San Diego, and the Pike place in Seattle. Doubtlessly, the most famous example is that of the London Docklands: The docklands were once the busy port of imperial London, but were gradually abandoned as the ships grew too large for them. Despite its proximity to the city, the area was gradually abandoned by its residents and businesses. Renewal attempts were frustrated by an impossible urban regime: Local authorities, ministries, and governmental agencies were all busy defending their authority and prestige rather than promoting the project.

In 1981, the British Government announced the foundation of the LDDC—London Docklands Development Corporation, a quasi-governmental entity that was given enough authority to bypass many of the bureaucratic obstacles. The LDDC orchestrated an ambitious and complex project that included the building of a vast transportation system, a huge amount of office space, housing developments, a high quality of environmental development, and a thorough shift in image (Sheppard, 1997).

Many of the projects, including the London's Docklands, were criticized for several reasons: The local community almost did not gain any advantages in terms of new jobs, better housing, or services; the cost of special infrastructure and services were a heavy burden on the municipal budget;

most of the decisions were made far from the public eye, whereby, for the sake of reducing bureaucracy, public accountability was compromised.

Most writers agree that public–private ventures of this type enlarged the gaps between the “haves” and the “have-nots,” contributing to the deepening of conflicts and social cleavages (Marcuse, 1993). There also appears to be a consensus in the literature that the way forward should employ a wide range of policy measures, which include economic incentives, cooperation between the public–private and nongovernmental sectors, and a careful and moderate mixing of populations of different socioeconomic status (Carmon and Baron, 1994).

E. The Issue of the City–State Relationship

Cities and states have a complex and ambivalent relationship. Urban agglomeration generates wealth through the exchange of goods, information, ideas, and other ingredients of human culture. Yet, this wealth depends on the territorial state for protection. States, by their nature, build boundaries that limit the flow of people, goods, capital, and information, and by that undermine the very nature of the city. One may say that the nature of the city is a nature of a crossroads, a node in the network that consists of the flux of all those things, while states by definition are territorial entities, defined by borders (Taylor, 1995).

After World War II, the capitalist states worked within the framework of the Bretton Woods agreements. While they agreed to cooperate with organizations dominated by the United States, such as the IMF and the World Bank, they maintained a large degree of autonomy as regards the regulation of their own economic and social matters.

Globalization brought with it a set of new organizations whose purpose is to further regulate and coordinate policies on global scale, such as the G8, OECD, and the World Trade Organization. The integration of many states into organizations such as the EU, NAFTA, ASEAN, etc. diminishes the ability or willingness (according to the ideology) of these once-sovereign nation states to attend to many of their responsibilities (Scott et al., 1999). Furthermore, in an era of long-range missiles and international terror organizations, even the state’s capability of offering protection is seriously undermined.

Local governments, once addressed as subcontractors of the state, have found themselves responsible for economic growth and social welfare in their region. Working directly with other local governments, international organizations, and the business sector, they have rendered the state redundant in many aspects. For example, the direct interaction between cities within the

EU has led many to become far more competitive globally, as each has become the gateway to an increasing number of opportunities (Scott et al., 1999, pp. 3–5; Short et al., 2000, pp. 323–324).

The state, as an aggregate of interests, has found it difficult to reconcile between the contradicting interests of different cities and regions: While Global or Gateway Cities may be interested in policies that foster globalization, traditional industrial cities might be interested in a protectionist policy, closing the borders to immigrants and restricting the removal of capital from the country. Cities have become the platforms for growth industries and services, sometimes in cooperation with adjacent cities across national borders, with whom they find common interests often not shared with other cities in their own states. Many cities actually work toward direct intercity connections, weaving a network of collaboration through environmental, cultural, educational, and other projects (Scott et al., 1999, pp. 5–6; Short et al., 2000, pp. 324–325).

In light of the above, we should question the traditional division of roles between city and state. That is not to say that the state has become redundant; it is still the power that enforces the endorsement of contracts and private property. It can be said that states are repositioning themselves, transferring part of their authority downward to the cities and upward to supranational organizations, as a means of enabling them to compete better in the global arena. Whether they manage to do so without weakening their national framework remains to be seen. It might be more than a coincidence that the fastest-growing economy in the world is that of Singapore, a city-state (Taylor, 1995; Short et al., 2000; Cheshire, 1999, pp. 861).

IV. CONCLUSION

The globalization process has a profound and much-faceted effect on every locality. Cities have to undergo a shift in their patterns of policy formation, and ultimately in their urban regime, to cope with the policy issues typically created or aggravated by globalization.

Globalization presents both a series of threats and opportunities. While policymakers are faced with the menacing issues of economic and social polarization, urban sprawl, physical deterioration, etc. they are also presented with the opportunity to share in the mutual learning of technological and organizational knowhow, as well as higher standards of human rights, and moral and cultural values.

Most of the literature concerning the local aspects of globalization tends to focus principally on economic issues of global cities in developed countries. This perspective, specifically the tendency to classify cities by

economic parameters, may be obscuring interesting developments in other parts of the world where globalization is just as evident. More recent studies have begun to examine the cultural, social, and historical aspects of the globalization process on cities in developing countries. Future developments in this alternative area of study will facilitate the integration of these two approaches and may well produce a richer and deeper understanding of the globalization process.

Another challenge for future research is to identify patterns of urban policy formation that facilitate the participation of neighborhood residents, local workers, immigrants, and other groups that are not included in the "Growth Coalition." We must closely monitor the emerging urban regime of the global era to ensure that it complies with the basic principles of pluralism. The challenge will be to create a synergy of cooperation between a wide array of social groups, giving all access to the resources and opportunities generated by globalization.

REFERENCES

- Abu-Lughod, J. (1999). *New-York, Chicago, Los-Angeles*. Minneapolis: University of Minnesota Press, pp. 1–17, 399–426.
- Alterman, R. (1988). Evaluating linkage and beyond: letting the windfall recapturing genie out of the exaction bottle. *J. of Urban and Contem. Law* 34(3):3–49
- Beaverstock, J. V., Smith, R. G., Taylor, P. J. (1999). A roster of world cities. *Cities* 16(6):445–458.
- Calthorpe, P. (1993). *The Next American Metropolis: Ecology, Community and the American Dream*. Princeton: Princeton Architectural Press.
- Castells, M. (1996). The informational mode of development and the restructuring of capitalism. In: Fainstein, S. S., Campbell, S., eds. *Readings in Urban Theory*. Oxford, U.K.: Blackwell (Chap. 4).
- Carmon, N., Hill, M. (1988). Neighborhood rehabilitation without relocation or gentrification. *J. Am. Inst. Plann.* 54(4):470–481.
- Carmon, N., Baron, M. (1994). Reducing inequality by means of neighborhood rehabilitation: an Israeli experience and its lessons. *Urban Stud.* 31(9):1465–1479.
- Cheshire, P. (1999). Cities in competition: articulating the gains from integration. *Urban Stud.* 36(5–6):843–864.
- Davis, D. E., Tajbakhsh, K. (2003). Are We All Globalized Now? An Introduction to a Symposium on Globalization and Cities in Comparative Perspective.
- Deelstra, Tj. (2000). Getting there: working towards places that last. In: Benson, J. F., Roe, M. H., eds. *Urban Lifestyles: Spaces–Places–People*. Rotterdam: A.A. Balkema.
- Elkin, S. L. (1987). *City and Regime in the American Republic*. Chicago: University of Chicago Press.
- Fainstein, S. S. (1996). The changing world economy and urban restructuring. In:

- Fainstein, S. S., Campbell, S., eds. *Readings in Urban Theory*. Oxford, U.K.: Blackwell (Chap. 7).
- Friedmann, J. (1986). The world city hypothesis. *Dev. Change* 17(1):69–83.
- Friedmann, J. (1995). Where we stand: a decade of world city research. In: Knox, P. L., Taylor, P. J., eds. *World Cities in a World System*. Cambridge, Massachusetts: Cambridge University Press, pp. 21–47.
- Grant, R., Nijman, J. (2000). Comparative urbanism in the lesser developed world: a model for the global era. Paper Presented at Sixth Asian Urbanization Conference, January 5–9, 2000. University of Madras, Cheney, India.
- Graham, S. (2001). Splintering urbanism: technological mobilities and the urban conditions. GaWC Annual Lecture 2001.
- Hall, P. (1997). Megacities, world cities and global cities. The Hague: The First Megacities Lecture.
- Harding, A. (1994). Urban regimes and growth machines: towards a cross national research agenda. *Urban Aff. Q.* 29/3.
- Howard, E. (1902). *Garden Cities of To-Morrow*. Reprinted: 1946. London: Faber and Faber.
- Huntington, S.P. (1993). The clash of civilizations? *Foreign Affairs* 72:22–49.
- Jessop, B. (1998). The rise of governance and the risk of failure: the case of economic development. *Int. Soc. Sci. J.* 155: 105–113.
- Knox, P. L. (1995). World cities in a world system. In: Knox, P. L., Taylor, P. J., eds. *World Cities in a World System*. Cambridge, Massachusetts: Cambridge University Press, pp. 3–20.
- Lin, J. (1997). Gateways in the flow of capital and culture: Hong Kong and New York as world cities. *City and Society, Annual Review*, pp. 217–240.
- Logan, J. R., Molotch, H. L. (1996). The city as a growth machine. In: Fainstein, S. S., Campbell, S., eds. *Readings in Urban Theory*. Oxford, U.K.: Blackwell (Chap. 12).
- Marcuse, P. (1993). What is so new about divided cities? *Int. J. Urban Reg. Res.* 17(3):355–365.
- Owens, S. E. (1992). Energy, environmental sustainability and land-use planning. In: Breheny, M. J., ed. *Sustainable Development and Urban Form (European Research in Regional Science, 2)*. London: Pion.
- Priemus, H., Metselaar, G. (1992). *Urban Renewal Policy in European Perspective*. OTB Research Institute, Delft: Delft University Press.
- Sassen, S. (1991). *The Global City*. Princeton University Press, pp. 3–16, 321–338.
- Sassen, S. (1998). Urban Economy and Fading Distance, The Hague: The Second Megacities Lecture.
- Scott, A. J., Agnew, J., Soja, E. W., Storper, M. (1999). Global City-Regions, Conference Theme Paper, Global City-Regions Conference, UCLA School of Public Policy and Social Research.
- Sheppard, H. (1997). *A Strategy for Regeneration*. London: London Docklands Development Corporation (LDDC).
- Short, J. R., Breitbach, C., Buckman, S., Essex, J. (2000). From world cities to gateway cities. *City* 4(3):317–340.

- Stanely, B. (2003). "Going Global" and wannabe world cities: (re)conceptualizing regionalism in the middle east. In: Dunaway, W. A., ed. *Emerging Issues in the 21st Century World-System and Resistance in the 21st Century World-System*. Westport, CN: Praeger, pp. 151–170.
- Stoker, G., Mossberger, K. (1994). Urban regime theory in comparative perspective. *Environ. Plann., C Gov. Policy*, 12.
- Stone, C. N. (1989). *Regime Politics: Governing Atlanta*. Kansas: University of Kansas Press, pp. 1946–1988.
- Sudjik, D. (1992). *The 100 Mile City*. London: Andre Deutsch.
- Sudjik, D. (1999). *Identity in the City*. The Hague: The Third Megacities Lecture.
- Taylor, J. P. (1995). World cities and territorial states: the rise and fall of their mutuality. In: Knox, P. L., Taylor, P. J., eds. *World Cities in a World System*. Cambridge, Massachusetts: Cambridge University Press, pp. 48–62.

11

Solidarity, Territoriality, and Healthcare: Cross-National Policy Learning in Europe

Hans Vollaard

Leiden University, Leiden, The Netherlands

I. INTRODUCTION

Solidarity can only be sustained in closed communities; without restrictions on entry or exit of a solidarity community, no one could be coerced to contribute to cover the costs of the benefits and services distributed, or be restrained from consuming these benefits and services. Free movement would thus make impossible the financial sustainability and the efficient planning and provision of welfare (Offe, 1998). Entry into and exit from solidarity communities of healthcare have been territorially confined in the European states. The principle of territoriality basically defines who has the right to access health services and coverage for the ensuing costs, and who must contribute for the maintenance of the healthcare system and the planning of healthcare facilities.

Greater freedom of movement and declining costs of travel in the world at large, and in Europe in particular, allow people not only to be more knowledgeable about which solidarity communities provide better health services, but also about the possibility to go there. This consequently jeopardizes the maintenance of the European healthcare systems. A flow of foreign patients may endanger the continuation of healthcare provision to the domestic recipients, whereas affluent contributors may simply leave to the detriment of the patients left behind. Such fluctuations in numbers of patients would make efficient planning and provision of healthcare services increasingly difficult. It may have great repercussions for the domestic political relationships, too. As the performance of healthcare systems is one of the major sources of a

government's legitimacy, governments would come under severe pressure to preserve the healthcare systems by closing it to foreigners, and enticing/forcing affluent contributors to stay.

Following this argument, it may come as a surprise that some West European states cooperate in their border regions in order to learn about, and even foster, cross-border healthcare. Are they, in fact, willing to open their healthcare systems and leave open their exclusive gatekeeper role, thus consciously putting their healthcare system at risk? What made them ready to join this variant of cross-national policy learning? Which mechanisms are behind these cross-border cooperation schemes? Do governments start to use nonterritorial solutions for closing their solidarity system of healthcare in a Europe without frontiers?

Several instances of experiments with cross-border healthcare at the Dutch–Belgian and Dutch–German borders shed light on how the Dutch government dealt with leaks in their solidarity systems and who learned what lessons from these experiments. The chapter subsequently detects what mechanisms may have molded the healthcare systems' territoriality, and applies them to the more general discussions on allegedly debordering states in times of globalization and Europeanization. The chapter starts with a short description of the healthcare systems under scrutiny.

II. HEALTHCARE SYSTEMS IN EUROPE

Healthcare systems in Europe have basically been developed within the territorial confines of the national states. Since the Second World War, they have been gradually extended toward almost universal, obligatory insurance, or service coverage of citizens' basic health needs. It thus takes up a considerable share of public expenditures, labor force, and gross domestic product (e.g., in The Netherlands, 11.3% of the labor force works in the health sector).^{*} Although these systems are all directly or indirectly regulated by states, the organization, financing, and delivery of healthcare differ from country to country. Two families can be distinguished among the European healthcare states (Moran, 1999; EP, 1998).

The "command-and-control healthcare state" is characterized by a state-guaranteed universal health insurance covering citizens' basic health

^{*}The Netherlands: 11.3% of labor force in health sector (2002), 11.8% of GDP (2002) [see Organization for Economic Cooperation and Development (OECD) Health Care Data 2003 (www.oecd.org) and Centraal Bureau voor de Statistiek (CBS) statistics (2003) <http://statline.cbs.nl>].

needs, the planning and provision of mainly publicly owned national health service, the funding of healthcare through state-collected taxes, and political decision making at national, regional, or local level. Costs of supplementary health could be covered by private voluntary insurance or direct payments. This model can be found in the UK and Scandinavian countries. In Southern European and certain Central and Eastern European countries, “incomplete” versions of this system could be found. Although the universal coverage of basic health has been legally enshrined, in practice, many citizens rely upon private insurance companies and care providers to obtain timely, better quality healthcare.

Within a “corporatist healthcare state,” insurance and provision of healthcare are largely in the hands of public law bodies—health insurance funds* and hospitals—in which health professionals’ associations and social partners (labor unions and employer federations) have a large say. This type of healthcare state is largely financed through a social insurance system of obligatory, income-related social security contributions. The state operates as a director of this corporatist amalgam, only showing its hierarchy in times of (financial) urgency. France, Belgium, Germany, Austria, and Luxembourg fit into this type of healthcare system. The Netherlands is a relative outsider within this corporatist group, as only two-thirds of the population is covered by an obligatory, social insurance and the rest relies on voluntary, private insurance to cover their health costs. However, a universal, obligatory insurance exists for long-term, privately uninsurable, and high-cost medical treatments. The Netherlands and Germany have a benefit-in-kind system, meaning that health insurance funds contract and pay care providers to provide healthcare to their clients. In the contrary, Belgian and Luxembourg patients could freely choose a care provider for treatment and send the bill to their health insurance funds for reimbursement afterward.

The statist command-and-control and corporatist entanglements have an inherent tendency to close off the respective healthcare systems within the state borders. Only some patients have made use of healthcare across these borders because of the dissatisfactory state of healthcare at home (Italy), or the insufficient availability of advanced top clinical care (Luxembourg). This cross-border healthcare took a fairly negligible share of total health expenditures within the area of the European Union (EU) until the late 1990s (0.50% in 1998) (Palm et al., 2000).

Affordable and timely access to healthcare of good quality has been of some importance to European citizens. The aging of the population and the

* Also called sickness funds or mutualities, organized according to region, religion, occupation, or company.

advancing possibilities of (expensive) medical technology, devices, and medicines have increased the number of chronic patients with all its financial consequences. Rising assertiveness and expectations among patients may heighten further demand for healthcare, not the least because of easy access to Internet resources that provide protoprofessional knowledge about health (European Commission, 2003). As most European governments must curtail budgets in accordance with the Economic and Monetary Union (EMU) norms* and limit the burden of premiums and taxes to remain internationally competitive, these financial pressures pose a serious challenge to the fulfillment of citizens' healthcare demands. A majority of European respondents expressed themselves against the dismantling of their respective healthcare systems and cuts to their basic health package, and adhere to the principle of solidarity subscribing to the statement that healthcare rights of the lower-income groups should not be diminished (Ferrera, 1993; Mossialos, 1997; European Commission, 1998). Medical airlifts for Dutch patients to the United States or Switzerland did therefore encounter criticism from particularly left-wing parties as they feared that affluent and employed patients would be given priority for treatment over nonaffluent and nonemployed patients, leading to an unfair dualization in healthcare. As citizens perceive governments both in command-and-control and corporatist responsible for healthcare, health issues like waiting lists have been a hot topic in recent elections in the UK and The Netherlands. With governments' performance in health having a serious impact on their legitimacy, a way out in these health issues is thus particularly welcome.

III. CROSS-BORDER HEALTHCARE IN EUROPE

Both corporatist and command-and-control healthcare states have started experimenting with cross-border healthcare within the framework of European integration. How come healthcare states have done so, notwithstanding the apparent risks for sustaining the healthcare system? Which lessons have consequently been drawn from these experiments? Cases of cross-border healthcare along the Dutch borders show how these experiments came about and what lessons have been learned about patient mobility and the survival of the healthcare state in The Netherlands and in the European Union.

* Within the framework of the EMU, the introduction of a common currency (the euro) was accompanied with agreement between the Member States on, among other things, a maximum level of budgetary deficit and national debt.

IV. EUROPEAN INTEGRATION AND EUREGIONS

In the 1950s, six Western European states* started to cooperate within the coal, steel, agriculture, and nuclear energy sectors and integrate their economies into an internal market in the European Coal and Steel Community, the European Atomic Energy Community, and the European Economic Community. Consequently, they established a European Commission as the daily executive having a few competencies to overrule national sovereignty, a European Court of Justice (ECJ) as the supreme authority in interpreting European law, a Council of Ministers with representatives from the Member States as main decision-making institution, and a European Parliament (EP). The initial six Member States have since been joined by nine others.† Although integration among the Member States remains within the economic area, it has also commenced in the fields of justice and home affairs, and military security and foreign policy. In 1991, the then 12 Member States decided at the intergovernmental summit in Maastricht, The Netherlands, to place this wide range of integrative initiatives into one EU. The EU is divided into three so-called pillars, of which the first comprises the elder communities with some supranational competences for the Commission, Court, Parliament, and a European Central Bank. The Member States have the final say in the second pillar on Common Foreign Policy and Security Policy, and the third pillar on Justice and Home Affairs. The organization, delivery, and financing of healthcare have been exempted from the involvement of the European Commission, as states' exclusive competence has been explicitly laid down in several resolutions adopted by the health ministers and in the EU Treaty of Amsterdam (1999).

Notwithstanding these national prerogatives, European healthcare systems have never been fully independent of international politics. A coordination mechanism among the EU Member States arranges how their socially insured citizens can obtain the coverage of costs in case of immediate, necessary care in another Member State, as well as prior authorization for a planned medical visit in another Member State, and how frontier workers could receive healthcare.‡ The scope of this mechanism has been gradually extended beyond workers and their families to self-employed individuals,

* France, Germany, Italy, Belgium, The Netherlands, and Luxembourg.

† The UK, Ireland, and Denmark (1973), Greece (1981), Spain and Portugal (1986), and Austria, Finland, and Sweden (1995); Cyprus, Malta, Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Latvia, Lithuania, and Estonia are expected to become members by May 2004.

‡ Regulations 3/58 and 4/58 (also 36/63, 63/63, and 73/63), later replaced by Regulations 1408/71 and 574/72 (see O J 1971 L 149/71 and L 74/72; consolidated version: O J 1992, C 325).

students, posted workers, pensioners, and civil servants, and is now also applicable in Liechtenstein, Iceland, Norway, and, to a certain extent, Switzerland. Despite its wider scope, the consumption of cross-border care has been fairly limited until the late 1990s. When the European Court of Justice interpreted this mechanism to be too patient-friendly in the late 1970s ruling, the governments responded immediately and even further restricted access to healthcare across borders.* The International Labor Organization (ILO), World Health Organization (WHO), and the Council of Europe† have also set certain minimum standards (e.g., the basic health package to be covered and provisions for maternity leave). However, much like the Organization of Economic Cooperation and Development, these organizations lack the political power to enforce these standards, and could mainly use open method of coordination (OMC) techniques to transfer ideas and best practices in healthcare policy to the participating states. Likewise, the EU Member States agreed in the 1980s to set up research programs on health issues under the auspices of the European Commission, and in 2000 to introduce OMC techniques to create the most competitive economy of the world, while preserving a Social Europe and a healthy aging population. Nevertheless, these international arrangements did not really interfere with Member States' authority in their territories.‡

In the meantime, enlargements and deepening integration have provoked Member States to enter into severe bargaining on power and budgets at European level. These negotiations have become increasingly complicated as the number of participating states grew with every enlargement, and the ensuing diversity of background and interests among states made the impact of (proposed) common policies more varied. Negotiations were therefore often accompanied by side payments to strike a deal and to compensate for (alleged) losses by certain Member States. These side payments were at the origins and development of European regional policies and funds in the 1970s, 1980s, and 1990s (Allen, 2000). Also, the 1986 Single European Market program to create a Europe without frontiers and an internal market with freedom of movement for persons, services, goods, and capital in 1992 was accompanied by measures for economically weak regions to absorb the shocks.

* ECJ (1978), *Pierik-I* (C-117/77), and (1979), *Pierik-II* (C-182/78), and the consequent change by Council Regulation 2793/81, O J 1981 L 275.

† A fully intergovernmental organization established in 1949. Most European states are members of the Council of Europe. It is best known for the European Human Rights Court in Strasbourg, not to be confused with the Council of Ministers nor with the European Court of Justice in Luxembourg (both EU institutions).

‡ Although see Leibfried and Pierson (1995) and Cornelissen (1996), as these regulations imply breaches into the principle of territoriality.

On instigation of the European Commission, some regional funds have also been directed toward cross-border, interregional cooperation in so-called Euregions. Three subsequent programs, Interreg-I (1988–1993), Interreg-II (1994–1999), and Interreg-III (2000–2006), have been launched in an attempt to facilitate the integration of the European territory to make national borders no longer an obstacle for these Euregions. The European Commission has listed programs and projects eligible for financial support, such as “measures to promote cooperation in health, particularly the sharing of resources and facilities on a cross-border basis.”* Approved applications can count on a maximum of 50% financing from the European Regional Development Fund, under the condition that any cross-border initiative must involve regional and national authorities and nongovernmental actors. But why did the Dutch government and its corporatist partners in the health sector subscribe to Euregional initiatives to experiment with cross-border care in three border areas, bearing in mind the necessity of a closed solidarity community? What did they want to learn from these cross-national experiments?

V. HEALTHCARE COOPERATION IN THE EUREGIONS MEUSE-RHINE, RHINE-WAAL, AND SCHELDDEMOND†

The Dutch health sector was not fully unaware of the potential impact of European market legislation upon the organization, financing, and delivery of healthcare. In the 1970s and 1980s, the European Court of Justice ruled in a few cases of reduction in medicine prices and medicine imports, and the European Commission was asked on several occasions to interfere in medicine price agreements. The free movement of persons in a Europe without frontiers in the Schengen and EU area made the government change health insurance legislation to prevent social tourism.‡ During a major market-oriented reform of the Dutch healthcare system between 1986 and 1993, the European Commission was consulted as to whether the reform proposals would fit with

* Art 14(m) O J 94/C 180/13 (July 1, 1994).

† This account of the Euregional cooperation in healthcare has been based upon reports and literature (see notes), and interviews with civil servants and health insurers involved. I like to thank E. Engelsman, Mr. G. J. Hamilton, and Mr. E. A. Smith (VWS), Mr. P. H. E. Bloemer (CZ), Mr. G. Straetmans and Drs. M. Smeets (ZN), G. Miltenburg, C. Parmentier, and S. Verduijn (CVZ), Mr. J. P. Kasdorp (RVZ), and Dr. H. E. G. M. Hermans (Erasmus University Rotterdam) for their willingness to be interviewed and to provide the necessary information. Quotation marks in the text denote quotes from one of the interviewed.

‡ Second Chamber Documents 1990–1991, 20 596 no. 36 (Voltooiing van de Interne Markt, April 11, 1991), 25.

competition legislation. The European argument was even (mis)used to block certain reforms by the Dutch senate and their corporatist allies in the health sector. In addition, hospitals in border regions reported problems with capacity and cross-border payments in April 1991, as the Minister for Health mentioned in parliamentary debate on the implementation of the internal market.* During the 1991 Dutch presidency of the European Union, the Member States subsequently discussed the potential influence of the internal market on their healthcare systems and decided during the Belgian presidency in 1993 to analyze the issue and experiment with cross-border healthcare consumption.† Most of the Euregional experiments on cross-border healthcare to “puzzle” with a Europe without frontiers have been located alongside the Dutch and Belgian borders (Palm et al., 2000, pp. 62–68).

Cofinanced by the European Commission within the Interreg-I program, several Interregional Projects on Healthcare (*Interregionaal Project Gezondheidszorg*, IPG) have been carried out in the Euregio Meuse-Rhine. This area of about 3.7 million residents comprises the cities of Maastricht (capital of the Limburg region in the southeast of The Netherlands), Aachen (Germany), Genk, and Liège (Belgium). In the 1980s, the construction of university hospitals was accomplished in each of the cities (except for Genk) within a circle of 80-km diameter. These hospitals analyzed in the early 1990s which opportunities exist to cooperate and share specialized resources across the border, drawing up inventories of the differences among the systems of health indication, patient treatment, and hospital financing (Starmans et al., 1997). The regional administration of Dutch Limburg subsequently urged that the issue of cross-border healthcare be dealt with more extensively within the Euregional framework. In January 1994, the executive board of the Euregio Meuse-Rhine established a temporary committee to report on cross-border healthcare. The primary objective was to propose practical solutions for the problems experienced by individual patients obtaining basic healthcare across the border, while fully respecting the national healthcare systems. The committee proposed ways to overcome the problem of patients having to travel much further within their domestic system for (top clinical) care, whereas just across the border, similar care was available but not easily accessible because of complicated administrative procedures (BECGZ, 1994). The committee also

* Second Chamber Documents 1990–1991, supra notes 15, 19, 21.

† Senate Documents 1990–1991, 21 200 (Wet Versterking WZV-Instrumentarium, April 23, 1991), 24-808; “Resolution of the Council and the Ministers for Health,” meeting within the Council of November 11, 1991 concerning Fundamental Health-Policy Choices, O J C 304/05, 1991; “Resolution of the Council and the Ministers for Health,” meeting within the Council (May 27, 1993) on Future Action in the Field of Public Health, O J C 174 (June 25, 1993).

pleaded for cooperation in the field of ambulance care, similar to other pilot projects being partly financed by the Interreg-II program.

The Meuse-Rhine report inspired health insurers within the three countries to cooperate: CZ in The Netherlands, Allgemeine Ortskrankenkasse (AOK) Rheinland in Germany, and the Christelijke Mutualiteit (CM) Limburg in Belgium. This turn toward cross-border cooperation originated from sessions during Euregio meetings and hearings for the report as they started to realize that all three are confronted with the administrative burden of authorization procedures for cross-border care. They therefore concluded agreements to ease these procedures in 1994 and 1996, and submitted proposals to obtain funding within the Interreg-II program for their cross-border experiments.

In 1995, another report was issued to foster cross-border information, coordination, and communication in healthcare in the Dutch–German Euregio Rhine-Waal, an area comprising the cities of Arnhem, Nijmegen in The Netherlands, and Kleve and Duisburg in Germany (Euregio Rhein-Waal, 1995). As in the Meuse-Rhine report, the continuing unification of Europe and the freedom across borders was mentioned. However, planning and hospital financing regardless of cross-border healthcare consumption and the administrative burden to obtain healthcare in another Member State were denoted as obstacles to free movement of services, knowledge, and health professionals. The Dutch health insurer VGZ also carried out research on the possibilities of cross-border healthcare in the Rhine-Waal Euregio. In other Dutch–German Euregios, activities in healthcare remained fairly limited to a single application for Interreg-II funding for specialized ambulant care (Ros and Van der Zee, 1996).

In her response to parliamentary questions on healthcare for frontier workers, the Dutch Minister for Health announced that the experiments could be exercised under the aegis of the Health Insurance Board with cofinancing from the Ministry and the Board to gain actual experience with cross-border care based upon the previous inventories and to establish information and communication networks in the Euregios. The Minister and Board, however, clearly stated that the projects should not become an extra burden to the national health infrastructure and its financing, and the cooperation should be controllable, manageable, and not irreversible.*

* Second Chamber question no. 1164, 1994–1995 (Tandartsverzekering voor Grensarbeiders, June 15, 1995), Appendix, 2395; Ziekenfondsraad (November 16, 1995), “Besluit Regeling Ziekenfondsraad Subsiidiëring Onderzoek Experiment Grensoverschrijdende Zorg.” Amstelveen: Ziekenfondsraad.

Based on the cooperation of the health insurers mentioned, simplified authorization procedures to obtain outpatient care in Belgium or Germany for Dutch socially insured clients in the Meuse-Rhine Euregio in the period April 1997 until November 1998 within the *Zorg op Maat* project (ZOM; Tailor Made Care Project) were implemented. These clients only require a referral from their general practitioners (GPs). Only 0.1% of their clients made use of the opportunity. This project has been extended into the IZOM project (*Integratie*; Integration ZOM) since October 1, 2000 to Belgian and German patients looking for healthcare in the Euregio. The ZOM project has shown that important incentives for patients to seek healthcare across the border are their familiarity with the other system from previous visits, dissatisfaction about waiting lists, travel distance, and language. The often-reluctant referral by their GP or doctor also appeared to be of influence. The Ministry of Health and the Health Insurance Board requested a discussion on the need for further structuring of cross-border cooperation in an evaluation of the ZOM project. According to the evaluators, this would have economic advantages, but “it requires to give up the autarkic healthcare of each country” (Grunwald and Smit, 1999). Inspired by the European Court of Justice’s rulings (see below), the Dutch Ministry of Health has sponsored an experiment since 1999 with an international care card issued by the Dutch health insurer CZ and the German health insurer AOK Rheinland. This card allows their clients to access contracted healthcare facilities within the Euregio Meuse-Rhine.

Inventories on ambulance care in both Euregions and the complementarities of top clinical care in the Meuse-Rhine Euregio have been drawn up since 1998 (e.g., see Biert and De Wolf, 1999; Medisch Contact, 2002). In the framework of the project *Zorg Nabij* (Care Nearby), these inventories have resulted in agreements between the municipality of Riemst (B) and Belgian mutualities to cover the extra costs of emergency care in the University Hospital Maastricht. Mutual access to advanced hospital care such as child heart surgery and renal dialysis has been arranged between the University Hospital Maastricht and the RWTH hospital in Aachen. Cooperation in the field of information technology and telecommunication in health has been set up, as well, among the four hospitals in the region. The Belgian and Dutch blood transfusion services agreed that the University Hospital Maastricht deliver blood across the border to the Hermalle-sous-Argenteau Hospital in Visé (B), as the delivery of Belgian blood would take more time for Visé patients. The issue of ambulance care has further been adopted into broader cross-border consultative bodies. With cosponsoring by The Netherlands government, programs started in 1998 to enhance cooperation among rescue workers, specialists, and other actors involved in major accidents. Attempts were also made to resolve the noncompatibility of communication systems, differences in tariffs, insurance coverage and qualified personnel required, and language

problems (French, German, and Dutch).^{*} After the 9/11 attacks, the implementation of a common mechanism for coordinating interventions for civil protection in cross-border emergency situations has been speeded up with help of the European Commission.[†] Most of the initiatives mentioned before in the Euregio Meuse-Rhine are now financed within the Interreg-III project “Cross-Border Health Care in the Euregio Meuse Rhine” (see HOPE, 2003b).

In the Rhine-Waal Euregio, German patients have been able to obtain top clinical care in the University Hospital Nijmegen since 1997, as certain pathologies were not available in the German part of the region within the Interreg-II program. The visits of German patients almost never exceeded the maximum amount of treatments available for German patients (Hermans and Den Exter, 1999). Since 1999, the Rhine-Waal Euregio has joined the ZOM project. In addition, regional symposia and seminars have been organized in the framework of quality improvement programs for health professionals.

Cofinanced by the Interreg-II Program, a project started under the aegis of the Euregio Scheldemond, covering the Dutch regions of Zeeland Flanders and Western Brabant and the West-Belgian region around Ghent and Bruges. In cooperation with the Dutch health insurer OZ and Belgian Christian, liberal, and socialist mutualities, the project aimed at simplifying the authorization procedures for cross-border healthcare and at fostering familiarity with cross-border healthcare. Between 1997 and 2000, 30 *Euregio-zorgloketten* (Euregio healthcare offices) and an ombudsoffice have been established; newsletters and booklets have been published; and the issue has been brought to the attention of local and regional media (*Euregiozorgloket*, 2000). This project builds upon previous arrangements between OZ and Belgian hospitals to provide clients from the relatively isolated Zeeland Flanders region with access to Belgian hospitals, and inventories of possibilities for further cross-border cooperation within the Interreg-I program (Van Tits and Gemmel, 1995). After a period of rationalization and reduction of healthcare facilities in this region, this arrangement was initiated by OZ in the 1970s and sanctioned by the Dutch Ministry of Health. The adoption of such an arrangement into the Euregional cooperation is not uncontroversial, as the Health Insurance Board initially advised against it, fearing medical tourism

^{*} Staatscourant (February 5, 2002), “Gemeenschappelijke Verklaring van Nederland, België, Vlaanderen en Wallonië inzake Grensoverschrijdende Samenwerking.” no. 64, 27; Second Chamber Documents 2001–2002, 26 670/ 28 800, no. 9 (Grensoverschrijdende Projecten/ Zorgnota 2002, April 4, 2002).

[†] Second Chamber Documents 2001–2002, 27 556, no. 3 (Internationale Aspecten van het Beleid inzake Brandweer en Rampenbestrijding, November 28, 2001), 2–13.

and fragmentation of the healthcare systems. At most, 4% of the clients in Zeeland Flanders used this arrangement until the late 1990s.

As somebody very closely involved in the politics of cross-border care claims, the Ministry of Health, the Health Insurance Board (CVZ), and most sickness funds initially considered cross-border cooperation as a “necessary evil.” Only after the issue of waiting lists became a hotly debated issue in Dutch politics in the late 1990s could a more rewarding stance be discerned. In its report on cross-border care, the CVZ underlines that further opening of Zeeland Flanders’ borders would considerably weaken the already vulnerable supply of healthcare facilities (CVZ, 2001, p. 38). The approach in these instances of Euregional cooperation in healthcare therefore can be “characterized by caution” because of the restrictions on budgetary and infrastructural effects, which kept the patient flows effectively under full control (Van der Mei, 2001, p. 325). Real conviction toward Europeanization of healthcare was certainly not the case. In fact, the Ministry’s participation in the Euregional cooperation in health was motivated by an official of the Ministry of Health intent on keeping the European Commission at bay. However, the ECJ changed the scene dramatically by its rulings in 1998, 2001, and 2003.

VI. THE KOHLL AND DECKER CASES AND BEYOND

The ECJ judgements in the cases of Kohll and Decker* in April 1998 provoked much turmoil among national health authorities in the European Union. According to the Court’s interpretation of European law, patients could obtain reimbursement of certain cross-border healthcare as, in principle, the freedom of services and goods also accounts for medical treatments and devices. This interpretation caused much upheaval as it implied that, notwithstanding the Member States’ exclusive competences in organizing and financing their healthcare systems, these systems were not excluded from European legislation on the freedom of services and goods. In the eyes of a Dutch official, the ECJ’s interpretation ran counter to the principle of sovereignty and had the potential to open the gates of the national healthcare systems without any restraint. In later cases, the Court further explained its position: Member States would still be allowed to restrict the freedom of services and goods for intramural care provided that it is motivated upon objective, nondiscrimina-

* European Court of Justice (28 April 1998), Case C-120/95 (Nicolas Decker vs. Caisse de Maladie des Employés Privés); and Case C-158/96 (Raymond Kohll vs. Unioin des Caisses de Maladie).

tory criteria of public health, financial equilibrium, planning, and accessibility of the intramural healthcare provisions. Furthermore, the Court ruled in the Müller-Fauré/Van Riet-cases* (May 2003) that Member States are no longer allowed to restrict (cross-border) purchase of extramural care.

Immediately after the Kohll and Decker cases, the Dutch Ministry of Health, the Health Insurance Board, and the Dutch Association of Health Insurers (*Zorgverzekeraars Nederland*) responded *unisono*. They stated that, within the Dutch benefit-in-kind system, restrictions on health consumption were necessary, as it would “explode” otherwise. The contracts between health insurers and care providers are essential to a benefit-in-kind system. However, the waiting lists (i.e., the shortage in certain pathologies) exerted increasing pressures on the Dutch authorities and health insurers. As a national court decided in 1998 that patients have right to care in due time, which was then adopted by the government in its health policies, insurers had to seek new ways to meet their patients’ demand. The Dutch Minister for Health stated in parliament that health insurers might have to contract cross-border care to fulfil their obligation to provide healthcare to their clients, and might help to press national care providers to provide quicker and cheaper treatment.† To acquire the necessary knowledge about, the Dutch government and the Health Insurance Board carried out the experiment “Grensoverschrijdend Contracteren” (cross-border healthcare contracting) in the Euregio Scheldemond between April 1999 and September 2000. The previous arrangements of the health insurer OZ with Belgian hospitals in Bruges, Ghent, and Knokke were thus incorporated into an experiment to learn about the problems of cross-border healthcare contracting. In contrast to previous Euregional experiments to simplify authorization procedures for individual patients seeking cross-border healthcare in a certain hospital, patients could only receive treatments in the contracted hospitals in this experiment. As GPs in Zeeland Flanders often referred patients to the Belgian hospitals, the latter treated more Dutch patients, shortening the waiting lists there.

The Dutch health authorities thus applied the well-known instrument of contracting after being confronted with an anomaly in their system, as the European Court of Justice caused uncertainty about one of the basic principles of their policy framework. The Health Insurance Board responsible for administrative execution of the social health insurance and the Supervisory

* European Court of Justice (May 13, 2003), Case C-385/99 (*V. G. Müller-Fauré vs. Onderlinge Waarborgmaatschappij OZ Zorgverzekeringen UA and E. E. M. van Riet vs. Onderlinge Waarborgmaatschappij ZAO Zorgverzekeringen*).

† Second Chamber Questions, no. 734, 2001–2002 (*grensoverschrijdend contracteren van huisartsen*, February 11, 2002), Appendix, 1541.

Health Insurance Board (CTZ) both preferred contracting in case of cross-border healthcare, and urged the health insurers and Ministry of Health to act accordingly (CVZ, 2001, 2002; CTZ, 2001). In contrast to individual authorization procedures, contracting provides better overview in advance and afterward for the supervisor, health insurers, and insured clients. An additional advantage of contracting is the opportunity to keep a certain control on the price, extent, and quality of healthcare. For a while, the Dutch health authorities considered inviting tenders for hospital care from the Belgian and German border regions (Baeten, 2000, p. 40). The potential discrimination of Belgians in favor of Dutch patients by this selective contracting abroad might have prevented them to do so. The desire for overview and control in a situation of opening borders was thus clearly the leading principles of the executive bodies, and the Ministry fully agreed to find the balance between cost containment and shortening the waiting lists with the help of controlled flow of cross-border healthcare.* The Ministry and the Health Insurance Board consequently introduced a subsidy for the extra administrative costs health insurers have to make for cross-border contracts. The international health card mentioned before is also based on contracts, and consequently sponsored.

The Minister for Health was clearly aware of the inevitable consequences by a Europe without frontiers for the territorial gates of the Dutch healthcare system. After mentioning the Kohll and Decker cases, she stated in parliament that “borders would lose their significance for the healthcare system, also because of the increasing mobility.”† Nevertheless, the immediate and furious response by the Ministry, the Health Insurance Board, and the Dutch Association of Health Insurers on a judgement in March 2002 by a Dutch regional court in Maastricht clearly showed the continuous defense of the Dutch contracting system. The court had ruled that a Dutch patient should have the right to cross-border extramural care according to European legislation, despite the contracting system between the patient’s health insurer and care providers. Notwithstanding the “sloppy reasoning” of the Court’s decision, the ECJ ruling in the Müller-Fauré/Van Riet case came to a similar position. Meanwhile, Dutch health authorities have remained anxiously silent about the consequences of this ECJ ruling for the contracting of extramural care *within* the Dutch healthcare system. An expected change in the Sickness Fund Act allowing individual patients more freedom to choose individual care providers, and severely loosening the contracting system, could possibly avoid further cases in court.

* Senate Documents 1999–2000, 26 800 XVI (Begroting VWS, March 14, 2000), 20-822.

† Second Chamber Documents 1999–2000, 26 800 XVI, no. 2 (Begroting VWS), 8-9 (my translation); also supra note 24, 20-849.

As Belgian hospitals increasingly supply healthcare to foreigners such as Dutch patients, the Belgian Minister for Health Frank Vandenbroucke also initiated a contracting policy. He thus aimed at controlling the patients' flow across borders in order to prevent overburdening the Belgian healthcare system. For example, the Belgian government closed a deal with the British National Health Services for cross-border healthcare. Belgian parliamentarians and the Minister himself in a Dutch newspaper expressed concern that the Dutch export of waiting lists would possibly worsen the access of Belgian patients. He therefore proposed to close a deal similar to a contract between the Belgian State and the British National Health Service. However, the Dutch purchasing of healthcare is fairly fragmented among the private health insurers, and the Ministry lacks any power to force them to contract with Belgian health authorities.* The Euro-inflicted leaks in the healthcare systems thus have mutual effects between these rather small neighboring countries.

VII. LESSONS LEARNED FROM THE EUREGIONAL EXPERIMENTS

The experiments in general show that motives to seek healthcare abroad include both dissatisfaction about the situation at home, and the familiarity with the system across the border. In these experiments, dissatisfaction mainly originated from waiting lists, mentioned by 88.7% of the respondents in the ZOM project (Grunwald and Smit, 1999; Coheur, 2001). The fact that Germans and Belgians living in The Netherlands and patients who had used cross-border healthcare before formed a considerable part of the patients' flow across the border clearly underlines the importance of familiarity. Referrals from the GP or doctor at home also appeared to be an important factor in deciding to access healthcare abroad. In general, patients were satisfied with the care provided abroad, particularly because of the personal and friendly treatment. As health users perceive a friendly and personal treatment as one of the most important aspects to return to a hospital, and as positive stories from family and friends are—next to a doctors' referral—an important motive to seek cross-border healthcare, cross-border healthcare might consequently grow (European Commission, 2003; Consumentenbond, 2002; Grunwald and Smit, 1999, pp. 16, 31; Zorgverzekeraars Journaal, 2002, p. 5).

* See NRC Handelsblad (2003); and Antwoord van Frank Vandenbroucke op Mondelinge Vraag van de Heer Velthoven van Februari 5, 2003: Patiëntenmobiliteit, de kosten van Medische Behandeling van Nederlandse Patiënten in Belgische Ziekenhuizen, on: <http://vandenbroucke.fgov.be/P-030205.htm>(May 6, 2003).

However, the use of cross-border healthcare is still marginal both in numbers and amounts. The hurdles of complicated administrative procedures, problems with aftercare, and language prevent many from going abroad. And it is not just that. Even within The Netherlands, the mobility is fairly low, as most patients seek healthcare within their own region or, at most, in adjacent national regions (Brouwer, 1999, p. 25). Depending on the specific pathology, 90–95% of patients would seek treatment in the same hospital as before (Centrum voor Verzekeringsstatistiek, 2002). However, it is not a surprise as, in principle in the Dutch benefit-in-kind system, socially insured patients have to seek treatment first in the hospitals contracted by their health insurance funds, whose working areas were (until 1992) restricted to one region. That may be one of the reasons the Dutch still show “inertia in patient mobility” (Brouwer et al., 2003). The immediate danger of experiments with cross-border healthcare for the system’s sustainability is consequently fairly low. Nevertheless, cross-border healthcare may rise in case of deteriorating situation in patients’ healthcare system. Referring to the large numbers of Italians seeking healthcare in France and Belgium, the conclusion is that “one key factor influencing a patient’s decision to seek healthcare abroad is the level of satisfaction with the domestic system” (Belcher, 1999, p. 75; see also France, 1997). Moreover, as an analysis of rather similar cases of healthcare consumption across Swiss canton borders show, the fewer obstacles to cross-border care, the more are the chances of cross-border healthcare (Crivelli, 1998). The developments in the Zeeland Flanders region might indicate such. After negative stories in the local media about the hospital in the city of Terneuzen, the demand for cross-border healthcare increased, which could be easily obtained in the Euregional experiment (CVZ, 2003).

The lessons learned from the experiments affect more than the patients. The 1994 Meuse-Rhine report on cross-border healthcare had a “psychological significance” for the actors involved. It brought the health insurers (the Dutch CZ, the German AOK Rheinland, and the Belgian CM-Limburg) together to deal with the complicated administration of international reimbursement procedures. CZ is now known as the specialist on cross-border healthcare among the Dutch health insurers. It remains the only insurer in The Netherlands that uses actively cross-border healthcare as a selling point. Other health insurers are more reluctant and tend to rely on hospitals abroad only if certain treatments are not available within the Dutch territory (CVZ, 2003, p. 51).

In respect to the marginal size of patient mobility, the media coverage in regional and national newspapers on cross-border healthcare has been quite extensive. In particular, employers’ policy to send employees abroad for treatment raised much attention. In response to subsequent political concerns about dualization, and priority care for affluent and employed patients, the

Minister for Health concluded a deal by promising an action program against waiting lists in exchange for them not seeking priority healthcare abroad for their employees (Brouwer and Hermans, 1999). Suggestions from politicians to allow patients to use healthcare abroad freely encountered a strong denial from the Minister, as that would make an end to the policy of contracting and cost containment in the Dutch benefit-in-kind system. Furthermore, parliamentarians feared that cross-border healthcare would seriously undermine the position of Dutch hospitals in the border regions. The Minister, however, did not see any reason to take cross-border healthcare into account in the planning of hospitals. However, the Hospital Facilities Board, the executive quango for the hospital construction policy, warned that although cross-border care might be attractive for reasons of waiting lists and efficient use of hospitals in the border areas, too much use of foreign hospitals might be detrimental to the sustainability of healthcare facilities in the Dutch territory (CBZ, 2001). Hospitals have perceived cross-border healthcare contracted by health insurers as stealing bread out of their mouth, and also expressed concerns about the potential “exhaustion” of the national health infrastructure and its planning. However, they are slowly turning toward a more positive stance as they have started to contract foreign hospitals themselves, particularly in the Euregio Meuse-Rhine (Baselmans and Hermans, 2003).

At European level, lessons were learned by members of EP who have joined the supervisory boards of the Euregions Scheldemond and Meuse-Rhine (Ria Oomen from The Netherlands, and Anne Vanlancker from Belgium). As they are both reporters in the EP on frontier workers, they could rely on the experiences in these experimental areas. As the European Parliament has limited say in these issues, the lessons learned for the more powerful Health Ministers and the European Commission are of much more importance. In particular, the Belgian Minister for Health was active in discussing cross-border patient mobility and the consequences of European legislation for the national healthcare systems. The impact of the Kohll and Decker cases made him organize a conference in Ghent in December 2001. Except for the Dutch minister and Spanish (confronted with many foreign pensioners using Spanish healthcare) and, to some extent, the British (waiting lists) and the German ministers, political discussion about healthcare systems at the European level remained almost out of the question and could only be exercised in informal meetings of state officials. However, the health ministers did acknowledge in a conference in Málaga, Spain, in March 2002 that the legislation on the internal market and the interpretations by the European Court of Justice need them to discuss these matters themselves, in particular that of patient mobility. In July 2002, an “informal process of high-level reflection on patient mobility and healthcare developments in the EU” was therefore been initiated. The claim by the Dutch European Commissioner for

the internal market, that it is no longer explicable to citizens that they cannot profit from the internal market regarding health services, consequently provoked tough discussions (HOPE, 2003a). Nevertheless, administrative representatives and health ministers from all EU Member States supported the Euregional experiments as a way to develop standard guidelines for cross-border healthcare.* In addition, the European Commission has asked the Euregio Scheldemond to present their experience in such a way that it could be implemented in Euregions in Central and Eastern Europe.

The “puzzle” the ECJ rulings pose to the experts from the national healthcare systems has not yet gained political importance in the national health headquarters that a change of the territorial foundations of national health policies is to be expected to occur too soon. As dissatisfaction about the healthcare systems grows because of waiting lists and diminished quality resulting from financial austerity, consequent cross-border patient mobility could alter the scene. Moreover, the extension of the right of free movement in the field of social security from EU citizens to third-country nationals in summer 2003 would soon exert more pressure, as the latter is much more mobile than the EU citizens.† If this were the case, the statement of the Belgian Minister for Health Frank Vandembroucke may come true that “[i]n order to safeguard the social features, as we cherish them in our nation states, it is necessary to discuss healthcare policy both at national and European level” (Vandembroucke, 2001, p. 20). The “puzzle” would thus be “powered” in a new “locus of authority” at European level instead of national level (Hall, 1993); another European rescue of the national healthcare state seems to be within sight.

VIII. MECHANISMS BEHIND CROSS-BORDER HEALTHCARE: EXIT, VOICE, AND LOYALTY

Would patient mobility thus eventually lead to a full restructuring of authority regarding health within the European Union, changing the fundamental principle of territoriality? Do the experiments with cross-border care herald a new era of borderless healthcare systems within the EU area?

* High-Level Committee on Health (2001); Results of the Meeting of Health Ministers, Málaga, February 8, 2002, www.ue2002.es (October 1, 2002).

† See “Council Regulation 859/2003 of May 14, 2003 extending the provisions of Regulation (EEC) No. 1408/71 and Regulation (EEC) No. 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality” (May 20, 2003), in O J L 124, and European Parliament (2003).

Notwithstanding their cautious, even reluctant, approach to cross-border healthcare, did states' healthcare authorities set a process of deterritorialization? An explanatory framework on mechanisms behind territorial restructuring is needed to grasp the potential effects of patient mobility and the way health authorities have dealt with it. Unfortunately, explanations of fundamental shifts in the territorial underpinnings of welfare polities in Western areas are underexplored (Ruggie, 1993; McEwen and Moreno, 2003). However, Bartolini (1998) has shown how the work by Rokkan (1999) on mechanisms behind the territorial reconfiguration of states and nations enlightens present-day processes of polity (re)formation within the EU area. His explication on why political actors would follow or leave territorial strategies is based on Hirschman's (1970) triad of exit, voice, and loyalty. Hirschman argues that in case of dissatisfaction, citizens–consumers can choose to voice their grievance to health authorities hoping that things will improve, or to exit to seek better provisions in another healthcare system. Considerations on exit or voice depend on the feelings the loyalty citizens have toward their (national) system, previous investments in voicing, and the uncertainty on what the new system has to offer. The more familiar another system is to citizens, the less is the uncertainty about the escape's effects, the easier it is to calculate the advantages and disadvantages to leave, and the lower are the costs of exit. Rokkan's basic contention subsequently holds that the external consolidation of polities' boundaries is mutually dependent on the internal structuring of voice and loyalty. The strengthening of borders enhances the internal structuring of voice and loyalty, as escape is not possible. The EU policies to open the Member States' borders would consequently undermine the cohesion of that internal structuring, as the necessity to voice in case of dissatisfaction diminishes by the availability of exit opportunities. As European legislation has a standardizing effect upon the EU Member States, the threshold for exit has been lowered even more: "...as countries start to resemble each other... will the danger of premature and excessive exits [and entries, HV] arise..." (Hirschman, 1970, p. 81). To keep dissatisfactory voice and exit at bay while their external consolidation is weakening, states' health authorities could foster national loyalty. The case of cross-border healthcare serves as an interesting example of the instrumental worth of the Hirschman–Rokkanian mechanisms to analyze the reterritorialization of polities within the EU area, as the main motives to seek healthcare abroad (familiarity and dissatisfaction) resemble these mechanisms' initiators. The (foreseen) repercussions of dissatisfaction and the EU-inflicted exit opportunities for the internal structure of healthcare system must consequently have led the Dutch health authorities to act.

The behavior of the consumer–citizen is, in the eyes of Hirschman, the ultimate indicator of the performance of public authorities and could thus

serve as an incentive for reform and renovation. In case of (expected) dissatisfaction shown through exit or voice, health authorities may anticipate or react to keep their consumers—citizens within the system. Exit opportunities for health users range from the possibility to switch from one public care provider or social health insurance fund to another, to seek private healthcare provision and insurance instead of public, or to escape from one national healthcare system to another (Freeman, 1999, pp. 109–110). The creation of exit opportunities within the system may be introduced to channel the health users' dissatisfaction, preventing them from escaping the system fully. Thus, the response of governments to (expected) dissatisfaction does not necessarily correspond with the demands of the citizens: “[n]owhere did user dissatisfaction with health care states imply a demand for the quasi-marketization of healthcare, though that is the way in which, in part, governments have sought to meet it” (Freeman, 1999, p. 116). Although health users in the area of the European Union are confronted with the same exit opportunities, the outcomes among healthcare states may greatly differ because of the variety of system structure. The British command-and-control healthcare state has started to introduce exit opportunities between private and public health providers to channel dissatisfaction among health users. The corporatist Dutch healthcare state, however, adopted exit opportunities among health insurance funds, ending their regional monopolies in 1992 and thus allowing patients to join the fund of their choice. As long as differences between funds' premium rates remained low, the Dutch patients did not switch (Gress et al., 2002). Dissatisfaction on the premium's height fostered exit behavior among health insurers since early 2003.

The Dutch health authorities also introduced opportunities to voice through issuing patients' right law, introducing grievance procedures in hospitals, and consultative platforms at national and regional levels in The Netherlands in the 1990s. They thus aim to enhance the internal voice structures and channel dissatisfaction to prevent health users from leaving the system. Being aware that the Dutch strict budgeting policy in the healthcare could deteriorate the broadly demanded delivery of timely and high-quality healthcare, introduction of exit and voice options within the system may also be interpreted as a means to spread the blame of the dissatisfactory functioning of the healthcare system. Devolving responsibility to the market, and perhaps later to subnational or European authorities, is thus also a way to avoid a further loss of legitimacy. Citizens' satisfaction with the Dutch healthcare system remained fairly high until 1998. The issue of waiting lists changed the scene thereafter. Their national loyalty may, however, urge the consumers—citizens to address the government in elections, expecting it to provide better healthcare in “our” country. As a matter of fact, 57% and 52% of respondents, respectively, mentioned healthcare as on one of the most

important issues in the 2002 and 2003 Dutch Electionary Studies and people still held the government responsible for solving the problems of the waiting lists (Van Holsteyn, personal communication, 2003; Centrum voor Verzekeringstatistiek, 2002).

The coincidence of dissatisfaction with waiting lists and the ECJ rulings in the late 1990s poses a threat to the external consolidation of the Dutch healthcare system. The rulings have fostered resemblance among the EU Member States applying the principles of the freedom of health services and of nondiscrimination on the basis of residence or nationality across the entire EU territory. Through the information campaigns on cross-border healthcare in Euregions and the media, patients are becoming more acquainted with healthcare in the other EU systems and the probability of exit thus increases. Besides, through international comparison, patients become more aware as to what treatments they are missing in their own healthcare system, potentially fostering feelings of dissatisfaction.

Although health insurance funds seemingly gain more power in the Dutch healthcare system, making them quick to respond to their clients' dissatisfaction, they have barely used the exits of cross-border healthcare actively with the notable exception of CZ. Insurers' high investment in voice in, and loyalty to, the corporatist healthcare state of The Netherlands may have prevented them from joining their clients' exit. The joint and unanimous reactions of the health insurers' interest groups and the Dutch health authorities against breaches into the Dutch health territory do indicate so. Health insurers with experience in cross-border healthcare in Euregions privately threatened to use European exits to break open the Dutch healthcare system; this legacy and corporatist entanglements have probably prevented any action until the moment of writing.*

Partly due to its institutional legacy and particularly to keep control of the exits, the contracting system has been employed as an instrument for cross-border healthcare. The experiments with cross-border healthcare were thus aimed to learn to keep the system as closed as possible, and clearly not open the gates to the Dutch healthcare state. The cross-border healthcare functions as a valve for temporary inconveniences of waiting lists, siphoning off the dissatisfaction in the border areas and saving money by a more efficient use of healthcare facilities just across border. Thus, the cross-border experiments have provided a means to keep the system running and to leave its internal structuring relatively unchanged.

* Personal observation at an expert meeting of Zorgverzekeraars Nederland on the Müller-Fauré case (June 6, 2003).

However, further demands to improve health performance for an aging population with more chronic patients and an increasingly expensive and continuously advancing medical technology might put severe pressure on the internal structures of the Dutch health authorities, restricted by the EMU norms for financial austerity. The temporary hospital financing policy in 2001 and 2002 to allow hospitals to treat as many patients as they could was stopped in 2003 due to the enormous financial repercussions. Although reluctantly because of the potential dualization in health treatments, the government recently proposed allowing profit-making health clinics within the public health system to provide patients more choice. Other possibilities to increase exit options within the system are fairly limited, as the contracting system between care providers and health insurers prevents patients to choose the hospital they prefer in the Dutch corporatist healthcare state. However, that simultaneously allows the government to keep control of the planning of hospital care facilities for intramural care and its ensuing costs. Introduction of more voice options will most probably not work out, as the voice for patients is relatively difficult to organize as they form a highly fragmented and volatile group, with the possible exception of chronic patients. A combination of dissatisfaction about the performance of the Dutch healthcare system and European exit options could therefore lead to the immediate use of the escape route of cross-border healthcare.

Actors involved in healthcare in the peripheral border regions, such as regional administrations, health insurers, and hospitals, would become more oriented to regions across the border to jointly solve the problems, and may start to present regionally based interests in the national and European political cores. Planning of healthcare facilities could consequently be less concentrated in national centers, but coordinated across national, (Eu)regional, and even European levels. EU-inflicted exits may thus loosen the congruence of the Dutch health territory with patterns of health consumption and the structure of health interest representation. The mutual shaping of internal structuring and external consolidation could thus mould the territoriality of the healthcare system considerably.

As long as the contracting system is strongly supervised by the Dutch health authorities, the system will remain relatively cohesive, just spreading Dutch quality requirements and grievance procedures across the borders through contracts between Dutch health insurers and foreign health providers for treating Dutch patients. In addition, as the Euregional experiments showed the importance of language and culture in healthcare treatments, health sectors largely dependent on language and culture (such as mental healthcare) will remain rather unaffected by the Europe-inflicted exits. As foreign hospitals started to provide healthcare “in Dutch” with the help of Dutch doctors in Italy, Spain, Germany, and England, this may slightly

change. Besides, the Dutch's regional and language-based range of action in using healthcare may prevent them from seeking basic, extramural care far away. Only in the case of costly intramural care or very high dissatisfaction would incentives to pay the price of exit from a known loyal region become more worthwhile. The range of action of health users thus keeps exit at bay and the unsettling of the territorial underpinnings fairly modest, as long as dissatisfaction and familiarity with other systems remain low.

IX. GLOBALIZATION, EUROPEANIZATION, AND DEBORDERING STATES?

Through the internal market, Euregional experiments, ECJ rulings, and the program to create a Europe without frontiers could thus set in motion the reorganization of the Dutch healthcare system. These developments were captured in more abstract terms of the mechanism of exit, voice, and loyalty, and the mutual dependency of external consolidation and internal structuring. It may thus provide a way to discuss more general matters of debordering states in times of globalization and Europeanization. Do these processes indeed deterritorialize states, weakening the Westphalian configuration of territorially separated polities? Do more exit options for individuals inevitably lead to the dismantling of territorially organized public benefit provisions within the present welfare states?

Be it within processes of global or European scale, citizens are becoming more mobile and better-informed about the provision of public benefits abroad. They, thus are more aware of potential deficiencies of their own state of public benefits, and are able to obtain better public benefits somewhere else. Due to minimum standards set in international treaties agreed within the ILO, WHO, the Council of Europe, and the European Union, the rights to public benefits have been rather individualized and could, to a certain extent, even be materialized in the territories covered by these treaties. This poses quite a challenge to governments involved. On one side, Europeanization and globalization hold incentives for governments to perform better in providing public benefits such as healthcare, as they are confronted with better-informed and exit-threatening affluent patients. On the other hand, the actual improvement in public benefits provision may attract so many new mobile patients that the system becomes unaffordable, leading to a higher tax load or premium load, stimulating affluent citizens to leave at the expense of maintaining solidarity. However, antidiscriminatory legislation at European and global levels prevents governments from selecting directly or indirectly benefit recipients to keep the system closed for "social tourism" by these new mobile

patients. Governments must therefore rely on different instruments to maintain their solidarity systems intact.

In case of more exit opportunities and growing dissatisfaction, a first option is to allow more voice to clients and their representatives. As existing voice electionary channels are predominantly territorially structured, this would rather enhance the territoriality of political systems. Freeman (1999, p. 117) claims that voice is only an option for the highly educated health users, whereas the bulk of them remains rather inactive to either exit or voice. If these highly educated people do not eloquently phrase their dissatisfaction but leave instead, a strong incentive for public authorities to improve their public benefits systems will disappear, leaving the more apathetic patients left behind worse off (Hirschman, 1970, Chap. 1). Rather cynically, governments can bet that it would thus become free from complaints on their performance. However, as the highly educated often belong to the more affluent and healthy part of the health system, governments are left with the less healthy and less contributing. Besides, the highly educated comprise a considerable share of the population of Western countries. Both in command-in-control and corporatist healthcare state that the vested interests in the public benefits sector would be at stake if the exit-prone citizens were allowed to leave.

Devolving the public benefits system toward the market, Europe, or regions to avoid further blame for deteriorating performance may be hindered by similar protests. Even in case of devolution, the public benefit systems are still confronted with similar global and European challenges of increasing mobility and information flows. To be concrete, the affluent regions of Flanders (northern Belgian region), Catalonia (northern Spanish region), and Padania (northern Italian region) will not totally be released from their less fortunate state fellows in Southern Belgium (Wallonia), Southern Spain, and Southern Italy (Mezzogiorno). In its turn, permitting more voice into the system may also increase demand for more and better public benefits provisions. That would certainly become too heavy a financial burden for governments, as they are restricted in budget expansion by global pressures for international competitiveness or European EMU norms.

Another option is to foster loyalty to keep both voice and exit at bay. The attachment to a public benefits system may prevent citizens–consumers both from complaining about and leaving “their” system. Reasoning within the Hirschman–Rokkan framework, globalization and Europeanization may thus result into a “revivification of nationalism” (Flora, 2000). As attachment to the nation has been basically framed within the territorial structures of states or regions, territorialization instead of deterritorialization is to be expected.

Thus, do globalization and Europeanization rather force the national states providing public benefits to remain in a similar territorial form? Not necessarily so. The territorial congruence of voice structures, loyalty patterns,

scope of competences, and the range of action of benefit providers, recipients, and regulators within national states will probably diminish. For the planning, rationing, and consequent financing of healthcare facilities and other public provisions, state authorities have to agree among themselves at bilateral, European, and international levels on controlling the flows of benefit recipients and on mutual financial adjustment measurements to cope with the unequal distribution of recipients among the participating states. Under the threat of aging, economically inactive, and socially excluded population segments, the EU Member States and the European Commission have therefore incorporated the aim of high-quality, accessible, and financially sustainable healthcare into its economic policy, and have been discussing more thoroughly the issue of patient mobility since July 2002 (see European Commission, 1999, 2001). Although emphasizing the national prerogatives of the Member States in organizing and financing their healthcare systems, mutual coordination at European level could solve inefficiencies in border regions and steer patient flows. National governments have also been cooperating to slow down exit-stimulating institutions such as the European Court of Justice.

The interest groups of care providers and health insurers follow suit to establish lobbying in places where planning and provision of healthcare facilities are mutually attuned, expanding the corporatist or statist networks in national capitals toward an amalgam of private, semipublic, and governmental actors at supranational level, as presently happens in the unofficial EU capital, Brussels. Regional healthcare demands and language determine patients' range of action in seeking access to public benefits such as healthcare. State borders thus matter less for patients' behavior in border regions, and consequently for their care providers and health insurers. The planning of public facilities may consequently be less based upon geographical spread per se, but rather on their position in international flows of potential benefit recipients, depending on the their partly language-based familiarity with other systems.

As a matter of fact, borders never sealed their states completely off. They rather function as one of the filters for access to public benefits and to keep public benefits systems "plannable" and affordable. Increasing mobility and information flows force state governments to consult neighboring states to control the flows of benefit recipients, such as patients. The heavily supervised experiments in Euregions to allow patients seeking treatment just across borders do fit into this attempt to rescue national benefits system with new policy instruments in a more exit-friendly environment. Thus, this variant of cross-national policy learning does not match with alarming stories about the detrimental opening of solidarity systems and the alleged debordering of states. Yet, the potential dissatisfaction about healthcare delivery in financially hard times for national governments and increased exit opportu-

nities by global mobility and EU policies to open the national welfare systems put European healthcare states under sever pressures. Subsequent strategies to foster regional or national loyalty to soothe protesting voice and to withhold citizens from escaping their healthcare state, plus cross-border and cross-level coordination among the subnational, national, and European authorities to improve healthcare performance, imply a reterritorializing reformation of solidarity communities within the European Union. Apparently contradictory (patient) mobility could thus entail both the weakening and strengthening of the territorial underpinnings of states.

ACKNOWLEDGMENT

I would like to thank the editors and Dr. M. Trappenburg for their comments on earlier versions of this chapter.

REFERENCES

- Allen, D. (2000). Cohesion and the structural funds. In: Wallace, H., Wallace, W., eds., *Policy-Making in the European Union*. Oxford: Oxford University Press, pp. 243–265.
- Baeten, R. (2000). *De Gevolgen van de Europese Eenmaking voor de Organisatie en de Verstrekking van de Gezondheidszorgen in België: Patiëntenmobiliteit en Grensoverschrijdende Zorg (report at the request of the Belgian Federal Ministry of Health)*. Brussels: Observatoire Social Européen.
- Bartolini, S. (1998). *Exit Options, Boundary Building, Political Structuring*. Florence: EUI.
- Baselmans, N., Hermans, H. E. G. M. (2003). Grensoverschrijdende Samenwerking: Oplossing voor Capaciteitsproblemen bij Ziekenhuizen? *Zorg Financ.* 5:11–27.
- BECGZ (Bijzondere Euregionale Commissie Grensoverschrijdende Zorg). *Zorg Dichtbij óók over de Grens: Advies over Grensoverschrijdende Zorg in de Euregio Maas-Rijn*. Aachen: ERM.
- Belcher, P. (1999). *The Role of the European Union in Healthcare: An Overview*. Zoetermeer: Council for Health and Social Services (RVZ).
- Biert, J., de Wolf, K. (1999). *Grenzüberschreitende Traumatologie: Studie über die Möglichkeiten der Zusammenarbeit in der Unfallmedizin (report at the request of the Euregio Rhine-Waal)*. Kleve: Euregio Rhein-Waal.
- Brouwer, W. B. F. (1999). *Het Nederlandse Gezondheidszorgstelsel in Europa: Een Economische Verkenning*. Zoetermeer: Council for Health and Social Services (RVZ).
- Brouwer, W. B. F., Hermans, H. E. G. M. (1999). Private clinics for employees as a Dutch solution for waiting lists: economic and legal arguments. *Health Policy* 47:1–17.

- Brouwer, W. B. F., van Exel, J., Hermans, H. E. G. M., Stoop, A. (2003). Should I stay or should I go? Waiting lists and cross-border care in The Netherlands. *Health Policy* 63:289–298.
- CBZ. (2001). *Sturing en Financiering van de Bouwkundige Zorginfrastructuur in Andere Landen van de Europese Unie: Signaleringsrapport*. Den Haag: College Bouw Ziekenhuisvoorzieningen.
- Centrum voor Verzekeringsstatistiek. (2002). *De Consument aan het Woord: Onderzoek naar de Mening van de Consument over de Gezondheidszorg en de Ziektekostenverzekering (report at the request of the Verbond van Verzekeraars)*. Den Haag: Centrum voor Verzekeringsstatistiek.
- Coheur, A. (2001). Integrating care in the border regions: an analysis of the Euregio Project. *Eurohealth* 7(4):10–12.
- Consumentenbond. (July 2002). 't Ene Ziekenhuis een stuk Beter dan het Andere: 37 Ziekenhuizen vergeleken. *Consumentengids*, pp. 39–45.
- Crivelli, L. A. (1998). Cross-border care between Swiss Cantons: a testing lab for the single European market. In: Leidl, R., ed. *Health Care and its Financing in the Single European Market*. Amsterdam: IOS Press, pp. 285–305.
- CVZ. (2001). *Grensoverschrijdende Zorg (report at the request of the Ministry of Health)*. Amstelveen: College Voor Zorgverzekeringen.
- CTZ. (2001). *Signalement Grensoverschrijdende Zorg (report at the request of the Ministry of Health)*. Amstelveen: College Toezicht Zorgverzekeringen.
- CVZ. (2002). *Grensoverschrijdende Zorg (Circular No. 02/21)*. Amstelveen: College Voor Zorgverzekeringen.
- CVZ. (2003). *Grensoverschrijdende Zorg (Internal Report)*. Amstelveen: College Voor Zorgverzekeringen.
- Cornelissen, R. (1996). The principle of territoriality and the community regulations on social security (regulations 1408/71 and 574/72). *Common Mark. Law Rev.* 33:439–471.
- Euregio Rhein-Waal. (1995). *Grenzüberschreitende Gesundheitsversorgung: Deutsch-Niederländische Zusammenarbeit im Gesundheitswesen in der Euregio Rhein-Waal, Zusammenfassung*. Kleve: Euregio Rhein-Waal.
- Euregiozorgloket. (2000). *Grensbewoners en Grensoverschrijdende Zorgverlening (Rapport Deel 1, Deel 2)*. Ghent: Euregio Scheldemond.
- European Commission. (1998). *Eurobarometer 49*. http://europa.eu.int/comm/public_opinion/archives/eb/eb49/eb49_en.htm.
- European Commission. (1999). A concerted strategy for modernising social protection. http://europa.eu.int/comm/employment_social/soc-prot/social/com99-347/com99-347_en.pdf.
- European Commission. (2001). The future of healthcare and care for the elderly: guaranteeing accessibility, quality and financial viability. http://europa.eu.int/comm/employment_social/news/2002/jan/com2001_723_en.pdf.
- European Commission. (2003). Eurobarometer 58.0: European Union Citizens and Sources of Information about Health. Luxembourg: European Commission.
- European Parliament. (1998). In: Jakubowski, E., Busse, R., eds. *Health Care Systems in the EU: A Comparative Study*. Luxembourg: European Parliament DG for Research.

- European Parliament. (2003). Report on the Proposal for a European Parliament and Council Regulation on Coordination of Social Security Systems. <http://www.europarl.eu.int/meetdocs/committees/empl/20030429/479921en.pdf>.
- Ferrera, M. (1993). *Citizens and Social Protection: Main Results from a Eurobarometer Survey*. Pavia: University.
- Flora, P. (2000). Externe Grenzbildung und Interne Strukturierung: Europa und Seinen Nationen: Eine Rokkanische Forschungsperspektive. *Berliner Journal für Soziologie* 10:157–166.
- France, G. (1997). Cross-border flows of Italian patients within the European Union: an international trade approach. *Eur. J. Public Health* 7(Suppl. 3):19–32.
- Freeman, R. (1999). *The Politics of Health in Europe*. Manchester: Manchester University Press.
- Gress, S., Groenewegen, P., Kerssens, J., Braun, B., Wasem, J. (2002). Free choice of sickness funds in regulated competition: evidence from Germany and The Netherlands. *Health Policy* 60:235–254.
- Grunwald, C. A., Smit, R. L. C. (1999). *Grensoverschrijdende Zorg: Zorg op Maat in de Euregio Maas-Rijn: Evaluatie van een Experiment (report at the request of the Health Insurance Board, no. 816)*. Utrecht: NZi.
- Hermans, H. E. G. M., den Exter, A. (March 1999). Cross-border alliances in health care: international co-operation between health insurers and providers in the Euregio Meuse-Rhine. *Croat. Med. J.* 40(2):266–272.
- Hall, P.A. (1993). Policy paradigms, social learning, and the state: the case of economic policymaking in Britain. *Comp. Polit.* 25:275–296.
- High-Level Committee on Health. (2001). *The Internal Market and Health Services*. Brussels: European Commission DG Health and Consumer Protection.
- Hirschman, A. O. (1970). *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States*. Cambridge: Harvard University Press.
- HOPE. (2003a). High level process of reflection on patient mobility. *HOPE Newsl.* 1:1–7.
- HOPE. (2003b). *Hospital Co-operation in Border Regions in Europe*. Brussels: HOPE (Standing Committee of the Hospitals of the European Union).
- Leibfried, S., Pierson, P. (1995). Semisovereign welfare states. In: Leibfried, S. Pierson, P., eds. *European Social Policy: Between Fragmentation and Integration*. Washington: Brookings Institution, pp. 43–77.
- McEwen, N., Moreno, L. (March 2003). The Welfare State and Territorial Politics: an under-explored relationship. Paper presented at ECPR Conference, Edinburgh.
- Medisch Contact. (2002). Zorg in Limburg gaat over de Grens. *Med. Contact* 57, 13.
- Moran, M. (1999). Death or transfiguration? The changing government of the health care state. EUI Working Paper 99/15. Florence: EUI.
- Mossialos, E. (1997). Citizens' view on health systems in the 15 Member States of the European Union. *Health Econ.* 6:109–116.
- NRC Handelsblad. (2003). Zieke Belgen mogen niet de Dupe worden: Belgische Minister over Vrij Verkeer van Patiënten. *NRC Handelsblad*. February 15.
- Offe, C. (1998). Demokratie und Wohlfahrtsstaat: eine Europäische Regimeform unter dem Streß der Europäischen Integration. In: Streeck, W., ed. *Internationale Wirtschaft, Nationale Demokratie: Herausforderungen für die Demokratietheorie*. Frankfurt: Campus Verlag, pp. 99–136.

- Palm, W., Nickless, J., Lewalle, H., Coheur, A. (2000). *Implications of Recent Jurisprudence on the Co-ordination of Health Care Protection Systems (report at the request of European Commission DG Employment and Social Affairs)*. Brussels: AIM.
- Rokkan, S. (1999). Flora, P.Kuhnle, S.Urwin, D., eds., *State Formation, Nation-Building, and Mass Politics in Europe: The Theory of Stein Rokkan*. Oxford: Oxford University Press.
- Ros, C. C., van der Zee, J. (1996). *Vooronderzoek Project Grensoverschrijdende Zorg (report at the request of the Ziekenfondsraad, Health Insurance Board, no. 703)*. Utrecht: NIVEL.
- Ruggie, J. G. (1993). Territoriality and beyond. *Internat. Org.* 47(1):139–174.
- Starmans, B., Leidl, R., Rhodes, G. (1997). A comparative study on cross-border hospital care in the Euregio Meuse-Rhine. *Eur. J. Public Health* 7(Suppl. 3): 33–41.
- Vandenbroucke, F. (2001). Foreword. In: Mossialos, E., McKee, M., eds. *EU Law and the Social Character of Health Care*. Brussels: P.I.E. Peter Lang.
- Van der Mei, A. P. (2001). Free movement of persons within the European Community: cross-border access to public benefits. *Ph.D. Dissertation*. Netherlands: Maastricht University.
- Van Tits, M., Gemmel, P. (1995). *Haalbaarheidsonderzoek Samenwerkingsnetwerk Ziekenhuizen in de Euregio Scheldemond: Samenvatting, Conclusies en Aanbevelingen*. Tilburg/Ghent: IVA/De Vlerick School voor Management.
- Zorgverzekeraars Journaal. Euregio Maas-Rijn: Nederlandse Patiënten tevreden over Zorg in Duitsland en België. *Zorgverzek. J.* 42:5.

12

Administrative Reforms in a Globalized World: Human Resource Management in Latin America's Public Administration

Carles Ramió and Miquel Salvador

Universitat Pompeu Fabra, Barcelona, Spain

Globalization is redefining the roles of states and their governments in different spheres of action. In Latin America, that transformation has been reflected both in the functions they fulfill and the strategies they adopt (Kliksberg, 1997, 2001). The failure of public administration structures to adapt to that process, and political and economic crises, have led to the emergence of modernization programs. For several decades, the modernization of the public administrations seems to have been a distinctive feature of their existence and frequently appears on the government agenda (Peters, 2002; Collier and Collier, 2002). The design of such modernization programs has also been conditioned by globalization processes, through both a consideration of international referents and the action of transnational agents that have acted as vehicles of institutional diffusion.

An analysis of modernization processes of Latin American administrations provides a complementary view of governments' capacity for action (Geddes, 1994; Spink, 1997). A specific analysis of human resources management enables us to identify one of the dimensions of the interaction between politics and administration in Latin America. We demonstrate how globalization has affected the processes of emulation and learning of public management policies in general and human resources management in particular (Oszlack, 2001; Cheung, 1997).

Our aim in this chapter is to give an account of the impact of globalization processes in public management and the difficulties that countries, characterized by a low degree of institutionalization, have in

dealing with this impact. The argument that is developed here shows how certain modernization paradigms and operative instruments make it difficult for countries to take advantage of their potential to improve public management by failing to take into account prevailing institutions.

Departing from descriptive studies of administrative reforms in Latin America, the chapter proposes a neoinstitutionalist perspective to reinterpret and to identify the dynamics of changing civil service management and the difficulties that they face. This approach allows us to emphasize the role developed by institutions, conceived as an integrated set of norms, rules, values, structures, and processes that tend to resist change. The review of reform initiatives, strategies, and areas of intervention in civil service management illustrates the importance of institutions in the impact of globalization pressures and in explaining their effective results.

By way of developing this argument, the first section begins with a conceptualization of civil service as an institution, paying attention to the institutional dynamics related to attempts to reform it. Concerned with the object, the second section shows a review of modernization and reform process in Latin American public administrations, following the waves or “generations” that inform about the influence of globalization dynamics. The third section is focused on the strategies developed to reform civil service systems, as a field of action into modernization initiatives, and how they deal with the existing institutional structure. A fourth section provides a review of the achieved results of reform in concrete fields of civil service systems such as public employment dimensions, performance assessment programs, training, or collective bargaining. In contrast with such operative approach, the fifth section introduces a review of the role played by civil service into the political and administrative system, departing from the two main administrative models and traditions.

Following this wide approach, the concluding section connects the civil service with its context, in terms of the relationship between administrative and civil service stability on the one hand, and that of the political system as a whole on the other. A brief review of the main administrative models and traditions shows the role played by the civil service system and its related institutions, and how they shape the pressures of globalization in the field of public management.

I. THE CIVIL SERVICE AS AN INSTITUTION

To analyze those processes, we will use concepts reflecting a neoinstitutionalist perspective that will help explain the impact of globalization on the

internal dynamics of change and modernization of Latin American public administrations. To that end, a first step is to define the main concepts and the theoretical approach around which the argument is structured. In this section, we offer an analysis of the modernization processes of the civil service, understood as the set of norms, rules, values, routines, and processes, which, through their interaction, reveal the configuration of a model of professional public employment.¹ This definition comes from the analytical perspective that stresses the importance both of the formal and informal aspects of the elements mentioned and of their adaptation to the institutional context in which they evolve.

As an institution, the human resources management system generates a “logic of appropriateness” (March and Olsen, 1989; Peters, 1999), which limits and directs the activity of the different players involved. The set of elements that make up the institution provides the players with a framework for interpreting situations and affects their definition of their own interests and expectations, based on their institutional and relational responsibilities toward the other players. In this way, institutions present a constraint/freedom duality as vehicles for organizational activity: “institutions are not just constraint structures; all institutions simultaneously empower and control” (Jepperson, 1991, p. 146).

In relation to the globalization processes, the prevailing institution of human resources management rules out certain options in favor of others that focus the discussion and most probably that determine the decision finally taken. As for the modernization programs promoted, the institution will condition their scope according to the magnitude of the changes proposed, the coherence of the strategy with the prevailing equilibrium, or the sustainability of the drive for transformation. From this point of view, the context in which the institution evolves is an essential element in considering the processes of learning and importing successful innovatory formulas from other institutional contexts (Ormond and Löffler, 1999; Shepherd and Valencia, 1996). Hence the need to adapt the goals and strategies of transformation to existing institutions, understanding their role in a particular social context, to smooth the processes of change of Latin American public administrations.

A first element to consider here is the processes and channels through which the institution is diffused (Scott, 1995). Once again, a definition of the network of players to which the organization relates and by which it is influenced is crucial (Jordana, 1995; Marsh and Rhodes, 1992), although this is not to deny the possibility of endogenously generated institutional change. In the case of human resources management in Latin American administrations, this consideration is particularly apt.

II. A REVIEW OF MODERNIZATION AND REFORM PROCESSES IN LATIN AMERICAN PUBLIC ADMINISTRATIONS

Throughout the 20th century, there were numerous initiatives designed to modernize the public apparatus in many Latin American countries (Oszlack, 2001; Spink, 1997; Barzelay et al., 2002). Although they greatly varied from one country to another, partly because of the divergences in their sociopolitical systems, they fall into three broad historical stages (Peters, 2002). This classification, reflecting the programs' similar content and strategies, becomes a first indicator of the processes of emulation that occur in public management policies and can be conceptualized in terms of institutional isomorphism (DiMaggio and Powell, 1991; Meyer and Scott, 1992).

A review of the evolution of the processes of reform, by focusing on regulations shared between countries that go beyond their borders, makes it possible to identify different dynamics of institutional emulation, even for the internal organizational transformation of their administrations and their human resources management (Borins, 2000; Spink, 1997). In another section, we shall single out some aspects of the modifications that affect the sphere of the civil service, and test both their orientation and their effective scope in the light of arguments about institutional learning and the impact of the references appropriate to a context of globalization.

Proceeding from these premises and using data provided by the historical and comparative studies developed by Sulbrandt (1989, 2002), Oszlack (2001), Spink (1997), Payne and Carlson (2002), or Bonifacio and Falivene (2002), we can distinguish the phases of modernization in the Latin American area. The first phase covers the modernizing initiatives of the state that emerged at the beginning of the 20th century and continued into the 1980s. During that phase, most Latin American countries, although from different starting points, embarked on reforms designed to overhaul and strengthen their state apparatuses, conceived of as fundamental agents for structuring social relations and promoting development. The aim was to increase intervention by the state, which over that period saw its structures and instruments increase substantially.

The modernizing approach of this first stage, following the dynamics of institutional isomorphism, spread over a large part of the region, in both its generic conception and its specific expressions. Attempts to introduce elements of merit into Latin American civil service systems began to follow in the 1930s, for example in Brazil through constitutional reforms in 1934, in Argentina 1937, Colombia 1938, Paraguay 1944, and Panama 1946 (Spink, 1997). The proliferation of national public administration schools and institutes, such as EBAP in Brazil in 1952, ICAP in Costa Rica 1954, INAP

in Mexico 1955, or ESAP in Colombia 1956, constitutes another example of these dynamics.

An important element of that process of diffusion was the intervention of international bodies, such as the United Nations, which, through its associated agencies, promoted the strengthening of states as a way to help implement development plans (Pérez Salgado, 1997). Through programs such as “Modernization of the State,” “Public Sector Modernization,” or “Strengthening and Reform of the State,” international agencies intervene by prescribing particular courses of action that marks out the different players’ room for maneuver. The resources associated with monitoring these programs and the recognition and legitimacy they involved helped many Latin American countries to adopt them, although they had limited effective capacity to enforce them.

On balance, these initiatives showed few successes; and large-scale reforms, such as massive systematic efforts to substantially transform the public administration, did not take root in Latin America. It is significant that, in contrast to the failures recorded under democratic governments, authoritarian governments made certain advances, usually associated with the need to win legitimacy by improving the functioning of the state organization. On the other hand, “(. . .) authoritarianism may seem to offer solutions (. . .) because it can insulate government decision makers from many of the political clientele networks that pervade society, as well as from most organized groups. (. . .) authoritarian governments weaken or destroy party-based patronage networks and (. . .) elected politicians can no longer divert state resources to their own survival needs” (Geddes, 1994, p. 191). But “successes” of that kind were not only sparse but also difficult to sustain over time.

From the 1980s, new modernizing initiatives emerged with a different rationale. Those promoted by Latin American countries during this second phase are called “first-generation reforms” under the nomenclature propounded by the World Bank. The orientation of these initiatives must be understood in terms of the modernization processes initially set in motion by conservative governments in the United Kingdom and the United States and that spread rapidly to many of the Anglo-Saxon countries (Barzelay, 2000; Hood, 1996). They reflected an emerging management doctrine known as New Public Management, and their influence reached a number of Latin American countries, although the sociopolitical and economic realities of those countries differed from those of the countries where the initiatives originated.

Nevertheless, the central objective of these reforms as they were applied in Latin America was not so much to improve the functioning of the state as to reduce it, on the grounds that it performed functions that were not considered suitable in the new ideological context. This led to the substitution

of the state in certain areas of action (mainly through privatization and deregulation) and a major cutback of staff in the public apparatuses. From a study of 11 countries in the region,² Sulbrandt (1989) observes a continuous growth of the state through the 1960s and 1970s that, from the early 1980s, tends to slow down and turn into a decline. The data show the major successes of the “first-generation reform” initiatives, so much greater than the previous reforms, although that is relative given the scope of the different objectives pursued.

The focus of these modernizing initiatives was the external orientation of the state apparatus; that is, they set out to modify the state’s relations with society but not its internal operation. The World Bank was strongly committed to market-oriented reforms after the Baker Plan in 1985 defined them as a precondition for solving the debt crisis (Bresser-Pereira, 2001). Given their orientation, the main successes of those reforms consisted of creating agencies and outsourcing and reducing the size of the public administrative apparatuses. That meant that they focused more on reducing the civil service than effectively transforming its structure (above and beyond introducing modifications such as greater fragmentation and flexibility).

In the next decade, the 1990s, a new “generation” of reforms emerged, different in terms of objectives and orientation from the previous one. In distinguishing these “second-generation reforms,” we should not overlook certain lines of continuity with the “first-generation reforms,” such as the tendency to cut back the structures and staff of the public apparatuses (Sulbrandt, 2002); but their central goal went beyond downsizing. As Bresser-Pereira (2001, p. 6) says, “for the World Bank, reform of the state meant, first, downsizing (or reducing the public apparatus), and second, reforming the public service.” The concern of the second-generation reforms was the internal dimension and, as a link with those introduced before the 1980s, they aimed to improve the functioning of the public administration apparatuses. Among other things, that objective consisted of promoting changes to the “rules of the game” in relations between the staff and the administration, affecting the very design of the civil service model. Although they are still in force, the effective results of this third phase of reforms have also been questioned (Oszlack, 2001; Gaetani, 1998), especially for their incapacity to transform the prevailing institutions in Latin American public administrations.

III. STRATEGIES TO REFORM CIVIL SERVICE SYSTEMS

In the process of institutional reform, the main inducers of change are the levels of satisfaction with present performance and the aspirations for

potential performance (Levitt and March, 1990). Here we must consider the learning strategies used, distinguishing between exploration strategies (for new institutions) and exploitation strategies (of existing institutions) (Lanzara, 1999; March, 1991). If the exploration of new balances between values, standards, rules, and processes requires the people involved to direct a large part of their efforts toward active investigation, exploitation of the existing structures consists of refining and perfecting the institutions already available. And so two opposite attitudes are involved: one embracing experimentation, inclination toward risk, invention, and readiness to face uncertainty; the other more conservative, averse to risk, and key decision making.

In the context of globalization, international agencies such as the World Bank, the International Monetary Fund, or the Inter-American Development Bank (IDB) play an important part in the “legitimization” of references (Pérez Salgado, 1997). The institutional environment of the Latin American administrations favors the development of exploitation dynamics, although not so much of the institutions themselves as of those imported from other reference contexts. However, the resulting combination of the two learning strategies (exploitation and exploration) will also depend on the participation of the different groups of players, defining their investments and strategies by reference to different interests and time horizons.

The change we can observe in the specialized forums on the subject (such as the CLAD Congress) or the investigations and specialized meetings promoted by agencies such as the IDB (“Regional Policy Dialogue: Public policy management and transparency network”) seem to point to the involvement of such players in those learning strategies, although there is still a long way to go to in transforming the Latin American public administrations so as to improve their role in the complex institutional framework in which they are set.

But greater or lesser openness to the influences and dynamics of globalization is also reflected in the strategies used to transform civil service systems. Oszlack (2001) identifies four strategies and approaches and results may be interpreted in terms of institutional dynamics, taking into account the international reference models.

A first option was the creation of a limited number of key posts, a kind of “senior executive service” inspired by the U.S. model. However, its implementation displayed variations that distorted the initial intention. The criteria were not specified and the conditions of objectivity and transparency for their provision were not respected, and so they tended to become another prize to be shared out on the basis of a logic that was more political than meritocratic. This illustrates how systems designed to create a senior management function, as in the Anglo-Saxon tradition, may be formally introduced into very different realities according to the logic of institutional

isomorphism, but are easily distorted and end up straying from the goals they were intended to pursue (Hood, 1998).

A second option was the creation of elite corps inspired by the French model of a “grands corps” and the ENA. That strategy, adopted only in the case of Argentina, involved a corps of “government administrators” recruited under a competitive system and then subjected to a specialist-training program. Besides appearing in only one country, the strategy did not manage to consolidate itself, in terms of either the functions the members ended up performing (advisory and not executive) or their limited numbers (about 200 members), and the creation of new posts was later frozen (Oszlack, 2001).

A third option was to extend new rules and procedures based on merit to the whole of the civil service. Although a merit system should not be exclusively associated with the continental administrative tradition (with the French case as referent), most observers associate it with the consolidation of a professional career following the parameters of that model. Then, “meritocracy, far from being considered as a technical definition of equality of opportunity, which civil service procedures have to aspire to create might, within an alternative perspective, require analysis of the social meaning attached to merit itself, including the mechanisms by which such ‘merit’ is guaranteed” (Spink, 1997, p. 22).

The lack of success of this option was associated with the difficulties of transposing the new model into the existing system, with all the changes in work culture and dynamics it would require. In other words, it is evident that attempts at global transformation came up against the dynamics of path dependence and the degree of institutionalization of informal rules of operation that were consistent with the prevailing organizational culture (Pierson, 2000).

A final option involved a network of external consultants, directly contracted by the state administration or financed by international agencies. For instance, Brazil opted for the international transfer of public management policies and used “the consulting services of a former Whitehall official named Kate Jenkins, who had participated in the Next Steps process, through which single-purpose operating units, known as executive agencies, were set up within U.K. government departments” (Barzelay et al., 2002). In human resources management, the incorporation of consultants linked to international agencies generated problems of equity, discrimination, divided loyalties, and disturbances in the activities in the public sector (Ramió, 2002). Such lack of confidence, which had repercussions on the information that could be obtained to do the job, limited both the validity of the consultants’ diagnoses and the legitimacy of their proposals.

There are two groups of variables that generate interferences in institutional international consultancy activities (Ramió, 2001, 2002; Pérez Salgado, 1997): (1) variables linked to the international environment in which

the consultant operates; and (2) variables linked to the environment and the “invironment” of the public administration, which is the object of the analysis. The variables linked to the international environment are:

- The international institutions or developed states promoting and financing the consultancy linked to development aid programs. These institutions usually have reference conceptual models that require or advise the consultancies they contract to implement their contributions within the framework of those models.
- The public administration models or referents for modernization or reform. The consultants come from countries with particular administrative models in which they have been trained and socialized and, which, through institutional isomorphism mechanisms, usually propose to their clients, often without paying due attention to the local reality.
- The interests of multinational companies in the contents of the consultancy activity. Proposals for institutional improvement in the public administration of a particular country may affect the “business” opportunities. On some occasions, the consultants belong to a holding company with interests that directly interfere with the consultancy’s subject of analysis and drafting proposals.

The variables linked to the environment and “invironment” of the public administration that is the object of the analysis are:

- The particular interests of the local political and administrative elites, with their own corporative–professional, private, or clientelist interests, which they wish to take precedence over the global institutional interest linked to the general interest.
- The private interests of the local economic elites, who, usually with informal links with some of the political and administrative elites, legitimately or illegitimately attempt to influence the consultancy activity to maximize their business opportunities.

Consideration of those two groups of variables is essential in assessing the contributions of agents of this kind and their capacity to transform existing institutions. The effectiveness of these reform strategies also varies depending on the specific area of the civil service management system to which they are applied. This is the topic of the following section.

IV. FIELDS OF REFORM OF CIVIL SERVICE SYSTEMS

From various investigations such as those mentioned by Sulbrandt (2002), by Oszlack (2001) into 10 countries in the Latin America and Caribbean

area,³ or by Barzelay et al. (2002),⁴ we can select a number of actions associated with the transformation of civil service systems to illustrate institutional dynamics.

The first item to consider is the public employment dimension in the different Latin American countries as an indicator of convergence dynamics. The difficulty of obtaining reliable data on public employment in the region complicates the analysis.⁵ By comparing the different sources of data (mainly those available from the World Bank, the IDB, and those provided by Centro Latinoamericano de Administración para el Desarrollo-CLAD), it is possible to establish clear patterns of continuous reduction over the 1990s. According to Sulbrandt's (2002) report, from an analysis of the countries for which there are reliable data over that period, the average share of civilian public employees in the total population fell from 4.06% to 3.40% (whether we use CLAD data or those from the World Bank or the IDB, the result is the same). A complementary indicator—civilian public sector employment as a share of the economically active population—shows the same prevailing tendency of reduction for 8 of the 10 best-informed cases (which include enough diversity of country size and subregions in Latin America) (Tables 1 and 2).

Over the same period, and even on the basis of situations that are so different that we can say that “in Latin America and the Caribbean there is no predictable relation between the size of the civil service and the total population, even when we consider countries with similar population magnitudes in the comparison” (Oszlack, 2001, p. 23), the reduction of the number of public employees in the countries analyzed by this author is estimated at between 5% and 40%. That is, despite differences in the composition and dimension of the civil services, the majority of cases manifest the prevailing decreasing tendency.

Another investigation undertaken in 26 countries in Latin America and the Caribbean (Payne and Carlson, 2002) yields data that point in the same direction. This research distinguishes between two groups of countries according to per capita GDP and compares civilian public employment as a share of population in 1995 and 1999. This indicator falls from 5.8% in 1995 to 4.6% in 1999 in the group of countries with GDP per capita of more than \$3,200 in 1997: Argentina, Bahamas, Barbados, Brazil, Chile, Mexico, Trinidad and Tobago, Uruguay, and Venezuela. For countries with GDP per capita of less than \$3,200 in 1997,⁶ the indicator of the civil service dimension falls from 5.1% in 1995 to 3.8% in 1999.

Thus all available data converge in showing a reduction in the share of public employment recorded in all the countries considered, regardless of their level of wealth as measured by GDP per capita. The data reveal the downsizing strategies promoted by international agencies over the previous

Table 1 Civilian Public Sector Employment, 1990–1999 (Percent of Population)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Argentina	–	5.87	5.37	4.99	4.9	4.88	5.13	5.13	4.87	4.75
Bolivia	–	–	–	–	2.8	2.7	2.6	2.8	2.8	2.3
Brazil	–	1.96	2.04	2.1	2.14	3.46	3.51	3.45	3.36	3.39
Chile	1.47	1.49	1.47	1.51	1.69	1.66	1.61	1.56	1.33	1.14
Colombia	–	–	2.95	2.81	3.56	3.69	3.85	4.56	4.54	3.91
Costa Rica	5.06	4.9	4.78	4.75	4.83	4.61	4.41	4.5	4.36	4.4
México	5.76	5.8	5.58	5.51	5.61	5.33	5.44	–	–	4.8
Nicaragua	2.3	2.31	2.2	2.03	1.94	2.04	1.88	1.76	1.71	1.8
Uruguay	–	–	–	–	–	7.56	7.5	7.09	6.98	6.3
Venezuela	1.18	2.94	2.8	2.57	2.53	4.51	2.29	2.2	1.61	–

Sources: <http://www.clad.org.ve/siare/>; <http://www.iadb.org/int/DRP/esp/Red5/transparenciamain.htm>; Sulbrandt (1989, 2002); Payne and Carlson (2002).

decade. “The result as the 80s became the 90s was often, especially in those countries undergoing structural adjustment, a very restricted view of public administration reform under the heading of Civil Service Reform with a concentration on reduced numbers, streamlined hierarchies and better managerial salaries” (Spink, 1997, p. 12).

To assess these dynamics of reduction in the context of the public sector modernization programs, we must be aware of the influence of the interna-

Table 2 Civilian Public Sector Employment, 1990–1999 (Percent of Economically Active Population)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Argentina	–	14.53	13.21	12.21	11.92	11.8	12.32	12.23	11.54	11.19
Bolivia	–	–	–	–	7.8	7.6	7.4	7.7	7.6	–
Brazil	–	4.51	4.66	4.74	4.79	7.76	7.73	7.52	7.27	7.27
Chile	2.09	2.11	2.09	2.13	2.39	2.33	2.26	2.18	1.85	1.6
Colombia	17.23	15.54	4.46	4.33	5.33	5.5	5.7	6.69	6.66	5.74
Costa Rica	13.95	13.99	13.48	13.01	13.03	12.38	12.24	12	11.2	10.5
México	19.46	19.58	18.84	18.61	18.94	17.99	18.38	–	–	12
Nicaragua	7.22	7.18	6.79	6.38	5.88	6.15	5.61	5.2	5	5.2
Uruguay	–	–	–	–	–	18.12	16.53	16.82	16.14	14.6
Venezuela	3.33	8.22	7.74	7.03	6.87	12.12	6.07	5.77	4.17	–

Source: <http://www.clad.org.ve/siare/>; <http://www.iadb.org/int/DRP/esp/Red5/transparenciamain.htm>; Sulbrandt (1989, 2002); Payne and Carlson (2002).

tional financial agencies (Pérez Salgado, 1997). They were the source of these processes of shrinking the public sector, accompanied by proposals for the reform of the state, although they were aimed more at promoting decentralization, outsourcing, and privatization than a change in public management. "Terms such as 'downsizing', 're-engineering' or 'rolling back the State' were being introduced from the competitively hawkish and increasingly neoliberal world of business administration" (Spink, 1997, p. 12). Significant changes in this direction were not introduced until the mid-1990s, with different measures that aimed, among other things, to transform the civil service model of Latin American administrations.

The outstanding changes in this field are those designed to make human resources systems more rational, with greater advances in restricting public spending and imposing rules that limit collective bargaining (Peters, 2002). A variation in the context helped promote conflictive decisions, although the dynamics of decoupling mentioned earlier occurred in this case as well, bringing out particularities that corresponded to the logic of power within the public organization. And so, for example, the introduction of measures to improve the competitiveness and transparency of promotions yielded certain results only in the sectors where the professional qualification requirements were stricter and where the end service was more clearly defined (e.g., health and education).

This encouraged the development of distinct subcultures in which, thanks to their singularity, certain professional groups managed to create their own management space, relatively free from the influence of politicians. The confusion between public employees and politicians that favored the existing system in many Latin American countries explains their resistance to surrendering patronage or losing discretionary powers in the selection and promotion processes to appoint and reward their collaborators. Related to these dynamics, conceived as a political resource, the patronage-based system constitutes a key element in sustaining many Latin American party systems (Geddes, 1994).

The distinction between the formal discourse and its effective application was exemplified in the promotion of performance assessment programs. A number of initiatives launched in Bolivia, Uruguay, Venezuela, Nicaragua, Argentina, or Chile show the scope of the issue and its capacity to get on to the public reform agenda, following patterns of mimetic institutional isomorphism. However, it was also the least-implemented initiative, largely because of the "existence of cultural rules which were little open to the acceptance of meritocratic criteria" (Oszlack, 2001, p. 34). In other words, the use of management practices taken from external referents (and promoted by certain international agencies) without suitable adaptation has tended to yield poor results and to question the validity of the reforms.

Restructuring wage systems has also been an objective of the civil service reforms. The aim was to stop the compression of wage levels, which tended toward homogeneity, and the fall in public employees' purchasing power (Sulbrandt, 2002). Once again, the differences lie not in their conception (reproducing dynamics of institutional isomorphism) but in the scope of their implementation, which is usually restricted to only a subset of public employees, the employees of the state administration (Oszlack, 2001).

Regarding the impact of the measures aimed at installing a merit system in the civil service and those linked to improvements in wages, combined with indicators of government corruption and the effectiveness of government action,⁷ the analysis developed by Payne and Carlson (2002) establish correlations that show how

- There is no significant link between public sector wages and government corruption, or between wages and government effectiveness.
- However, a meritocratic civil service is positively associated with less government corruption, with greater government effectiveness and higher confidence in the public administration, and with a capacity to reach higher levels of sustained economic growth.

Another important aspect of the reforms designed to transform the civil service was training. The measures taken brought about a major quantitative increase in the training provided for public employees, although it was often not linked to any organizational strategy aimed at promoting and consolidating the change. The increase in hours seems more designed to satisfy this particular initiative and the public servants' interests than to respond to training needs in particular areas, especially at the territorially decentralized levels (Sulbrandt, 2002).

But these results say little about the prevalent players' interest in the policy arena of the civil service. Then, "changes in recruitment and promotion that would convert a personalistic, patronage-based system into a merit-based system threaten existing employees and reduce the patronage resources controlled by political activists. Consequently, civil servants unions, politicians and party activists have often opposed such changes" (Geddes, 1994, p. 28).

Those results are also related to the processes of negotiation with the trade union organizations in the public sector. Although there are major variations between countries according to their political and trade union culture and according to the institutions in force, there seem to be certain common features. As Bonifacio and Falivene (2002) point out from a comparative analysis of the experiences of Argentina, Costa Rica, Mexico, and Peru, most of the processes are associated with the establishment of new values in the civil service system, such as transparency and equity. There also

seems to be progress in the consolidation of spaces for dialogue that make it easier to reach agreements and avoid breakdowns in the process of establishing new “rules of the game” in human resources management in public administrations. Nevertheless, differences in both the purpose of the dialogue and the way it is organized are maintained. It seems that this particular sphere puts up less resistance to globalization processes, and distances itself from the dynamics of emulation found in those parts of the reform programs defined unilaterally by the central authorities.

In short, this set of measures, by not paying due attention to the reality of each country, limited the potential for transformation associated with the processes of learning and international transfer of experiences. Despite the important processes of emulation based on institutional isomorphism, the complex reality of each country, especially in an internal sphere such as the civil service, tended to generate dynamics of decoupling, which helped the survival of the preexisting institutional framework.

The way to overcome those constraints must be to promote, consistently and over a prolonged period, a reform project that integrates the particularities of each country and opts for the exploration of solutions produced by internal learning, while also considering the international referents.

V. CIVIL SERVICE IN ITS CONTEXT: ADMINISTRATIVE MODELS AND TRADITIONS

Dealing with the triple approach mentioned (waves of administrative reform, strategies, and outstanding areas of reform in the civil service), the analysis of civil service systems in the countries of Latin America provides a varied spectrum of models and submodels (Chaudry et al., 1994) ranging from countries that do not have an institutionalized and professionally based civil service (in effect, the majority) to those that have historical civil service systems (Bresser-Pereira, 2001; Méndez, 1999). Between those two poles, there is a wide range of intermediate positions: countries that do not have general civil service models, but which do adopt similar systems for specific professional groups (such as the diplomats in the chancelleries), countries that over the last decade have tried with greater or less success to globally or partially introduce a civil service system (Bolivia, the Dominican Republic, Mexico, or Nicaragua), or countries that have seen their historical civil service model distorted by the military dictatorships of the 1980s and are in the process of reviewing them (Chile and Argentina).⁸

Despite the differences between the countries of Latin America, we can establish some points of contact between them. To sum up, as common

features, Oszlack (2001) mentions entry into public employment as access to a specific job (although in some cases it is access to a corps or a rung on the ladder). Entry does not usually take account of merit systems or involve any rigorous objective, transparent criteria; it is normally based on direct selection by the person in charge of the agency. Usually there are no assessment processes, and promotions are based on the same criteria of trust used in selection. As far as staff training is concerned, there has been no adequate planning and assessment, and the result is an indiscriminate array of courses with no real adaptation to training needs. In general terms, the systems correspond more to clientelist and political impulses in a context in which the economic incentives of public servants are very weak and their status very low. These two elements add up to great instability of human resources in public administrations.

When it comes to reviewing the model, the international referents to consider fall somewhere between two management models for public employees: a “closed” model based on the principle of the polyvalence of public employees (referred to as “career civil servants”) and an “open” model inspired by the principle of specialization (Ballart and Ramió, 2000; Palomar, 2000). The “closed” civil service model is based on the idea that the public employee is going to be connected with the administration for life, occupying different posts, thus pursuing his or her professional career. The European administrations represent the principles of the “closed” civil service model (Ziller, 1993; Bekke et al., 1996; MAP, 1997). The “open” civil service model is based on differentiation between the various posts in the administration, which means making a detailed study of each with the aim of recruiting the most suitable people. The administrative system of the United States is the one that best exemplifies some of the criteria of the “open” civil service model.

When the models are posed as a dichotomy, any discussion of their suitability for configuring the civil service systems in Latin America tends to concentrate on the values underlying them. An open model associated with flexibility, dynamism, effectiveness, and efficiency is opposed to a closed model linked to rigidity and bureaucracy, which may tend to become an obstacle to the operation of the public organizations. In a context of increasing globalization, simplistic diagnoses of that kind support the introduction of open model civil service systems for the countries of Latin America and the firm rejection of the closed continental European model. From our point of view, that strategic decision is a mistake that arises from confusion about the objectives and effective contributions of a public or civil service operative model.

The importance and value of these models are related to the dynamics of institutional isomorphism (Meyer and Rowan, 1991). Because of their

internal character and the scant attention paid by the political management, the objectives of the human resources function are not usually clearly determined, nor do they generally have effective systems for assessing results. In that context, human resources management administrative units tend to operate in unstable environments, in which the criteria for success and failure are ambiguous, shifting, or conflictive, and so it is better to look for legitimized references that will make it easier to argue their decisions. That encourages the tendency to reproduce the institutions regarded as “successful” in their reference environment (Ormond and Löffler, 1999). This mimetic isomorphism is combined with two other kinds of institutional isomorphism (DiMaggio and Powell, 1991).

As a result of the formal and informal pressures brought to bear by international organizations (Pérez Salgado, 1997; Spink, 1997), one can identify *coercive isomorphism* dynamics that force Latin American public administrations to reproduce certain operational structures and guidelines. There are also *normative pressure* dynamics related to the impact of professional groups, such as academics or international consultancy firms, who define the “good practices” that are to be reproduced (Meyer and Scott, 1992; Tolbert and Zucker, 1996).

In following some of these dynamics, it is true that the countries of Latin America are looking for a civil service model that will allow them to build effective and efficient public institutions (Geddes, 1994). But it is no less true that the deep aim of the introduction of civil service models is to overcome the clientelist model and help to strengthen public organizations institutionally. In our opinion, the main problem of the public administrations in Latin America is their weak institutionalization, which hampers their development processes.

The conceptual approach set out in the previous sections leads us to focus the discussion on the whether the civil service model works in the sociopolitical system in which it is embedded. To do so, it is essential to recognize the institutions around the one known as the “civil service” to identify both their value and the possibilities of transforming them. We can find an interesting analysis of an institution that is current in many of the civil service models in developed countries—namely, the merit system—in a study by Prats (2000). From the studies carried out by Johnson and Libecap (1994) and Horn (1995) of the evolution of the patronage and merit systems in the civil service in the United States, Prats analyzed the way in which those human resources management institutions really work. His analysis shows that the social function associated with the emergence of the merit system in the civil service was obtaining legal security. This was made operational through institutional guarantees of the impartiality of public agents and their selection, promotion, and payment on the basis of merit and the criteria of the

bureaucratic career (Méndez, 1999). If we apply that analysis, it comes as no surprise that the system has come in for criticism when assessed against other criteria and in terms of functions other than those that produced and consolidated it.

The need to consider the social, political, and administrative reality in which the different civil service systems emerge and are maintained leads us to include an analysis of the reference administrative tradition. The administrative systems usually taken as references internationally can be divided into two broad models or administrative traditions: the continental Western European model and the Anglo-Saxon model.

This double classification is inspired by what Pollit and Bouckaert (2000) have said about the traditions or models they call the “Rechstaat perspective” and the “public interest perspective.” In the former tradition, closer to what we have called the continental European model, the state plays a central and very visible role in shaping society. Among the outstanding values of this tradition are legal security, equity, and equality before the law. In the latter tradition, in what has been called the Anglo-Saxon model, the role of the state is much less significant and visible; it tends to be limited and its powers controlled, while the different social agents play a leading part in shaping society. The values associated with this model are impartiality, transparency, or pragmatism in the actions of government and administrations.

To pursue this differentiation, one of the first distinctive elements of the administrative traditions is the degree of stability of their political and administrative systems. While in the case of the Anglo-Saxon models (the United Kingdom and the United States) there is a clear line of continuity, without traumatic or radical breaks, in those of continental Europe (with references in France, Germany, and Spain) we find breaks and abrupt transformations of the political system while the administrative system remains stable. With these characteristics, the administrative systems of the continental model acquire an intrinsic value as guarantors of continuity, and their autonomy and independence from the political system grows. In the specific case of the civil service system, the “closed” model option, with “corps” and groups and a low degree of politicization, reinforces that “stable” character, providing for continuity in the face of the surrounding political instability.

A second feature of the two administrative traditions is the relationship between society and the public apparatuses. In the Anglo-Saxon models, this evolves in an environment that is close to “pluralism,” characterized by a highly dynamic civil society, structured and shaped independently of state intervention. Continental models, on the other hand, tend to be shaped in a context of “statism” (in which the public sector develops a major role as regulator/promoter of civil society, with clearly interventionist activity), or alternatively in one of “corporatism,” in which the structuring of large sectors

of society conditions the activity of the state in a relationship of mutual support.

The role of the civil service systems in both cases is that of an institution adapted to different contexts. Both the stability of the political system and the relations between state and society give rise to differentiated administrative systems that obviously foster the emergence and maintenance of differentiated human resources management systems. While a stable, continuous civil service model at the service of a strongly interventionist state was consolidated in a context of political instability, at the opposite pole—in a politically stable context with a highly structured civil society—the civil service model took a different shape.

Some contemporary modernization programs designed to be applied in developing countries have proceeded by judging the successes of one model in terms of the parameters of the other, forgetting the specific way it functions in relation to its context (Gaetani, 1998). To condemn the operation of a civil service model designed fundamentally to provide stability and security for its deficiencies in efficiency and economy is as inappropriate as trying to implant formulas that ignore the reality of the context in which they are to be applied.

On the other hand, the adoption of paradigms and instruments promoted by some international referents and included in modernization programs has not always taken account of the peculiarities of each country, in terms of either the origin and type of the pressure for modernization or their political and administrative reality. In Western Europe and the Anglo-Saxon countries, the engines of change were fundamentally fiscal crisis and the expansion of demand for public services, while in many Latin American countries the pressure came both from the problems associated with the weakness of the state and its democratic systems and from the pressure applied by different international agencies. As a result of these pressures, modernization programs have been forced to follow constantly changing conceptual and ideological referents through certain fashions or waves of variable duration and impact (Aucoin, 1990; Peters, 2002).

And so both the implicit characteristics of the civil service models and the context in which they are set and evolve must be considered before incorporating any of their elements into other political and administrative realities. Because the reality in most Latin American countries is the instability of their systems, the first option should be a model that fundamentally brings stability to the administrative system as a first step toward stabilizing the whole. Moreover, the evolution of modernization initiatives in Latin American public administrations has shown how the processes of learning and emulation have progressed in a way that has little to do with this institutional concept.

VI. CONCLUSIONS

In contrast with historical-descriptive (Oszlack, 2001; Spink, 1997) and rational choice (Heredia and Schneider, 1997) approaches to civil service systems in Latin America, the neoinstitutionalist perspective allows us to introduce a complementary view, introducing the impact and the effective results of globalization. Focusing on globalization in human resources management and in a region such as Latin America, with a low level of institutionalized public administration, the chapter identifies some difficulties in digesting and consolidating globalization.

Conceiving of the civil service as an institution, with its integrated and self-reinforcing components, this chapter offers a reinterpretation of modernization programs. The administrative reform initiatives could be defined as waves created by international pressures, with different degrees of compatibility with the countries' civil service systems. Important similarities have been detected also in the content of modernization programs and the strategies followed by governments. Both show the formal impact of globalization dynamics and the influence of certain actors, such as international agencies. On the other side, the references to attempts at administrative reform in concrete areas of civil service systems demonstrate their limited impact. Despite relevant results in downsizing the civil service, especially in the 1990s, the continuity of internal civil service dynamics must be interpreted as the institution's capacity to resist and absorb pressures to reform.

The instability of Latin American political and administrative systems in terms of staff management is a major feature of the prevailing civil service institution. In this sense, instability itself makes for an equilibrium that makes it easy to introduce new "rules of the game" into human resources management policies and practices, but very difficult to consolidate them. With these institutions, Latin American civil service systems become relatively open to globalization processes in terms of incorporating new management practices and instruments, but the difficult part is to consolidate these exogenous and out-of-context contributions to change the rules of the game.

For example, attempts to introduce merit systems into civil service models date back to the first half of the 20th century, but their incompatibility with the Latin American context made them difficult to institutionalize. As Spink (1997, p. 9) says, "attempts to introduce personnel practices and merit systems with tenure began to follow in the thirties (...). These receive a big stimulus as a result of the United States public administration career reforms, but are also part of the early dissemination of personnel management practices (...). Many, if not all these experiences were to become negative, as clientelist practices return to find their way around merit systems."

That institutional framework tended to reproduce itself through the dynamics of path dependence, leaving room only for “bounded innovations” (Weir, 1992), which, even on the path set by the existing institutions, were difficult to consolidate. That prevented the emergence of the dynamics of institutional exploration (Lanzara, 1999; March, 1991), because the most favorable strategies for the agents involved were restricted to the short term. With learning dynamics based on the exploitation of existing institutions, complemented by the import of other institutions from different contexts, the civil service model in most Latin American countries did not undergo any notable changes.

The initiatives launched to transform the civil service model are a good example of the institutional dissemination processes, through isomorphism dynamics (mainly mimetic and coercive), although they only modified slightly Latin American administrative systems. Although openness to the introduction of changes may be interpreted as a sign of their institutional weakness, the poverty of the results of the initiatives shows that institutional framework also made it difficult to consolidate new arrangements.

In a context of globalization, the diffusion processes of institutions through isomorphism dynamics explain the similarities in initiatives to reform and modernize the Latin American public administrations. A more specific approach to their reality and results makes their success more relative, and shows how the dynamics of decoupling have been able to maintain certain institutions that determine the operation of civil service systems.

International agencies played a leading role in these processes, affecting both the preparation of diagnoses and the specification of the remedial measures to be adopted. Like coercive isomorphism, this explains the spread of certain orientations for action. The so-called first- and second-generation reforms are clear examples of the importance of those ideas and of certain agents' capacity for influence.

The theorizing of certain ideas (such as those connected with New Public Management) helped them to spread, supported by international agencies and consultancies. The fact that those initiatives initially focused on a mere downsizing of the public sector and only later partially tackled the transformation of spheres of management such as the civil service can be explained by the agents involved in the process.

As Bresser-Pereira (2001, p. 162) says, “these reforms were directed by economists: local economists and the economists of the international agencies such as the World Bank and the IMF (...), most of those economists are bureaucrats who are fairly unfamiliar with public management (...) on the one hand they have the idea that a professional service is good in itself; on the other they know that the days of the classic bureaucracy are gone (...). And so they tend to sideline the issue and reduce the reform of the public sector to

structural adjustment, privatization, downsizing and the fight against corruption.” The only confirmed change is the reduction in the number of public sector employees, and the limited results in the most important areas of human resources management questioned their validity as a sustainable course of action.

A redefinition of those processes in terms of administrative traditions, with due regard to the function fulfilled by the civil service systems, made it possible to provide a new understanding of a career civil service based on merit following a “closed” or career employment model. The link between those practices and the consolidation of a stable public administrative apparatus represents the recognition of a complementary approach to an analysis of the learning processes in public management. An example of progress in this direction is a recent agreement between 21 Latin American countries (with Portugal and Spain) to develop civil service systems departing from the common principles and guidelines taken as a reference.⁹

Lastly, we should emphasize that the globalization of public management has had positive effects on developed countries with solid, well-established public institutions (Hood, 1996; Peters, 2002; Pollit and Bouckaert, 2000; Horton et al., 2002; Farnham and Horton, 1996). Globalization favors the dynamics of the import and export of techniques, learning experiences and “good practices” that can encourage the renovation and improvement of institutional rules that are inflexible or poorly adapted to the new challenges of contemporary societies. The new currents in public management, basically inspired by New Public Management, can make certain institutional arrangements more dynamic and improve their effectiveness and efficiency in promoting innovation in public policy. In that way, intensifying globalization processes can generate highly positive learning dynamics.

However, the globalization of public management has not turned out to be at all positive or functional in those developing countries with major deficits in institutionalization or with different institutions in their public apparatuses. We can therefore draw certain conclusions:

- The different public management models (such as the civil service ones) in the countries of Latin America have been introduced by a combination of imposition (coercive isomorphism and normative pressure) and emulation (mimetic isomorphism), but without sufficiently careful thought having been given to their specific reality. As a result, they remain a superficial copy, far from institutional or managerial learning rules.
- The globalization of public management in developing countries has in fact meant abandoning the institutional path and opting exclusively for a more technocratic conception, usually without the

context in which the reforms are applied being taken into account. Our case study shows how reforms tackle the civil service not as an institution but as a set of technical instruments. The conceptual bases of the public management model that has been promoted since the 1990s are flexibility and post-bureaucracy, and so it is hostile toward classical public institutions in so far as these form a set of constant rules, norms, and values that hamper flexibility and innovation. In that sense, no account is taken of two fundamental parameters:

- (a) Prevailing institutions are important. It is vital to recognize the civil service as an institution, as its design plays a highly significant role in the political process. Institutional structures help to establish the “rules of the game” among the different players. If the civil service is not regarded as an institution, governments tend to alter the elements of a human resources management system from the correlations of power that exist at the time between the administrative players.
 - (b) The most widespread public management model may attain effectiveness and efficiency in the supply of goods and services to individual citizens. That is important, but it does not in itself generate a system of legal security and confidence, which are the cornerstones of a country’s institutions. That is why it is argued that acceptance of public management does not generate sufficient added value to produce public institutions that will bring benefits to the political and administrative system.
- There is no point in constructing learning mechanisms in public management on the basis of global best practices when the process takes place without a previous analysis of the institutional reality. The civil service systems in the countries of Latin America had very weak institutional bases, which, moreover, were deliberately ignored or suppressed when new human resources management models were configured. But learning in public management cannot take place in an institutional void, because it ceases to be learning linked to an improvement of the system and becomes learning in response to the political convenience of the moment and corporate and clientelist pressures.
 - As we have shown in this analysis, the prevailing civil service institutions must be identified and recognized. They should be improved through incremental changes based on the political and administrative reality of the country. This paradigm also has its

foundations in learning through international referents in a context of globalization, but starting from acceptance of the unique political, social, and cultural context of each country, and proposing institutional and not purely technocratic learning processes and strategies. Global learning of the postulates of public management will be a suitable way to improve administrative systems, but only when the institutions have been redesigned and consolidated in a way that makes it possible to take advantage of their potential.

A concluding comment: The phenomenon of globalization has created a multinational space occupied by a host of agents that promote certain institutions. Among them, we should mention the academic and professional groups linked to the New Public Management doctrine, international agencies (with the capacity to generate the dynamics of coercive institutional isomorphism in developing countries), international consultancy firms, the political and administrative elites of developed countries, and, lastly, a significant part of the political and administrative elites of the developing countries that are the object of the reforms. This multinational space should theoretically have the virtue of generating rich learning systems that would encourage institutional development in countries in zones such as Latin America.

However, in practice, the result is the exact opposite: A closed technocratic learning system that feeds on itself outside the context of the countries' political, social, and economic realities. There is no real institutional learning dynamic, but a process of reaffirmation of a particular orientation that is conceptually armor-plated and gradually distances itself from the institutional realities it sets out to improve or resolve. But if the globalization of public management is not capable of coexisting with the specific political and social instruments of the region, it is unlikely to generate institutional learning mechanisms that combine the global and local dimensions, which are the keys to fostering the institutional development of these countries.

NOTES

1. Defined as a set of instruments related to the mode and conditions by which the state ensures the availability of staff with the skills and attitudes required to carry out their activities according to their role in society (Oszlack, 2001).
2. Argentina, Bolivia, Costa Rica, Chile, Guatemala, Honduras, Mexico, Panama, Peru, Uruguay, and Venezuela.
3. Argentina, Brazil, Chile, Uruguay, Guatemala, Nicaragua, and Venezuela.
4. Into the process of change in public management policies in the cases of Brazil and Peru.

5. In addition to the major difficulties in classification (Sulbrandt, 2002; Oszlack, 2001; Sulbrandt, 2002; Payne and Carlson, 2002).
6. Belize, Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, and Suriname.
7. Like the Graft Index and the Government Effectiveness Index, developed by Kaufmann et al. (2000).
8. Oszlack (2001) made an aggregate analysis of the many countries in Latin America, which are introducing or restructuring a professional civil service model: Argentina, Bahamas, Barbados, Belize, Guyana, Honduras, Nicaragua, Panama, Dominican Republic, Surinam, Uruguay, and Venezuela.
9. The 5th Latin American Conference of Ministers on Public Administration and Reform of the State, convened on 26 and 27 June 2003 in Santa Cruz de la Sierra (Bolivia), has approved the Carta Iberoamericana de la Función Pública (Latin American Charter for the Civil Service), sponsored and promoted by the United Nations.

REFERENCES

- Aucoin, P. (1990). Administrative reform in public management: Paradigms, principles, paradoxes and pendulums. *Governance* 3(2):115–137.
- Ballart, X., Ramíó, C. (2000). *Ciencia de la Administración*. Valencia: Tirant lo Blanch.
- Barzelay, M. (2000). *The New Public Management. Improving Research and Policy Dialogue*. Berkeley: University of California Press.
- Barzelay, M., et al. (2002). Designing the Process of Public Management Policy Change: Practical Implications of Case Studies on Brazil and Peru. Paper commissioned by the IDB for the Regional Policy Dialogue. Washington, DC: Public Management and Transparency Network.
- Bekke, H., Perry, J. L., Toonen, T. A., eds. (1996). *Civil Service Systems in Comparative Perspective*. Bloomington: Indiana Univ. Press.
- Bonifacio, J. A., Falivene, G. (2002). Análisis comparado de las relaciones laborales en la administración pública latinoamericana: Argentina, Costa Rica, Mexico y Perú. *Documentos Debate: Estado, Administración Pública y Sociedad: 8*. Caracas: CLAD.
- Borins, S. R. (2000). What border? Public management innovation in the United States and Canada. *J. Policy Anal. Manage.* 19(1):46–74.
- Bresser-Pereira, L. C. (2001). Reforma da nova Gestao Pública: Agora na Agenda da America Latina, no entanto. *Int. J. Polit. Stud.* 3(1):143–166.
- Chaudry, S. A., Reid, G. J., Malik, W. H. (1994). *Civil Service Reform in Latin America and the Caribbean*. Washington: World Bank.
- Cheung, A. B. (1997). Understanding public-sector reforms: global trends and diverse agendas. *Int. Rev. Adm. Sci.* 63(4):435–457.
- Collier, R. B., Collier, D. (2002). *Shaping the Political Arena. Critical Junctures, the*

- Labour Movement and Regime Dynamics in Latin America*. Notre Dame, IN: University of Notre Dame.
- DiMaggio, P., Powell, W., eds. (1991). *The New Institutionalism in Organizational Analysis*. Chicago: Chicago Univ. Press.
- Farnham, D., Horton, S., eds. (1996). *Managing People in the Public Services*. Basingstoke: Macmillan.
- Fligstein, N. (1991). The structural transformation of American industry: an institutional account of the causes of diversification in the largest firms, 1919–1979. In: DiMaggio, P., Powell, W., eds. *The New Institutionalism in Organizational Analysis*. Chicago: Chicago Univ. Press, pp. 311–336.
- Gaetani, F. (1998). A Reforma do Estado no Contexto Latino-Americano: Comentários sobre Alguns Impasses e Possíveis Desdobramentos. *Rev. Serv. Público* 49(2):85–113.
- Geddes, B. (1994). *Politician's Dilemma. Building State Capacity in Latin America*. Berkeley, CA: University of California Press.
- Heredia, B., Schneider, B. R. (1997). The political economy of administrative reform in developing countries: working hypotheses and a framework for analysis. *Congreso Interamericano del CLAD sobre la Reforma del Estado y de la Administración Pública, Anales 3, Caracas*, pp. 491–498.
- Hood, C. (1998). Individualized contracts for top public servants: copying business, path-dependent political re-engineering- or trobriand cricket? *Governance* 11(4):443–462.
- Hood, C. (1996). Exploring variations in public management reform of the 1980's. In: Bekke, H., Perry, J. L., Toonen, T. A., eds. *Civil Service Systems in Comparative Perspective*. Bloomington: Indiana Univ. Press, pp. 268–287.
- Horn, M. J. (1995). *The Political Economy of Public Administration. Institutional Choice in the Public Sector*. Cambridge: Cambridge Univ. Press.
- Horton, S., Honddeghem, A., Farnham, D. (2002). *Competency Management in the Public Sector: European Variations on a Theme*. Amsterdam: IOS Press.
- Jepperson, R. L. (1991). Institutions, institutional effects, and institutionalism. In: DiMaggio, P., Powell, W., eds. *The New Institutionalism in Organizational Analysis*. Chicago: Chicago Univ. Press, pp. 143–163.
- Johnson, R. N., Libecap, G. D. (1994). *The Federal Service and the Problem of Bureaucracy: The Economics and Politics of Institutional Change*. Chicago: University of Chicago Press.
- Jordana, J. (1995). El Análisis de los Policy Networks: ¿Una nueva perspectiva sobre la relación entre Políticas Públicas y el Estado? *Gest. Anál. Polít. Públicas* 3:77–89.
- Jordana, J., Ramió, C. (2003). Trade policy institutions. A comparative analysis. In: Delvin, R., Estevandeordal, A., eds. *Bridges for Development*. Washington: Brookings Institution.
- Kaufmann, D. A., Kraay, A., Zoido-Lobaton, P. (2000). *Aggregating Governance Indicators*. Washington, DC: World Bank.
- Kliksberg, B. (1997). Repensando el Estado para el desarrollo social: más allá de convencionalismos y dogmas. *Reforma Democr. CLAD J.* 14:121–162.
- Kliksberg, B. (2001). *El nuevo debate sobre el desarrollo y el rol del Estado: mitos y*

- realidades en la América Latina de hoy*. Mexico: Instituto Nacional de Administración Pública.
- Lanzara, G. F. (1999). Por que es tan difícil construir las instituciones. *Desarro. Econ.* 38(152):925–953.
- Levitt, B., March, J. G., Chester, A. (1990). Barnard and the intelligence of learning. In: Williamson, O., ed. *Organisational Theory: From Chester Barnard to the Present and Beyond*. New York: Oxford Univ. Press, pp. 11–55.
- Longo, F. (2001). Modernizar la Gestión Pública de las Personas: los desafíos de la flexibilidad. *Reforma Democr. CLAD J.* 19:193–218.
- MAP. *Modelos de función pública comparada*. Madrid: Ministry of Public Administrations (Ministerio para las Administraciones Públicas).
- March, J. G., Olsen, J. P. (1983). Organizing political life: what administrative reorganization tells us about government. *Am. Polit. Sci. Rev.* 77:281–296.
- March, J. G., Olsen, J. P. (1989). *Rediscovering Institutions*. New York: Free Press.
- March, J. G. (1991). Exploration and exploitation in organizational learning. *Org. Sci.* 2(1):71–87.
- Marsh, D., Rhodes, R. A. W., eds. (1992). *Policy Networks in British Government*. Oxford: Clarendon Press.
- Méndez, J. L. (1999). ¿Vieja o nueva administración pública? Una propuesta ante los dilemas de la modernización administrativa. *Reforma Democr. CLAD J.* 13:219–246.
- Meyer, J. W., Rowan, B. (1991). Institutionalized organizations: Formal structure as a myth and ceremony. In: DiMaggio, P., Powell, W., eds. *The New Institutionalism in Organizational Analysis*. Chicago: Chicago Univ. Press, pp. 41–62.
- Meyer, J. W., Scott, W. R. (1992). *Organizational Environments. Ritual and Rationality*. London: Sage.
- Olsen, J. P., Peters, G. P. (1996). Learning from experience? In: Olsen, J. P., Peters, G. P., eds. *Lessons from Experience. Experimental Learning in Administrative Reforms in Eight Democracies*. Oslo: Scandinavian Univ. Press, pp. 15–42.
- Ormond, D., Löffler, E. (1999). Nueva gerencia pública: ¿qué tomar y qué dejar? *Reforma Democr. CLAD J.* 13:141–172.
- Oszlack, O. (2001). El Servicio Civil en América Latina y el Caribe: Situación Actual y Retos de Futuro. Paper presented at the VI CLAD Congress on State and Public Administration Reform, Buenos Aires.
- Palomar, A. (2000). *Derecho de la Función Pública. Régimen Jurídico de los Funcionarios Públicos*. Madrid: Dykinson.
- Payne, J. M., Carlson, I. (2002). Cross-country comparisons of public employment and pay of 26 Latin American and Caribbean countries. Paper commissioned by the IDB for the Regional Policy Dialogue. Washington, DC: Public Management and Transparency Network.
- Pérez Salgado, I. (1997). El papel de la cooperación técnica internacional en el proceso de modernización del Estado y de la gestión pública. *Reforma Democr. CLAD J.* 8:73–98.
- Peters, B. G. (2002). From change to change: patterns of continuing administrative reform. *Reforma Democr. CLAD J.* 24:45–70.

- Peters, B. G. (1999). *Institutional theory in political science: The "New Institutionalism."* London: Painter.
- Pierson, P. (2000). Increasing returns, path dependence, and the study of politics. *Am. Polit. Sci. Rev.* 94(2):251–267.
- Pollit, C., Bouckaert, G. (2000). *Public Management Reform: A Comparative Analysis.* Oxford: Oxford Univ. Press.
- Powell, W. W. (1991). Expanding the scope of institutional analysis. In: DiMaggio, P., Powell, W., eds. *The New Institutionalism in Organizational Analysis.* Chicago: Chicago Univ. Press, pp. 183–203.
- Prats i Català, J. (2000). Del Clientelismo al Mérito en el Empleo Público. Análisis de un Cambio Institucional. *Biblioteca IDEAS*, Instituto Internacional de Gobernabilidad and Universitat Oberta de Catalunya.
- Ramió, C. (2001). Los problemas de la implantación de la nueva gestión pública en las administraciones públicas latinas: modelo de estado y cultura institucional. *Reforma Democr.* CLAD J. 21:75–116.
- Ramió, C. (2002). El impacto de la actividad de consultoría sobre la capacidad institucional de los organismos públicos de los países de América Latina. Paper given at the VII CLAD International Congress, Lisboa.
- Salvador, M. (2001). El papel de las instituciones en la gestión de las administraciones públicas. *Reforma Democr.* CLAD J. 20:73–108.
- Scott, W. R. (1995). *Institutions and Organizations.* Thousand Oaks: Sage.
- Shepherd, G., Valencia, S. (1996). Modernizando a administração pública na América Latina: problemas comuns sem soluções fáceis. *Rev. Serv. Público* 47(120):31–55.
- Spink, P. (1997). Technical Possibilities and Political Imperatives in 70 years of Administrative Reform. Paper prepared for the meeting of the Latin American Studies Association, Mexico.
- Sulbrandt, J. (1989). El tamaño del sector público en América Latina: un estudio de 11 países. Document commissioned by CLAD (<http://www.clad.org.ve/siare/tamano/estadistica.html>).
- Sulbrandt, J. (2002). Informe sobre la situación y las tendencias del empleo público en América Latina: un estudio comparativo entre países de la región. Document commissioned by CLAD, with the financial support of UNPAN, United Nations Online Network in Public Administration and Finance (<http://www.clad.org.ve/siare/tamano/estadistica.html>).
- Tolbert, P. S., Zucker, L. G. (1996). The institutionalization of institutional theory in clegg. In: Hardy, S. R., Nord, C., eds. *Handbook of Organization Studies.* Sage: London, pp. 179–192.
- Weir, M. (1992). Ideas and the politics of bounded innovation. In: Stenimo, S., Thelen, K., Lonstreth, F., eds. *Structuring Politics: Historical Institutionalism in Comparative Analysis.* Cambridge: Cambridge Univ. Press, pp. 188–216.
- Ziller, J. (1993). *Administrations comparées. Les systèmes politico-administratifs de l'Europe des Douze.* Paris: Montchrestien.

13

The Globalization of Anticorruption Policies: The Diffusion of Best Practices and the Role of Knowledge Management

Bryane Michael

Linacre College, Oxford, UK

The production, diffusion, and implementation of programs which can be labeled as “anticorruption programs” are increasingly representing a world-wide phenomenon. At the global level, the size of the anticorruption industry in terms of staff and budget is large.¹ For example, a simple search of participants who had attended an international anticorruption conference within the last 3 years produced over 2500 names from a variety of international organizations (such as the World Bank, United Nations Development Programme, and Organisation for Economic Cooperation and Development), international NGOs (like Transparency International or the Open Society Institute), national governments, businesses, and NGOs.² Moreover, with the wide media coverage surrounding anticorruption, the dissemination effects are even larger. For example, a Lexis-Nexis search on the term “anticorruption” produced over 187 hits for the week of April 1–5, 2002. Thus the number of people who either work on anticorruption projects or are affected by them through media influence is quite large. Such a large range of interest suggests that it is not only international organizations which are diffusing policy to national governments (or national governments which are diffusing policy internally). These policies do not simply “diffuse” the way dye does in water or a virus would in a population (to use two popular metaphors from the literature). Instead, as this chapter will show, knowledge flows are determined by project managers looking for good ideas and skills they need to do their jobs.

This chapter will attempt to describe how anticorruption policy lessons have been transmitted in the past and how they can be transmitted more effectively in the future. The first section will cursorily place anticorruption knowledge management in the policy diffusion literature—showing how knowledge management offers a new perspective on policy diffusion. The second section will describe the “first wave” of global anticorruption activity—characterized by “awareness raising” and “action planning”—which ignored vital knowledge building. The third section will explore the concept of (anticorruption) networks more fully and discuss how anticorruption knowledge is generated in networks along value chains. The fourth section will offer a model for thinking about the diffusion of policy, incorporating knowledge management concerns into anticorruption project design. Such knowledge seeks to find the optimal allocation of codified (written down) and tacit (applied) anticorruption knowledge in the diffusion of policy. The fifth section will discuss three applications of the model.

Before beginning the main exposition of the argument, it will be useful to define some terms. References to “anticorruption” refer to projects and programs which are either directly labeled as “anticorruption” programs or more generally to programs whose objective is to increase transparency or reduce the “use of public power for private gain” by civil servants (World Bank, 1997). Thus public sector reform projects, judicial reform programs, integrated public sector financial reform systems, investigative journalism training, and other programs which seek to change the incentive systems that affect the civil servant’s decision to exercise discretion in the performance of his job for self-enrichment or the enrichment of chosen colleagues would fall broadly into the category of anticorruption.³ Similarly, “anticorruption practitioners” refers to individuals or groups of individuals who engage in part-time or full-time activity related to implementing an activity which might be found on a government or company “anticorruption” action plan. In the discussion of policy diffusion, I do not suggest that anticorruption should be led only by knowledge-endowed technocrats. Although I support the participatory methods advocated by most anticorruption practitioners, this paper attempts to problematize the policy diffusion process for whichever “stakeholder” (or segment of society) is engaged in anticorruption activity.

I. SOME LESSONS FROM INTERNATIONAL POLICY DIFFUSION?

In spite of the risk of obfuscation attendant with any binary classification, theories of policy diffusion fall into roughly two groups: organization-led and institution-led perspectives.⁴ In the organization-led view of policy knowledge diffusion, key organizations—such as the International Monetary Fund,

the World Trade Organisation, the Organisation for Economic Cooperation and Development, or the World Bank—are responsible for the transfer of policy. A simple conceptualization of organization-led diffusion—based on an adaptation of Dolowitz and Marsh (2000)—is shown in Fig. 1. The circles represent actors, be they government officials, firms, NGOs, or others. The *y*-axis shows the “degree” to which lessons are transferred—be they coercive, influential, or voluntary. The *x*-axis shows the transmission process itself—involving the copying or emulation of policy from other countries or the observation of these policies which provide inspiration for the creation and implementation of “local” policies. If there are “failures” in the policy transmission process, they are due to the complexity or feasibility of the policy in the adapter’s local context or incompatibility with local ideologies. The adapter can also receive policy information which is incomplete, inappropriate, or unformed.⁵

The greatest advantage of the organization-led perspective on policy diffusion is its recognition of the interests and politics behind such diffusion. These interests can be defined narrowly (focusing only on the organization’s immediate objectives) or may be defined more broadly—taking into account second-order gains from contributing to the social or collective good. Examples of narrowly defined interests, in a corruption context, include U.S. pressure for international anticorruption work and its funding of international agency initiatives such as the OECD Convention on the Bribery of Foreign Officials in International Business Transactions or USAID co-sponsorship with the World Bank of business-oriented anticorruption programs. In this case, it is in the narrow interest of the United States to expand international markets for U.S. firms bound to Foreign Corrupt Practices Act

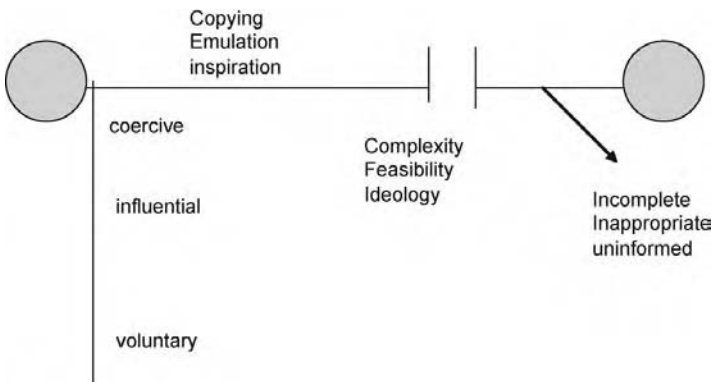


Figure 1 Dolowitz and Marsh policy transfer framework. [Source: Adapted from Dolowitz and Marsh (2000).]

of 1971 and compete successfully with European countries which were not bound by antibribery legislation. Broadly defined interests may be another reason for organization-led policy diffusion. The creation of “rules of the game” and the provision of international “public goods” have been important in an international context and are becoming increasingly so. In this view, U.S. support for international anticorruption action reflects “enlightened self-interest”—benefiting other nations as it benefits the United States. Through U.S. contributions to national anticorruption programs abroad and especially its support to the UN Anti-Corruption Convention, the United States establishes important rules of the game which other countries would not provide as “free riders.” Regardless of whether interests are narrowly or broadly defined, the basic intuition of the Dolowitz and Marsh model focusing on coercion and reception holds.

The institution-led view of policy diffusion focuses less on specific organizations and more on the systemic dynamics of the policy diffusion process. In this view, policy knowledge exists “out there” and there are either norms, cultural institutions, or “mental models” which determine how agents propagate and respond to policies. Unlike the mechanical model of organization-led policy diffusion shown in Fig. 1, which assumes a degree of coercion and receptivity to policy, the institution-led perspective tries to explore the methods by which such diffusion takes place. An extreme simplification of this view is shown in Fig. 2. In this figure, policies are assumed to flow as “fields”—drawing an analogy to physics.⁶ One reason for such flows may be the inevitable “logic” of the era—such as the Logic of Industrialization or the Logic of Modernization.⁷ Most of these theories assume that “times are changing” (usually reflecting technological change) and that the “logic” of

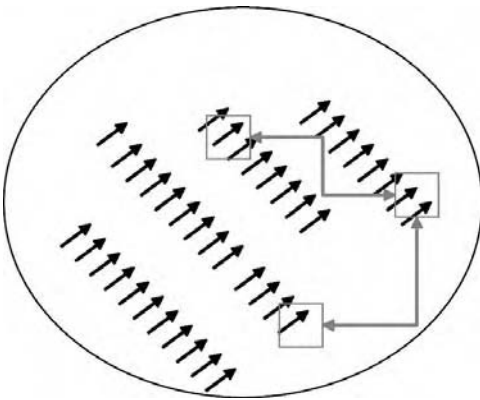


Figure 2 The institutionalist perspective.

certain types of policies—be they welfare policies or increased government transparency—are overwhelming. Gibbons et al. (1994) ascribe the need for increased transparency and accountability to social change concomitant with the “new production of knowledge.” Another reason for such flows reflects copying and “social learning.” Such copying or social learning arises from pressures to conform or forces promoting “institutional isomorphism.”⁸ Such copying may also be due to the similarity in world-view attendant with the existence of “epistemic communities” which are involved in the transmission of policy lessons.⁹ Unlike the “push” of organization-led theories—where experts in organizations try to promote a type of expert knowledge—ideas are “in the air”—and thus can be socially constructed. A third reason for such flows may be the result of engagement with the writing and practice of the times—as the movements from New Public Sector Management to the rise of anticorruption attest.¹⁰ A final reason for such knowledge flows comes from recent theorization of policy diffusion. In this view, policy ideas are not “in the air” but “in the network”—and specifically within policy networks which operate on a voluntarily and ad hoc basis.¹¹ Rather than simple “fields,” Fig. 2 also depicts a network representation, showing how policy must flow along the contours defined by the network rather than omnidirectionally.

The largest advantage posed by institution-led theories of policy diffusion is that they provide a broader view of policy diffusion. In Fig. 1, the payoffs of the policy diffusion “negotiation” determine the degree and speed of policy diffusion. In Fig. 2, the degree and speed of policy diffusion determine the payoffs of policy diffusion “negotiation.” In other words, the organization-led view is agent-based, whereas the institution-led view is inherently structural. Such structure is important because organization-led policy diffusion suggests a higher degree of variation in policy than is observed in the real world. Explaining “eras” or “policy regimes” is difficult for organization-led theories. In the institution-led perspective, policy is seen to have intrinsic value or content rather than merely acting as a term of negotiation between parties. Figure 3 offers a comparison between the two perspectives.

	Organisational perspective	Institutional perspective
Driver	Politics/interests	Isomorphism
Type of diffusion	“Push”	“Pull”
Degree of diffusion	Bargaining power	Fit with pre-existing mental models
Theoretical centre	Agent	Structure
Method of diffusion	Agent-sponsored legislative change	Copying/learning

Figure 3 Comparing the organizational and institutional perspectives.

However, the intrinsic value of such policy diffusion presents a weakness for both the organization-led and institution-led perspectives. If policy has some intrinsic value, then it can and should be managed. Rather than merely reflecting a “public good,” policy diffusion represents a contribution to a stock of knowledge, with each lesson building on the previous one. In the organization-led perspective, policy diffusion is negotiated based on interests, while in the institution-led perspective, policy diffusion is omnipresent, acting as an external constraint and opportunity. Yet a closer inspection of both perspectives reveals that it is *knowledge* about policies and the organizational and project structures used in the policy formation which are actually being transmitted. Policies are not like pieces of machinery which can run independently of policymakers. Policymakers acquire knowledge about policy and such diffusion relies the purposive activity of individuals to choose the content, modality, target, time, and objective of policy communication. In other words, policymakers and their advisors choose who, what, where, when, why, and how to diffuse policy knowledge. Therefore the question of policy diffusion boils down to the *management of policy knowledge*.

As will be argued, the diffusion of anticorruption policies (and practices) has been driven by organizational and institutional factors which have erroneously ignored the role of policy knowledge management. A consideration of the “mesolevel” between these perspectives will show how such policies are “operationalized” with concrete projects by concrete project managers.¹² The institutionalization of anticorruption in the “first wave” has led to inferior outcomes which could be remedied by better policy management at the global level.

II. THE CURRENT STATE OF PLAY IN ANTICORRUPTION'S “FIRST WAVE” OF REFORMS

During the 1990s, anticorruption action programs and activities were disseminated at a global level. Reflecting both organization-led and institution-led factors, the anticorruption industry evolved—in some part due to the dissemination of World Bank anticorruption programs. Figure 4 shows that the dissemination of much of the donor-led international anticorruption activity began by taking lessons from the Hong Kong’s Independent Commission Against Corruption. This experience (marked by arrow 1) was used by the World Bank and in combination with other country experiences to begin work in Tanzania and Uganda in roughly 1995–1996.¹³ With some of these experiences, by 1997, the World Bank was beginning its first work in Bolivia and Nicaragua, while by 1998, the initial activities engendered by these programs were being thought about in Central and Eastern Europe and

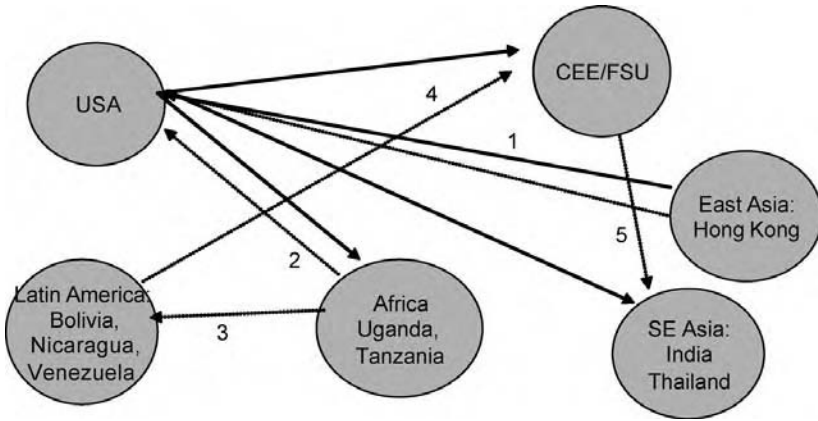


Figure 4 Propagation mechanism: toward evolution?

the Former Soviet Union. While such policy diffusion does not capture the entire picture (some countries in Africa undertook donor-supported anti-corruption programs late and India had undertaken donor-supported anti-corruption relatively early), the general flows of World Bank anticorruption policy are roughly those highlighted in the figure.

The result of such policy diffusion has been the emergence of global anticorruption policies. In some cases, these policies are truly global—such as the United Nations (UN) Conventions against Corruption or the UN International Code of Conduct for Public Officials (UN, 2002).¹⁴ At the multinational level, important international policies include the OECD-ADB Anti-Corruption Action Plan for the Asian Pacific and the work of the Council of Europe’s Group of States Against Corruption (GRECO). At the international level, the diffusion of methods used to create national action plans also represents an important vector of policy diffusion. For example, in the early 1990s—what might be considered as the beginning of a “first wave” of efforts aimed at raising awareness about the harms of corruption—national anticorruption plans were implemented by the World Bank, USAID, and UNDP, often in partnership with Transparency International in places such as Uganda, Tanzania, Ukraine, and Bolivia. By the late 1990s, information could be found on the Internet about similar programs in almost every region of the world. In Asia, countries such as South Korea, Mongolia, and Cambodia adopted anticorruption action plans.¹⁵ Almost every country in Latin America had action plans.¹⁶ Several European countries—notably Albania, the Baltic republics, Bulgaria, Macedonia, Serbia, Ukraine, and others—as well as many countries of the Former Soviet Union such as in

Russia, Georgia, and Kazakhstan—also had elaborated programs.¹⁷ In Africa, similar programs were being implemented in countries such as Nigeria, Morocco, and Zimbabwe. Such programs have increased in diversity as well as in number, reflecting different action plans dealing with investigative journalism, public procurement, judicial reform, and other types of “anticorruption” activity.

Given the global span of these programs, some emergent patterns are already starting to become visible. According to an anticorruption donor coordination meeting held in Vienna on May 15th 2002, the distribution of anticorruption programs (and consequently anticorruption knowledge) varies geographically and functionally (United Nations Office on Drugs and Crime, 2002). Geographically, listing countries by the number of “anti-corruption” programs, Russian Federation ranks first with 13 programs, followed by Romania (8), Ukraine (6), Albania (6), Armenia (6), and Indonesia (5). Conspicuously absent (due to its size) is greater technical assistance to China (3 projects) and Afghanistan (due to its global strategic importance). However, these numbers do not include programs which were labeled as “global” or “regional” programs.¹⁸

Looking at the relative distribution of anticorruption projects (and anticorruption knowledge), UNDP appears to favor programs which could be deemed as “capacity building”; the Department of Economic and Social Affairs also has a large number of “capacity-building” programs, yet has a greater relative share of “law enforcement” activities than UNDP. The Center for International Crime Prevention has roughly an equal weighting of “capacity-building” and “awareness-raising” programs. The OECD Secretariat appears to engage most in “awareness raising” supporting the Anti-Bribery Convention, while its Cooperation with Non-Members appears to focus greatly on “capacity building.” The Council of Europe and Transparency International are noted for the large number of reported activities which appear to balance “capacity building,” “awareness raising,” and “law enforcement.” It should be stressed, however, that these qualitative judgments have been made based on counting relative frequencies of activities. Given the large degree of multicategory reports, no exact numbers are reported here.

Finally, looking at partner institutions, government was the most popularly reported partner (22), followed by TI (17), World Bank (9), USAID (6), UNDCP (6), ADB (5), and Civil Society (5). Such partnerships reflect a general trend as many programs are either co-organized or involve direct financial contributions from other donors. For example, USAID gave the international NGO Transparency International 14% of its 2000 donations and Open Society Institute (a branch of the international NGO Soros Foundation) contributed 18%.¹⁹ Lack of availability of data from many

organizations (such as World Bank or USAID), combined with blanks in the original reports, however, suggests large-scale underreporting. Again, due to data problems, these data should be taken as indicative rather than as precise estimates.

Such a rough distribution of donor-funded anticorruption activity suggests an emerging global distribution of knowledge and partnerships in anticorruption policy diffusion. Such diffusion is taking place and the international organizations have a role to play in such policy diffusion. However, this role is often to implement a set of relatively homogenous programs across very different geographical, institutional, and cultural milieus.

At its most basic level, a relatively “standard” anticorruption action plan is a list of actions which representatives (usually from the country or countries concerned) in a meeting agree to undertake. These representatives are often listed in the action plan under the organization (or “stakeholder group”) which they belong to—such as the executive, judiciary, parliament, media, church, NGO sector, private sector, or the international community. One example is the work of the Ukraine National Coalition for Integrity which was supported by USAID funds and which used the same contractors (Management Systems International) which had undertaken anticorruption programs in a number of other countries. Under their Partnership for Integrity, meetings were held in 2000 in the three towns of Kharkiv, Lviv, and Donetsk.²⁰ In the case of Donetsk, actions had included activities covering the executive, the parliament, judiciary, the media sector, and the business sector at the local level (see Table 1 for an example). Moreover, across these organizations, there are several similarities in the type of action to be undertaken.

In the case of the Donetsk action plan, there is a stress on “awareness raising” through workshops, seminars, the publication of guidelines, and media programs. Such actions focused on issuing instructions, conducting round-table discussions, and university lectures featured prominently. In the case of the action plan for Bolivia elaborated in 1998, such “awareness-raising” activity was usually supported by corruption perceptions surveys (see CIET, 1998 for examples of these types of surveys).²¹ In these corruption perceptions surveys, a large sample of individuals from the different “stakeholder groups” was asked about their perception of the degree of corruption in a variety of public organizations and services. These data were then widely disseminated. The philosophy behind the project design was that quantifiable indicators would assist with “evidence-based” conclusions supported in various national meetings. The surveys conducted by CIET International in Bolivia (other countries include Nicaragua, Tanzania, Uganda, and South Africa) were all rather large household surveys combined with a survey of the service providers. The data from these surveys were subsequently discussed in

Table 1

Donetsk Regional Civic Movement “PARTNERSHIP FOR INTEGRITY”
 ANTI-CORRUPTION ACTION PLAN—2000
 Approved at the 2nd International Conference,
 “Challenges to Economic Growth: Issues of Integrity” (Donetsk, October 17, 1999)

Public Awareness and Education Projects

Develop and publish “Instructions for Entrepreneurs” which will help them plan for and respond more effectively during sanitary inspections, fire inspections, and with traffic police.

Responsible party: In cooperation with the relevant public offices.

Conduct four round-table discussions on the rights and responsibilities of business people and tax inspectors/tax police; business people and traffic police inspectors; business people and tax inspectors; and business people and sanitary inspectors.

Responsible party: In cooperation with the above-mentioned agencies.

Prepare and conduct lectures on anticorruption practices to students of local educational institutions in the Donetsk Institute of Internal Affairs, Donetsk State University, Donetsk Technical University, Academy of Management, and Donetsk Economics and Trade University.

Responsible party: Jointly with the Oblast Education Department and rectors of these institutions.

Conduct an international student conference entitled, “Corruption as a Global Problem: Approaches and Strategies to Fight Corruption.”

Responsible party: “Partnership for Integrity,” Student Research Societies, The Renaissance Foundation, Oblast education department.

Deregulation and Simplification of Government Procedures between Entrepreneurs and Officials; Introduction of Codes of Ethics

Develop Codes of Ethics for police, traffic police, and tax inspectors.

Responsible party: In cooperation with these state agencies.

Create a joint commission to address and resolve conflicts and disagreements among government, the business community, and citizens.

Responsible party: Jointly with the local government.

Collect information and develop a pamphlet on the rights and obligations of Ukrainian citizens with respect to various state structures.

Responsible party: Civic Movement “Partnership for Integrity.”

Conduct a workshop on the ethics for government officials in dealings with their customers.

Responsible party: Jointly with local government and other institutions.

Table 1 Continued

Improving Standards of Public Service Delivery

Assist each government department in drawing up lists of services that must be rendered for particular fees or for no fee; create price lists of fees for services.

Responsible party: In cooperation with the government departments involved.

Monitor of the quality of services rendered by officials on a quarterly basis; inform citizens about the results of such monitoring.

Responsible party: Jointly with the involved government departments.

Monitor the implementation of court decisions on the payment of wages.

Responsible party: Civic Movement “Partnership for Integrity.”

Legal Protection of Customers

Develop, publish, and publicize the activities and further development of the Citizen Advocacy Office

Responsible party: Civic Movement “Partnership for Integrity.”

Set up Citizen Advocacy Offices in additional cities and rayons of the Donetsk Oblast.

Responsible party: Civic Movement “Partnership for Integrity.”

Analyze grievances of citizens. Publish and circulate information flyers with results.

Responsible party: Civic Movement “Partnership for Integrity.”

Draw up a list of topics on which legal advice will be offered by experts during “hot line” consulting.

Responsible party: Civic Movement “Partnership for Integrity.”

Prepare materials required for the creation of an arbitration court affiliated to our movement.

Responsible party: Civic Movement “Partnership for Integrity.”

Promoting Our Goals in the Mass Media

Prepare and publish an information bulletin on the work of the Movement and its structures.

Responsible party: Civic Movement “Partnership for Integrity.”

Prepare monthly releases for The Kupecheskij Vestnik and other media describing the activities of the Executive Committee and the Movement.

Responsible party: Civic Movement “Partnership for Integrity.”

Prepare materials for TV on the work of the Movement.

Table 1 Continued

Responsible party: Civic Movement “Partnership for Integrity.”
 Preparation of a TV program on the joint work of the Movement with government agencies and public organizations.
Responsible party: TBD

Organizational Work

Render assistance for the creation of branches of the Movement in Donetsk Oblast cities: Yenaskiyev, Mariupol, Kramatorsk, and Krasnoarmijsk.
Responsible party: Civic Movement “Partnership for Integrity.”

Source: Adapted from the Ukraine Partnership for Integrity.

focus groups (350 in Uganda) with the public and later with opinion makers to find out to what extent the issues raised by the public could realistically be addressed effectively in the current political environment.

Upon reflection, it is clear that the spread of the first wave of anti-corruption is attributable to organization-led or institution-led factors. Organization-led policy diffusion would presumably seek greater results than those which have currently been achieved. There have been a number of evaluations of these programs. However, evaluations focus mostly on the methodology employed rather than on program results—given difficulties in measuring corruption.²² Yet from an analysis of the anticorruption action plans, rarely were resources attached to these programs. Moreover, they did not appear to take into account the resources and competencies needed to address the plan. For example, in 2000, Georgia had passed by executive decree the results of its anticorruption action planning. The action plan included over 92 subpoints.²³ Even in a recent OECD action-planning workshop for East Asia, there were about 30 points covering a wide range of activities to be undertaken by the public, business, and civil society sectors.²⁴ However, the plan only included a brief discussion of the means of financing and allocation of staff resources. Given the strong role of the international organizations and national governments, combined with the quick institutionalization of such programs around the world, there is possibly some degree of organization-led and institution-led influence in the rise of the first wave of anticorruption.

Yet the first wave of anticorruption failed to take into account the competencies needed to achieve program results as well as any description of current processes which would serve as a baseline. As is becoming more and more obvious, the flows of knowledge—or the skills and abilities necessary to implement action plan activities—are a key determinant of success. In the case

of the Donetsk action plan, implementing a simple action such as developing a code of ethics relies on written (codified) knowledge of codes of ethics (their structure, style, and content). It also relies on know-how (or tacit knowledge) to decide on methods which might be used to encourage particular agencies and individuals to act according to these codes. Policy knowledge management plays a large role in the diffusion of policy—and such diffusion normally occurs in networks, along value chains.

III. THE ROLE OF NETWORKS AND VALUE CHAINS IN KNOWLEDGE DIFFUSION

Attempts to build codified and tacit anticorruption knowledge have resulted in the creation of a number of anticorruption networks. Examples of such anticorruption networks include the Parliamentary Network of the World Bank, OECD's Anti-Corruption Network for Transition Economies, or Transparency International's local chapters. Other examples of network-type organizations are E-mail discussion groups and even networking conferences. Yet not all networks are created equally. In the organization-led view of policy diffusion, such diffusion is assumed to be a pure transfer from one actor to another with a certain degree of coerciveness and receptivity. Thus such networks are not really networks—but represent multiple linkages of power and interest relationships. In the institution-led view of policy diffusion, policy was assumed to flow along the contours of the network—determining the actions undertaken by “nodes” of organizations in the network. However, such networks view knowledge flows as passive, questioning neither the types of policies diffused through the network nor the quality of such policy in achieving objectively set criteria—such as reducing corruption.

The best forms of networks acknowledge the role of knowledge management. They seek added value, create synergy, and generally make the members better off than the result from simple policy lesson “trading.” Such networks would seek to increase the value of policy knowledge the more it is disseminated—in other words, generate network externalities (Economides, 1996). Such network externalities arise as each member can “tap” the resources and knowledge of all other members. As such, it is continual and unrestricted access to knowledge which gives a network its value. Given that each member can draw on the other n members, the total value of the network is n^2 . The difference between a true network and simple “knowledge spillover” is that in the case of a network, all members focus on a collective goal and generate the knowledge needed to achieve that goal.

If anticorruption knowledge flows along with these policy networks, then tacit and codified knowledge become strategic factors of policy produc-

tion.²⁵ Such knowledge must be managed, and such “knowledge management” is fundamentally about the management of people.²⁶ Knowledge is produced along the project’s value chain. A value chain, simply put, is that process or chain of activities which contribute—incrementally along each node of the value chain—to the value of a good or service in satisfying beneficiary wants and needs (Porter, 1985). An example of an anticorruption value chain would be an assessment of client needs through an assessment mission or through research (first node), the hiring of experts (second node), devising a program (third node), implementation (fourth node), and assessment (fifth node). At each of these points, a certain amount of value added takes place which contributes to the overall process.

In development, the process of knowledge accumulation during the implementation of a project is referred as the project cycle or the implementation cycle to stress the reiterative and action-learning component of this type of anticorruption program “production” (Langseth, 1997). By seeing the anticorruption program as being produced in value chain along networks, however, it acknowledges the important role of value generation along each node and allows for the possibility of intermediation and disintermediation (something the project cycle model does not allow for). Moreover, value chains more closely focus on the network properties of anticorruption project management—a number of actors must act together to develop knowledge synergistically.

Revisiting the earlier description of the “standard” anticorruption project, the World Bank has used similar principles in the design of its anticorruption programs. In many of its programs discussed previously in Eastern Europe, Africa, Latin America, and Asia, the value chain consisted of a number of elements. Starting off the value chain was codified, global anticorruption knowledge derived from OECD member countries and Hong Kong, among other places. Senior project staff transmitted this knowledge to junior staff to lever its use. All these experiences were transmitted to and used by local survey experts and facilitators who combined this knowledge with their own codified, local country specific experience to modify many of the lessons for their own local circumstances. This knowledge was then used in meetings with “stakeholders” such as representatives of the parliament, NGOs, executive, church, and others to further identify needs and plan a program based on their tacit knowledge of their own organizations. With the combination of this knowledge, the next node on the value chain consisted of a reappraisal of all the codified knowledge accumulated with the tacit knowledge collected by the NGO sector. The combination of codified and tacit knowledge was then used in national workshops.

Linking this whole process is the anticorruption practitioner, whether the person is in an international organization, government agency, or local NGO. The anticorruption practitioner manages knowledge—combining the expertise of various experts and local actors into a program. As such, anticorruption practitioners usually act as intermediaries—matching anticorruption programs to international and local experts with specific discipline expertise in judicial reform, accounting, and media, for example, based on mandates given to them by various stakeholder groups.²⁷ If such matching adds value due to reducing transactions costs associated with collecting information about various experts and country conditions, then little value is probably being created. However, if these intermediaries are developing tacit knowledge about the use of experts’ codified and tacit knowledge given different country and organizational climates, then synergies (where synergy is the creation of value in excess of the sum of the input values) are created.

However, in many first-wave anticorruption projects, little value generating knowledge combination occurred (see Fig. 5 for a comparison of the two waves). In the traditional anticorruption training of trainers and codified knowledge-type seminars, an attempt is made to transfer knowledge. However, such one shot transfers do not capitalize on the existing knowledge resources of all participants. Because lectures are given, the valuable work-related experience (tacit knowledge) of participants remains untapped. Given the importance of such networks and value chains, policy diffusion—in other words, the creation of policy knowledge—must be managed. In the organization-led perspective, policy knowledge exists as a resource to further organizational interests. In the institution-led perspective, policy knowledge exists independently of the project and influences projects homogeneously. A knowledge management viewpoint suggests that such policy should be managed. Recognition of such policy knowledge management would constitute an important “second wave” in anticorruption work.

	First Wave	Second Wave
Time period	1990s	2000s
Focus	Awareness raising	Capacity building
Reception	Copy	Customise
Implementation	Homogeneity	Heterogeneity
Main actors	International organisations	Multiple international and local organisations

Figure 5 Comparing the first and second anticorruption waves.

IV. A SECOND WAVE OF ANTICORRUPTION REFORM?

Policy knowledge management represents a middle ground between organization-led perspective (with its stress on organizational interests and incentives) and the institution-led perspective (with its stress on ambient “fields” and structures of knowledge). Given the relative paucity of knowledge creation in the first wave of awareness raising, the move from information dissemination to the development of knowledge would represent a “second wave” of anticorruption activity. Not just codified, but tacit knowledge, needs to be developed in the policy diffusion process. Codified knowledge refers to knowledge which can be written down (or codified). In the anticorruption context, this refers to reports, best practices, theoretical models, and suggestion lists. Thus, while an anticorruption “toolkit” would qualify as knowledge, it remains as codified rather than tacit knowledge because it requires experience and training to know how to apply the toolkit. Tacit knowledge refers to knowledge and know-how more generally confined to the individual’s head. The ability to analyze public sector problems leading to corruption, conducting a national anticorruption workshop, and interpreting a corruption perceptions survey all represent the application of tacit knowledge. The goal for anticorruption in this second stage is to move beyond copied codified knowledge to build up institutions for knowledge pooling and the creation of tacit knowledge. Whether one is reforming the regulatory environment, creating systems of policing, or writing an investigative article, developing knowledge—and especially tacit knowledge—should be a key goal of policy diffusion which occurs in networks and along value chains.

One meeting I had with a high-level Latin American official demonstrates the role of tacit knowledge in the anticorruption project. In 1998, I was visiting a Latin American country working on a national anticorruption program. The country visit had included meetings with several different stakeholders who would contribute to the design of an anticorruption program. During one meeting, I had met a senior official and begun to talk about current thinking in anticorruption program design. The official proceeded to produce a copy of the book that one of the team working on the program had coauthored. This official then proceeded to use the model developed in the book, adding elements which were appropriate for his particular country. His analysis was done impromptu on an overhead projector and had lasted about 30 min. The official had taken codified knowledge, combined it with his own codified and tacit knowledge, and had created value through innovation. Several months later, this official was invited to international conferences to discuss his views about anticorruption.

From the discussion that followed, it was clear that many of the other officials had not been able to combine the now codified knowledge with their own tacit knowledge. When exploring the reasons why, I came to discover that the Latin American official possessed a large amount of management training and practice in the United States. It was his previous business training which provided him with the tools he needed to elaborate and help implement an anticorruption project.²⁸

Given that codified and tacit knowledge are important in anticorruption project design, what is the optimal method of transferring this knowledge in an international setting? The Latin American official referred to earlier remains an important resource to the international community for tacit knowledge about anticorruption reform. How should his time be used on the margin? How should policy be diffused—recognizing that policy diffusion is a key type of knowledge management?

The official's time utilization depends on the *operational needs* of the anticorruption program. A particular activity—be it the investigation of a corrupt official or the writing of a money laundering bill—has two main dimensions. First, does it use codified or tacit knowledge? Second, is the knowledge applicable at the global or local level? Put in a practical way, the Latin American expert previously referred to can be engaged in four different ways. He can become an international civil servant helping other countries (building global tacit knowledge). He can write and publish in English (building global codified knowledge). He can write in Spanish (contributing to local and codified knowledge). Or he can engage in politics at home (building local and tacit knowledge).

Which activity on the margin would best meet the strategic objectives identified? In Barlett and Ghosal's (1989) model, global, multinational, and international projects (which most anticorruption projects are as discussed in the first part of this paper) must strategically balance their ability to respond to locally specific circumstances against the need to maximize efficiency through mass producing relatively standard policy. On the one hand, they must choose between the advantages of globalization and centralization (and the cost advantages this confers) vs. the ability to respond to local circumstances. On the other hand, the project must choose whether to provide codified or tacit knowledge. Figure 6 presents the trade-offs between developing codified vs. tacit and global vs. local knowledge.

Codified global knowledge refers to the principles or best practices which can be conveyed using mass communications technologies such as the Internet. Global anticorruption knowledge is sufficiently general so that it can be applied (or adapted) universally. Some example might include model laws, model codes of conduct, or models of corruption behavior. Such knowledge usually relies on "combination" where individuals may combine

	Global	Local
Codified	Principles or discipline-based models	Best practices and “local knowledge”
Tacit	Discipline-specific know-how (technical applied knowledge)	Personalised training

Figure 6 Matching policy diffusion to objectives.

codified knowledge to create new knowledge (Nonaka and Takeuchi, 1995). An example of combination would be the teaching of model anticorruption laws by an international expert to an audience of legislators.²⁹ *Codified local knowledge* is knowledge which can be written down but which is relevant for a particular locality—such as the best way to run an Anticorruption Commission or how to detect bribe payments in a particular ministry suboffice in a particular region. The creation of such codified local knowledge can occur through a process which Nonaka and Takeuchi (1995) refer to as “externalization” or the transmission of tacit individual knowledge to local groups as codified knowledge. An example would be anticorruption toolkits or instruction manuals such as Klitgaard et al.’s (2000) *Corrupt Cities*.

Tacit global knowledge is know-how which groups must obtain—such as rank and file investigators of corruption charges or NGO managers. Nonaka and Takeuchi’s “socialization” is one way that individuals or groups teach other groups applied methods. A group study tour aimed at discussing the best methods of investigating corruption would be one such example. *Tacit local knowledge* is know-how which is relevant only to a locality—such as a personalized course in investigative journalism which takes into account a particular journalist’s strengths and weaknesses. An example would be a group of international experts visiting to help the comptroller design a special project—reflecting Nonaka and Takeuchi’s “internalization” as an individual takes a group’s learning and develops know-how through hands-on application. Another example of internalization would be when an auditor’s expert meeting discusses techniques which an individual can use in his own organization to conduct audits.

While the model is simplistic, it conveys strategic aspects of policy diffusion which are neither organization-led nor institution-led. Policy knowledge management offers a mesolevel of analysis, showing how the *quality* of policy diffusion is as important as the amount and nature of such

diffusion. Most importantly, and perhaps most controversially, it does not simply seek to explain policy diffusion, but attempts to theorize more optimal ways of diffusing (anticorruption) policy.

V. APPLICATIONS

Understanding this model can help with key design problems in three projects: anticorruption network design, investigative journalism training, and the parliamentarian training. The first example concerns the OECD's Anti-Corruption Network for Transition Economies. In 1998, the OECD established a network to bring policymakers, businesspersons, and NGO representatives together from the countries of Eastern Europe and the Former Soviet Union.³⁰ The network, with its secretariat in the OECD, has conducted a number of programs under the aegis of the network. Yet looking at the output of the network, one sees that the network administrators have spent too much time trying to “synthesize” knowledge produced by network members. New best practices, copies of laws, and other materials were submitted to the network administrator for discussion or inclusion on the network's Internet site. In some cases, network administrators had synthesized this information into a broader set of guidelines or principles—attempting to create codified group knowledge. In other cases, the design of workshops and independent reports commissioned by the network administrators had heavily influenced the type and nature of the policy diffused. If instead, the objective was to act as an exchange where practitioners could communicate and exchange tacit knowledge to learn from each other (develop tacit individual knowledge), then the best type of organization would have been to act as a host—decentralizing the role of coordination to the contributors themselves and keeping a local focus. However, by processing the data, knowledge exchanged within the network was centralized and codified—often recodified—leading to organization-led policy diffusion.

The conduct of investigative journalism training within the larger framework of anticorruption appears to suffer from the opposite problem—being too institution-led.³¹ Many of these programs have been designed to teach a relatively standardized syllabus to investigative journalists in different regions of the world. Items on the syllabus include types of information to collect, how to conduct press conferences, how to conduct interviews, and how to write an investigative story. Despite the relatively wide range of institutes conducting such training, there appears to be a fair amount of “isomorphism” in these programs, especially given the wide range of country contexts in which such training finds itself. In many such workshops, knowledge is not managed—journalists learn either textbook methods or

hear speeches by international bureaucrats and media consultants. If such programs were redesigned to include practical (and unfortunately expensive) hands-on training, policy diffusion could be an important tool in reducing corruption.

A final example refers to parliamentary training in anticorruption. For parliament to exercise a role as an oversight body, parliamentarians need to understand how they may gain access to government financial information, pass laws which discourage corruption, and understand methods of communicating with constituents to address corruption issues in their districts.³² Much of this knowledge is codified, global knowledge which is applicable to most systems of government. As such, a centralized and efficiency-focused knowledge delivery process should be preferred—and it often is for many forms of parliamentary training. However, parliaments are often weak in a number of countries vis-à-vis the executive and such policy diffusion cannot often be applied. If such training is to occur, a long-term training relationship between a trainer with extensive tacit knowledge and experience in a parliament would be one way of diffusing knowledge which might have long-term “network” effects.

These three examples highlight several points related to the discussion of policy diffusion. First, some methods of diffusing policy (or managing knowledge) are better than others. The objectives of policy should determine how policy should be diffused—even if it does not always do so. Second, the consideration of such policy diffusion moves the debate away from organization-led vs. institution-led policy diffusion and centers it on the “mesolevel” where policy diffusion takes place. Third, at the start of the anticorruption drive, general “awareness-raising” type policy may have been desirable (most anticorruption policy diffusion was global-codified cell of Fig. 6). Now, however, such policy should move toward building local tacit anticorruption knowledge (the local-tacit cell of Fig. 6). The optimal policy may well shift over time.

VI. CONCLUSIONS

This chapter has tried to address the policy diffusion literature by looking at the concrete example of the internationalization of anticorruption policies. “Policies” are not diffused; it is *knowledge* about how these policies are “operationalized” with concrete projects by concrete project managers which is diffused in practice. In the “first wave” of anticorruption policy diffusion, much of the knowledge being transmitted was global, codified-type awareness raising. While such diffusion may have been optimal at the time (or may have simply reflected expediency), there are little data to suggest that these policies

made a large impact in fighting corruption. While such diffusion has changed over time, reflecting greater emphasis on the creation of codified and tacit knowledge about anticorruption through training, Internet sites, and technical assistance, much more work needs to be done. The model presented in this chapter potentially offers international anticorruption practitioners one way of thinking about the policy diffusion problem. More importantly, the experience of international anticorruption work offers an interesting way of finding a mesolevel theory between agency-based organization-led views and the structure-based institution-led perspectives of policy diffusion.

ACKNOWLEDGMENT

The opinions here reflect those of the authors and do not represent those of the institutions for which they work. The authors would like to thank the participants of the PERC conference on Globalisation and Governance in Sheffield from July 4 to 6 for useful feedback on an earlier draft of this paper.

NOTES

1. According to figures presented by a variety of anticorruption donor agencies at a UN meeting in Vienna on 15 May 2002, \$100 million appears to be a “lower-bound” estimate for value of anticorruption activities of principally the UN (United Nations Office on Drugs and Crime, 2002).
2. The search consisted of typing “anticorruption” and “list of participants” into the search engine Google. Only the first 100 matches were explored.
3. There is a large literature focused on the elaboration of anticorruption policies (see Riley 1993; Langseth and Stapenhurst 1997; World Bank 2000; Klitgaard et al., 2000). I focus on projects (or the *results* of policies) rather than the policies themselves on the grounds that diffusion does not occur if it is not acted upon.
4. Such a taxonomy ignores the important coevolution between institutions and organizations. I recognize this problem without attempting to address the fine points of the argument due to space limitations.
5. For examples of such policy transmission, see Collingwood (2002) who discusses the World Bank’s governance program or Stone (2000) who discusses the creation of a policy transfer mechanism, the Development Gateway. In another variant of this view, multinational enterprises and international NGOs are the primary vectors of knowledge diffusion—see Evans (1995) or Weinstein and McIntyre (1986) for the role of multinational enterprises. Madon (1999) discusses NGOs.
6. See Scott (1991) for a classical formulation of this perspective or Fligstein (2001) for a more recent treatment.

7. Examples of such authors include Kerr et al. (1960) or Inkeles and Smith (1974). A similar “logic” though deriving from a different set of mechanisms can be found through the institutionalization of World Bank anticorruption “discourse” (Polzer, 2000).
8. See Fligstein (2001) or DiMaggio and Powell (1983) for more.
9. See Haas (1992) for a discussion of epistemic communities and Braithwaite and Drahos (2000) for an application to international policy dissemination.
10. For examples of learning from experience, see Rose (1993) or Peters (1997).
11. The concept of policy networks has received some attention in the public policy literature. See Podolny and Page (1998) or Powell et al. (1996) for a deeper discussion on the management of policy networks. Börzel (1998) addresses different conceptions of policy networks, Knoepfel and Kissling-Näf (1998) discuss social learning in networks, while Reinicke (2000) address the issue of global policy networks.
12. Such a mesoview of policy diffusion represents a more rigorous attempt at finding a middle ground between agency and structure than compromise models such as “structuration” (Giddens, 1984).
13. For examples, see Marquette (2002), Langseth (2000,2001), or Kpundeh (1998).
14. For more information on these and other international legal instruments, see UN (2002).
15. See <http://www.worldbank.org/wbi/governance/pdf/govfromdiagnostics.pdf> for list of action plans sponsored by the World Bank.
16. For more information on anticorruption programs in Latin America, see www.respondanet.org.
17. For an excellent resource on anticorruption activities in Eastern Europe and the Former Soviet Union, see www.nobribes.org.
18. Regarding the global distribution of functions, programs (as classified by the UN) are as follows: “law enforcement” (82), programs which might be labeled as “capacity building” because they are primarily focused on “training,” “institution building,” or “capacity building” (38), “financial sector/financial management” (37), “awareness raising” (34), legislation (32), public sector management (23), “judiciary” programs (16), and private sector management (11). However, due to reporting of several types of programs under one heading, these values are approximate.
19. www.transparency.org/dnld/BDO2000.pdf.
20. Information was obtained from <http://www.nobribes.org/UNCI/default.htm>.
21. The Plan National de Integridad is available at: http://www.integridad.gov.bo/plan_nacional.htm.
22. See Huther and Shah (2000) or van Gils et al. (1998) for examples of anti-corruption evaluations.
23. See <http://www.corruption.ge/index-en.html> for more information.
24. For more information, see <http://www1.oecd.org/daf/ASIAcom/Action-Plan.htm>.
25. In the literature, knowledge is different from information because knowledge has been processed and has higher value-added. In a sense, awareness-raising

- programs convey information, while real training conveys codified and tacit knowledge.
26. “Knowledge management” represents a broad field with some authors stressing the information technology aspects of knowledge management (Ruggles, 1998), while others focus on the management of people and the ways they share what they know (Davenport and Prusak, 1997).
 27. In Thompson’s (1967) technology framework, they can be seen as exercising a “matching technology.”
 28. Nevertheless, while much innovative work has been done for this particular country, it is presently unclear how successful the reform will be.
 29. Codified knowledge can be transmitted in two ways (Collier, 1998). The first way is through pooling knowledge (or combining knowledge from different sources to create new knowledge). The second way is through copying which involves the unidirectional transmission of knowledge. Conferences and action-planning workshops would be examples of the first type, while Internet sites and publications are “copying” types of knowledge dissemination.
 30. For more information, see <http://www.anticorruptionnet.org/indexgr.html> or <http://www.nobribes.org/>.
 31. For some examples of anticorruption-focused investigative journalism workshops, see <http://www.worldbank.org/wbi/governance/journalism/index.html>.
 32. For more, see http://www.worldbank.org/wbi/governance/parl_devforum.htm or http://www.parlcent.ca/gopac/anticorruption_e.php.

REFERENCES

- Bartlett, C., Ghosal, S. (1989). *Managing Across Borders: The Transnational Solution*. Boston, MA: Harvard Business School Press.
- Börzel, T. (1998). Organizing Babylon—On the different conceptions of policy networks. *Public Adm.* 76:253–273.
- Braithwaite, J., Drahos, P. (2000). *Global Business Regulation*. Cambridge: Cambridge University Press.
- CalPERS. (2002). Available at: <http://www.calpers.ca.gov/invest/emergingmkt/oxford.htm>.
- CIET. (1998). *Popular perceptions of corruption in Public Services*. Available at: <http://www.ciet.org/www/image/download/bolco-eng.ZIP>.
- Collier, P. (December 1998). Social Capital and Poverty. *World Bank SCI Working Paper No. 4*.
- Collingwood, V. (2002). *Good Governance and the World Bank*. Bretton Woods Project.
- Davenport, T., Prusak (1997). *Working Knowledge: How Organizations Manage What They Know*. Boston, MA: Harvard Business School Press.
- DiMaggio, P., Powell, W. (1983). The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields. *Am. Sociol. Rev.* 48:147–160.
- Dolowitz, D., Marsh, D. (2000). Learning from abroad: The role of policy transfer in contemporary policy making. *Governance* 13(1):5–24.

- Economides, N. (October 1996). The economics of networks. *Int. J. Ind. Organ.*
- Evans, P. (1995). *Embedded Autonomy: States and Industrial Transformation*. Princeton, NJ: Princeton University Press.
- Evans, M., Davies, J. (1999). Understanding policy transfer: A multi-level, multi-disciplinary perspective. *Public Adm.* 77(2):361–385.
- Fligstein, N. (2001). *The Architecture of Markets: An Economic Sociology of Capitalist Societies*. Princeton: Princeton University Press.
- Gibbons, M., Limoges, C., Nowotny, H., Schwartzman, S., Scott, P., Trow, M. (1994). *The New Production of Knowledge: The Dynamics of Science and Research in Contemporary Societies*. London: Sage.
- Giddens, A. (1984). *The Constitution of Society*. University of California Press.
- Haas, P. (1992). Epistemic communities and international policy coordination. *Int. Organ.* 46(1).
- Huther, J., Shah, A. (2000). Anti-corruption policies and programs: A framework for evaluation. *World Bank Working Papers 2501*.
- Higgott, R., Payne, A. eds. *The New Political Economy of Globalisation*. Cheltenham: E. Elgar (reference books series).
- Inkeles, A., Smith, D. (1974). *Becoming Modern. Individual Change in Six Developing Countries*. Cambridge: Harvard University Press.
- Kerr, C., Dunlop, J., Harbison, F., Myers, C. (1960). *Industrialism and Industrial Man: the Problems of Labor and Management in Economic Growth*. Cambridge, MA: Harvard University Press.
- Kpundeh, S. (1998). *A Cross-country Comparison of National Integrity Systems as an Approach to Curb Corruption*. Available at: <http://www.transparency.org/coris/edocs/kpundeh1998.doc>.
- Knoepfel, P., Kissling-Näf, I. (1998). Social learning in policy networks. *Policy Polit.* 26(3):343–367.
- Klitgaard, R., MacLean-Abaroa, R., Parris, H. (2000). *Corrupt Cities. A Practical Guide to Cure and Prevention*.
- Langseth, P., Stolpe, O. (2001). *The United Nations Approach to Helping Countries Help Themselves by Strengthening Judicial Integrity*.
- Langseth, P., (2001) *Value Added of Partnership in the Fight against Corruption*. OECD's Third Annual Meeting of the Anti-Corruption Network of Transition Economies in Europe, Istanbul, March 20–22.
- Langseth, P. (2000). *Integrated vs. Quantitative Approach. Lessons Learned. Corruption: Critical Assessments of Contemporary Research*. A workshop hosted by Chr. Michelsen Institute and Norwegian Institute for Foreign Affairs in collaboration with NORAD in Oslo 19–21 Oct. 2000.
- Langseth, P., Staphenurst, R. (1997). The role of the national integrity system in fighting corruption. *EDI Staff Working Paper*. Washington, DC: World Bank.
- Madon, S. (1999). International NGOs: Networking, Information Flows and Learning. *Institute for Development Policy and Management Working Paper 8*. Available at: http://idpm.man.ac.uk/idpm/di_wp8.htm.
- Marquette, H. (2002). *Corruption, Development and Politics: The Role of the World Bank*. Basingstoke: Palgrave.

- Nonaka, I., Takeuchi, H. (1995). *The Knowledge-Creating Company*. Oxford University Press.
- Peters, B. (1997). Policy transfers between governments: The case of administrative reforms. *West Eur. Polit.* 20(4):71–88.
- Podolny, J., Page, K. (1998). Network forms of organization. *Annu. Rev. Sociology* 24:57–76.
- Polzer, T. (2000). Corruption: Deconstructing the World Bank Discourse. *Destin Working Paper Series*.
- Porter, M. (1985). *Competitive Advantage*. New York: Free Press.
- Powell, W., Koput, K., Smith-Doerr, L. (1996). Inter-organizational collaboration and the locus of innovation: Networks of learning in biotechnology. *Adm. Sci. Q.* 41:116–145.
- Reinicke, W. (2000). The Other World Wide Web: Global Public Policy Networks. *Foreign Policy*. Winter.
- Riley, S. (1993). Post-independence anti-corruption strategies and the contemporary effects of democratisation. *Corrupt. Reform* 7(3).
- Rose, R. (1993). *Lesson Drawing in Public Policy: A Guide to Learning Across Time and Space*. Chatham, NJ: Chatham House.
- Ruggles, R. (1998). The state of the notion: Knowledge management in practice. *Calif. Maage. Rev.* 40(3).
- Scott, W. R. (1991). *Institutions and Organizations*. Sage.
- Stone, D. (2000). *Banking on Knowledge: The Genesis of the Global Development Network*. London: Routledge.
- Thompson, J. (1967). *Organizations in Action*. New York: McGraw-Hill.
- Transparency International. (2002). TI Source Book. Downloaded from the Internet on April 15th, 2002. Available at: <http://www.transparency.org/sourcebook/index.html>.
- United Nations Office on Drugs and Crime. (2002). Report of the Interagency Anti-Corruption Coordination Meeting, 4–5 February. Available at: http://www.unodc.org/pdf/crime/corruption/report_coordinationmtg2/Report_Interagency_July02.pdf.
- van Gils, G., Kreft, C., Leeuw, F. (1998). *EDI's Anti-Corruption Initiatives in Uganda and Tanzania: A Mid-Term Evaluation*.
- Weinstein, J., McIntyre, J. (1986). Multinational corporations and the diffusion of world standards. *Stud. Comp. Int. Dev.* 21, 51–84.
- World Bank. *Anticorruption in Transition: A Contribution to the Policy Debate*.
- World Bank. *Helping Countries Curb Corruption*.

14

The Rise of Adversarial Legalism in the European Union:

Beyond Policy Learning and Regulatory Competition

R. Daniel Kelemen

Lincoln College, University of Oxford, Oxford, UK

I. INTRODUCTION

Many Europeans view American legal and regulatory style with a mixture of amusement and horror. Class actions, multimillion-dollar punitive damage awards, ambulance chasing lawyers, and, more generally, adversarial, litigious relationships between regulators, regulated industries, and interest groups all appear as part of the fabric of American exceptionalism. While most Europeans may feel secure in their immunity to this “American disease,” there are increasingly strong indications that American-style adversarial legalism is emerging as an unwanted stepchild of European integration.

A rich literature on comparative regulatory policy shows that the advanced industrialized democracies rely on very different regulatory styles in pursuing their policy objectives and that the United States takes a particularly distinctive approach. American regulatory style, which Kagan (2001) has labeled adversarial legalism, is distinguished by its emphasis on detailed, prescriptive rules, substantial transparency and disclosure requirements, formal and adversarial procedures for resolving disputes, costly legal contestation involving many lawyers, and frequent judicial intervention in administrative affairs.

While it is of course far more difficult to make generalizations about regulatory styles across Europe given the diversity of national systems, a number of common attributes distinguish traditional European regulatory styles from the American. The approaches to regulation that long predominated across western Europe were more informal, cooperative, and opaque and relied less on the involvement of lawyers and courts than those in America. Closed networks of bureaucrats and regulated interests developed and implemented regulatory policies in close concertation. The systems of regulation prevalent across Europe—ranging from the corporatism found in Austria, Sweden, and Germany (Lehmbruch and Schmitter, 1982; Goldthorpe, 1984), to the dirigisme of France (Suleiman, 1974; Hayward, 1982), to the “chummy” cooperative style of British regulation (Vogel 1986, 1996)—all relied heavily on closed policymaking networks and empowered regulators to pursue informal means of achieving regulatory objectives. Neither network insiders nor outsider groups relied heavily on litigation to pursue their policy goals. Network insiders had no need to resort to litigation. Outsider groups had greater incentives to do so, but typically found courts unwilling to block policy initiatives developed within elite policymaking networks.

Recently, scholars of comparative law and comparative public policy have started to ask whether the American legal style may be spreading to Europe, supplanting well-established regulatory styles. Some scholars have argued that various aspects of legal styles are converging on an American model (Wiegand, 1991, 1996; Shapiro, 1993; Trubek, 1994; Dezalay, 1996; Galanter, 1992, 1996, Stone and Shapiro, 1994; Tate and Vallinder, 1995; Stone Sweet, 2000), while others have argued that traditional national legal styles remain firmly in place (Kagan, 1997; Van Waarden, 1995). These studies have identified a wide range of factors that might encourage the spread of American legal and regulatory style including economic liberalization, the globalization of markets, growing distrust of government bureaucrats, heightened judicial assertiveness, the globalization of U.S. law firms, and the international influence of American legal education.

This paper argues that a shift toward adversarial legalism is occurring in the EU and that it is being caused by a combination of economic liberalization and political fragmentation, both of which are inextricably linked to the process of European integration. In a number of policy areas, increasing economic liberalization in the context of the single European market has combined with political fragmentation at the EU level to undermine informal, opaque approaches to regulation at the national level and to create pressure for more legalistic, transparent approaches. The new approaches adopted at the EU level establish more transparent procedures, more justiciable rights, and more adversarial, litigious interactions between actors in the regulatory process. Few actors in the regulatory process would

explicitly advocate this shift. Nevertheless, adversarial legalism is emerging as a by-product of European integration. In essence, economic liberalization and political fragmentation at the EU level have produced conditions in the EU similar to those that gave rise to adversarial legalism in the U.S. context decades earlier.

The spread of adversarial legalism across the EU is not a result of the processes we typically associate with policy diffusion. Regulatory competition (i.e., race-to-the-bottom pressure) has not driven the EU to adopt adversarial legalism as a way of enhancing its competitiveness. Quite to the contrary, adversarial legalism often imposes far greater costs than more informal approaches to regulation and is not pursued as a means to reduce costs for business. Nor is American regulatory style spreading primarily through a process of social learning or emulation. While U.S. practices may be looked to as laudable models in many areas of economic policy, most European policymakers view the dominance of lawyers and litigation in U.S. regulatory processes as an American disease to be strenuously avoided. Moreover, Euroskeptics routinely claim that the rigid, detailed directives emanating from Brussels are strangling European business with red tape. In a number of issue areas, EU policymakers have called for the adoption of more flexible, informal approaches to “governance,” relying on tools such as framework laws, voluntary agreements, various forms of self-regulation, and “the Open Method of Coordination” (Héritier, 2002; Radelli, 2003). However, the impact of such initiatives has been overshadowed by the less discussed but more pervasive spread of transparent, legalistic, and adversarial approaches to regulation across a number of policy areas.

A variety of deeply entrenched national legal institutions in EU member states will continue to limit the degree of adversarial legalism and to block the emergence of the most notorious aspects of the U.S. system. We are not about to see legions of obese European children suing McDonald’s on the grounds that the firm knowingly sold them food that damaged their health, nor are we about to see roving hordes of European class-action lawyers hunting for deep-pocketed defendants. Nevertheless, the shift toward a more adversarial legalistic approach to regulation in Europe is already evident, and recent developments in community law are likely to encourage further moves in this direction across a host of policy areas.

The rest of the paper proceeds as follows. Section II explains how economic liberalization and political fragmentation have encouraged an increase in adversarial legalism in the EU. Section III first presents a general discussion of overarching trends that indicate a shift toward adversarial legalism in the EU. Next, this section presents case studies assessing changes in regulatory style in four policy areas: environmental regulation, securities regulation, antidiscrimination law, and products liability law. These case

studies by no means constitute a definitive test of the arguments presented in this paper. Rather, they simply serve to demonstrate the generalizability of the argument across a wide range of issue areas. Section IV concludes.

II. EXPLAINING THE SPREAD OF ADVERSARIAL LEGALISM

The confluence of two factors has sparked a marked shift toward adversarial legalism in European regulatory style since the mid-1980s. First, the economic liberalization resulting from the 1992 initiative and ongoing efforts to complete the single market has both undermined traditional approaches to regulation at the national level and encouraged the emergence of new forms of regulation at the EU level. Many national regulations have been attacked as nontariff barriers to trade. Economic liberalization has introduced new actors, many of them foreign, into previously protected domestic markets. The growing diversity of players in national markets has undermined informal, opaque systems of regulation that relied on closed insider networks and trust. In response to deregulation at the national level, national and EU policymakers have pushed for re-regulation at the EU level. However, the style of regulation that has developed at the EU level does not resemble the informal, corporatist patterns of regulation that were common in many member states. Instead, in an effort to regulate the diverse set of players active in liberalized pan-European markets and to ensure equal treatment of domestic and foreign economic interests, EU regulatory processes emphasize formal, transparent rules and policymaking processes and legal enforceability.

Second, the transfer of regulatory authority to the EU level has led to an increasing fragmentation of political authority, along both vertical and horizontal lines. Authority in many policy areas is divided vertically between the EU and member state governments and horizontally at the EU level between the council, the commission, and the European Parliament. This fragmentation of power has encouraged the production of detailed laws with strict goals, deadlines, and procedural requirements and has encouraged an adversarial, judicialized approach to enforcement (Prechal, 1995, pp. 15–18, 109–113; Franchino, 2001, p. 174; Kelemen, 2004). Ironically, member state governments have themselves supported this self-constraining approach because they doubt one another's commitment to implementation and often favor detailed directives and regulations that facilitate Commission and European Court of Justice (ECJ) enforcement actions against noncompliant states (Majone, 1995). The European Parliament favors this approach as it distrusts member states and seeks to limit their discretion in implementation and to encourage the commission or private parties to take enforcement

actions against laggard states. More generally, widespread criticisms of the “democratic deficit” in EU decision making and distrust of distant Eurocrats in Brussels have led to increased public demands for transparency and public participation in regulatory processes (Shapiro, 1992; Harlow, 1999; Schwarze, 1996). Satisfying demands for openness and transparency has required further formalization of EU regulations and administrative procedures. Finally, the fragmentation of power in the EU has worked to enhance the power and assertiveness of the ECJ. Divisions between the Council of Ministers and the European Parliament and the further division between these two legislative bodies and the commission make it difficult for all of these political branches to act in concert to rein in an activist judiciary. Thus the ECJ can take an assertive stance in enforcing EU law against non-compliant member states with little fear of political backlash (Kelemen, 2000; Alter, 1998; Pollack, 1997). Backed by strict, action-forcing statutes and a judiciary willing to take errant member states to task, the commission has pursued enforcement litigation actively, even to the point of levying financial penalties against member states that fail to comply with ECJ judgments.

EU treaties, secondary legislation, and expansive ECJ interpretations have also created a number of legally enforceable rights for individuals. The creation of these individual rights has enabled private parties to bring litigation against member state governments before national courts and to access the EU judicial system via the preliminary ruling procedure. The EU’s focus on rights creation is no coincidence. Given the small size of the Eurocracy and the associated limitations on the EU’s enforcement capacity, advocates of regulation at the EU level have an incentive to enlist private parties as the enforcers of EU law. Thus the absence of a powerful Eurocracy in Brussels is encouraging the spread of adversarial legalism as a means of decentralized enforcement. As we will see below, such decentralized enforcement litigation has already played a powerful role in some issue areas, such as gender equality law (Alter, 2001; Stone Sweet and Caporaso, 1998; Alter and Vargas, 2000).

III. ADVERSARIAL LEGALISM: GENERAL TRENDS AND CASE STUDIES

A number of overarching developments affecting a wide range of policy areas evidence the shift toward adversarial legalism in the EU. First, the European Commission has taken an adversarial, legalistic approach to policy enforcement and the ECJ has supported this approach. The European Commission has strengthened its enforcement activities radically since the mid-1980s. The

commission has not only increased the number of infringement procedures it initiates to well over 1000 annually, it has also expanded the forms of noncompliance regarding which it pursues cases (Tallberg, 2003; Börzel, 2003). Earlier, the commission only pursued infringement cases when member states blatantly failed to transpose directives. However, during the 1980s, the commission began to bring cases routinely when member states failed to implement directives in practice. At Maastricht, the member states granted the commission the authority to request that the ECJ impose penalty payments on member states that failed to comply with ECJ rulings in infringement cases. Since 1997, the commission has initiated dozens of these cases, imposing its first penalty payments on a member state in 2000. The ECJ has maintained a strict view in infringement cases, finding member states to be in noncompliance even in cases where EU directives appeared to provide member states with considerable discretion, as for instance in a number of the environmental policy cases discussed below.

Second, recognizing the limits on the commission's capacity to enforce EU law single-handedly, the commission, the council, and above all, the European Parliament have consistently encouraged the empowerment of private actors to enforce EU law through the courts. Decentralized enforcement by private parties before national courts relying on the Article 234 (ex Art. 177) preliminary reference procedure has grown steadily over the years (Alter, 2001; Fligstein and Stone Sweet, 2001). The EU is actively working to expand financial support for public interest litigation. In 2002, the council adopted a regulation (743/2002) concerning judicial cooperation in civil matters, one central aim of which is to improve access to justice across the EU. Pursuant to this regulation, the commission has proposed a directive [COM (2002) 13 final] that would require member states to provide legal aid to individuals who could not meet the cost of litigation and that would require them to fund litigation by nonprofit public interest organizations. The ECJ has also worked to empower litigants, most famously through its establishment of the doctrines of supremacy and direct effect and its ongoing development of the doctrine of state liability. Most recently, ECJ and Court of First Instance (CFI) case law has expanded the ability of individuals to invoke EU law in disputes with other individuals and against acts of EU institutions (Kelemen, 2003). Taken together, these legal developments promise to increase opportunities and incentives for private parties to bring litigation to enforce their EU rights.

Third, the European legal services industry has undergone a profound transformation in recent years adopting forms of organization and patterns of practice that resemble those found in America. Between 1985 and 1999, the number of offices of American law firms in western Europe more than doubled and the number of lawyers they employ has increased nearly sixfold,

from 394 to 2236 (Kelemen and Sibbitt, 2004). American firms have flourished in Europe because they had the size, forms of organization, and experience in particular legal fields, such as mergers and acquisitions and securities regulation, which became vital for corporate clients in the increasingly liberalized market. Faced with competition from American firms, European firms have adopted many of their legal techniques and have increased their size significantly in recent years, either through expansions, mergers, raids of other firms for partners and practice groups, or the formation of global alliances with firms in other countries (Kelemen and Sibbitt, 2004). Through such changes in the legal services industry, private parties, at least in the corporate sector, now have access to law firms that are oriented to providing American-style legal services. However, as the case studies below reveal, the impact of changes in the legal services industry is limited to regulatory areas impacting large corporations. By contrast, less privileged parties, such as diffuse public interest groups and aggrieved individuals, typically lack access to legal service providers oriented to European litigation strategies (Kelemen, 2003).

IV. CASE STUDIES

A. Environmental Regulation

In the area of environmental protection, the commission frequently declares its commitment to flexible, cooperative policy instruments and has issued a number of directives that aim to increase regulatory flexibility. However, the overwhelming majority of EU directives continue to include detailed substantive and procedural requirements, fix rigid deadlines, and many create rights that individuals may later rely on in court. When existing EU environmental laws were amended during the 1990s, their strict, nondiscretionary approach was left in place (Jordan et al., 2001). Most environmental directives adopted in the 1990s still take an inflexible, command-and-control approach (Rittberger and Richardson, 2003). The European Commission consistently brings cases against member state governments for infringements of EU environmental directives. Even where directives appear to grant member states considerable discretion as, for instance, in the designation of bathing waters or bird protection areas, the commission and ECJ have acted aggressively to restrict member state discretion. Not only has the commission challenged member states on substantive violations, it has also forced member states to adopt more inflexible, legally binding instruments to implement EU law. For instance, in a series of well-known cases, the ECJ has forced member states such as Germany to replace administrative circulars with binding legally enforceable instruments as a means of imple-

mentation. Recently, the commission has started to impose penalty payments (under Art. 228) on member states that fail to comply with ECJ judgments. Through such enforcement action mechanisms, the EU has forced significant shifts in the selection of policy instruments and policy styles in many member states.

In addition to enforcement actions brought by the commission, the EU is creating both greater opportunities and greater incentives for private enforcement of environmental law. Many EU environmental directives create rights for individuals. These include substantive rights, such as right to specified levels of environmental quality in water or air, and procedural rights, such as the right to be consulted in environmental impact assessments, or the right of access to information on the environment. When community directives have been transposed properly into national law, they are indistinguishable from purely national laws, and private parties can simply defend their rights under these laws before national courts as they would with any other right. Even where national governments have failed to properly transpose EU directives, individuals can rely on the doctrines of direct effect and supremacy of community law to defend their rights under community law before national courts. National courts may rule on these cases directly, or they may refer the cases to the ECJ via the preliminary ruling procedure [Art. 234 (ex Art. 177)]. There are no comprehensive EU-wide statistics on environmental litigation rates across the member states; however, given the dominance of EU environmental law (relative to purely national environmental law) and given the abundance of justiciable rights in EU environmental law, EU environmental law has clearly increased opportunities for environmental litigation before national courts. As for references to the ECJ, as of 1999, only 46 references for preliminary rulings in environmental cases had been sent to the ECJ (Somsen, 2000). Although the pace of referrals from national courts accelerated in the late 1990s and has started to play an important role in areas such as nature conservation policy (Cichowski, 2001), overall, the impact of the preliminary ruling procedure on EU environmental policy remains limited. One important reason for the infrequency of such cases is that many member state legal systems maintain restrictions on standing that prevent environmental NGOs from bringing suits before national courts (Somsen, 2000; IMPEL, 2000).

Recent commission initiatives and developments in European law promise to strengthen further the incentives and opportunities for private parties to initiate litigation. In the mid-1990s, the commission and the European Parliament began pressuring member states to harmonize their national rules on access of private parties to national courts. In 1998, EU member states and the EU itself signed the UN Aarhus Convention, which includes a set of commitments concerning access to justice in environmental

policymaking. The commission and member state environmental inspectorates have interpreted them to demand that environmental NGOs have at least some opportunity to challenge administrative decisions in the public interest (IMPEL, 2000, pp. 16, 160–163). The ECJ's case law concerning the principle of state liability has created the potential for environmental plaintiffs to sue member states for damages they suffer due to the nonimplementation of environmental law. In a series of rulings beginning with *Francovich*,* the ECJ has developed a doctrine of state liability that provides that under certain conditions, member states can be held liable for damages suffered by individuals as a result of the member state's failure to implement community law. Although this principle has yet to be applied to environmental directives, individuals are likely to bring such claims in the future, as conditions for access to justice are enhanced. Moreover, the mere potential for such suits is likely to have an impact on states' implementation practices. Beyond these general principles of state liability, there has already been a marked trend to broaden the scope of environmental liability legislation at the national level (Betlem and Faure, 1998). At the EU level, there is an ongoing discussion about adopting environmental liability rules on a community-wide basis (European Commission, 2000a).

The EU has developed an inflexible, adversarial, and judicialized approach to environmental regulation largely as a result of the institutional structure of the EU. This approach has certainly not been adopted in an effort to enhance the competitiveness of European industry or as a result of a desire to emulate the United States. Rather, the council's (and, increasingly, the parliament's) distrust of the commission, their mutual distrust of the member state administrations, and the member states' distrust of each other all encourage the drafting of detailed directives and regulations that can later be enforced by the ECJ. For instance, the parliament's distrust of member state administrations helps explain its opposition to the use of voluntary environmental agreements as instruments of policy implementation and its demand for transparent, legally binding measures. The fragmentation of power in Brussels safeguards the ECJ against political attacks and emboldens it to play an active role in the regulatory process.

B. Securities Regulation

In the mid-1980s, restrictions on capital movements were lifted and European financial markets were liberalized considerably. Cross-border activity increased dramatically in the 1990s as investors, firms, and financial services

* Joined cases C-6/90 and C-9/90, *Francovich and Others v. Italy* [1991] ECR I-5357.

providers sought out opportunities outside their home markets. This liberalization ran headlong into established patterns of securities regulation at the national level. Securities exchanges across Europe had long enjoyed great autonomy and relied on flexible, informal self-regulation based largely on trust between closed networks of repeat market players (Karmel, 1999, p. 30). Most member states imposed few disclosure requirements for securities transactions and did little to restrict insider trading, and none of the member states had an independent securities regulatory agency at the national level (Warren, 1994, p. 185). Unsurprisingly, shareholder litigation against financial intermediaries or listed companies was nearly nonexistent, as the flexible regulations that existed severely limited private causes of action.

The commission recognized that divergence between national standards would continue to fragment the market (Warren 1994, p. 186). Therefore the commission backed its efforts to promote market liberalization with a program of financial market re-regulation at the EU level. The commission proposed a series of directives establishing minimum EU standards for 1) public offerings and listings, 2) trading activities, and 3) financial intermediaries (Lannoo, 2001). Many of these directives were later consolidated in the 1993 Financial Services Directive. The EU's approach to securities regulation resembled the adversarial, legalistic American approach in fundamental respects. As in the United States, EU securities regulation relies on detailed laws focusing on disclosure, transparent regulatory processes, and an adversarial, judicialized approach to enforcement by both government and private parties.

The Americanization of EU securities regulation accelerated with the introduction of the euro. In the run-up to the launch of the euro, the commission presented a Financial Services Action Plan proposing a series of measures aimed at completing the single market in financial services by 2005 (European Commission, 1999a). Subsequently, the EU established a pair of regulatory committees [the European Securities Committee (ESC) and the Committee of European Securities Regulators (CESR)] and adopted a series of measures designed to enhance transparency and disclosure (European Commission, 2002a). The fragmentation of political power at the EU level has had a major impact on the design of the new EU regulatory bodies and the shape of new legislation. The European Parliament has sought to limit the discretion of any bureaucratic agencies involved in implementing EU securities regulation and has emphasized that such bodies must be structured in a transparent, democratically accountable manner (European Parliament, 2001). The EP blocked the establishment of the ESC until it won assurances that it would be given advanced notice of ESC implementation decisions and subsequently proposed hundreds of amendments to securities directives aimed at constraining the ESC's discretion and forcing regulators to protect

consumer interests. As a result, the EU's most recent securities directives, such as the draft prospectus and market abuse directives, are extremely detailed and action-forcing (Lannoo, 2002, pp. 11–12).

Finally, the EU is moving to take a stricter, more judicialized approach to enforcement. In response to implementation failures of some member states throughout the 1990s, the EP, the council, and the commission have endorsed the Lamfalussy reports' call for the commission to strengthen enforcement by bringing more cases before the ECJ via the infringement procedure. Shareholders are invoking their newly won rights and increasing their use of litigation to enforce securities regulations. American institutional investors in Europe have begun employing their shareholder activism techniques, including litigation. Shareholder activism has increased markedly in a number of member states, including France, United Kingdom, and Germany (Kissane 1997, Business Week Online, 2001).

C. Civil Rights: Antidiscrimination Policies

Eager to appeal to citizens by expanding the “social dimension” of the EU but lacking the resources necessary to pursue social policies that rely on fiscal transfers, the EU has focused on establishing social regulations that create rights for individuals (Majone, 1993). To date, the EU has had the greatest impact in the area of equal treatment of the sexes, one of the few areas of antidiscrimination law enshrined in the treaties since the founding of the communities (Art. 141, ex Art. 119). EU treaties and secondary legislation have established a number of legally enforceable rights designed to ensure equal treatment of the sexes, and ECJ interpretations of these treaty provisions and directives have served to expand their scope significantly. As has been well documented, women's rights organizations have employed litigation strategies whereby they use lawsuits brought by individuals to pressure their governments to equalize treatment of women in areas ranging from pay, to pregnancy, to pensions, and to part time work (Alter and Vargas, 2000; Cichowski, 2001).

More recently, other groups that suffer from discrimination have mobilized to pursue a rights litigation strategy similar to that pioneered by women's rights groups. For instance, in the mid-1990s, disability rights groups and NGOs representing racial and ethnic minorities, gays and lesbians, and religious minorities lobbied for the inclusion of nondiscrimination rights in the Amsterdam Treaty (Burke, 2002). A list of nondiscrimination rights was included in Article 13 of the Treaty of Amsterdam (rights concerning discrimination based on sex, race/ethnicity, religion/belief, disability, age, and sexual orientation). This Treaty Provision was

drafted explicitly to not create direct effect (Flynn, 1999, p. 1132); however, subsequent secondary legislation on equal treatment has created directly effective provisions. The 2000 Racial Equality Directive (2000/43/EC) and the 2000 Equal Treatment Framework Directive (2000/78/EC) create new bases for antidiscrimination litigation (Bell, 2002). The latter directive includes a “reasonable accommodation” requirement similar to that found in the Americans with Disabilities Act (ADA) and includes a provision requiring member states to grant disabled persons standing to sue in cases of discrimination.

The EU’s competence and the catalogue of EU antidiscrimination rights remain limited. The decision by the member state governments at Nice not to fully incorporate the Charter of Fundamental Rights into the treaties clearly reduces the prospects for societal actors to bring rights-based litigation for the time being (Flynn 1999, p. 1132; de Búrca 1995). Emerging research emphasizes that EU rights produce less litigation and have less impact in member states that limit access to the courts and provide little legal aid (Conant, 2001; Harlow, 1999; Caporaso and Jupille, 2001; Alter and Vargas, 2000). To date, the commission’s effort to promote harmonization of conditions for access to justice in the member states has met with limited success. However, looking to the future, it seems quite likely that the role of antidiscrimination litigation will increase. The EU has a powerful, independent, and expanding judicial branch, which has already shown a willingness to expand the scope of EU rights, in areas such as gender equality. In many issue areas, litigation brought by individuals via the preliminary ruling procedure to protect their rights under European law has played a vital role in expanding the EU’s power vis-à-vis member state governments (Alter, 2001; Mattli and Slaughter, 1998; Stone Sweet and Caporaso, 1998; Alter and Vargas, 2000; Fligstein and Stone Sweet, 2001). Moreover, the doctrine of state liability may serve as a powerful motivator for some forms of rights litigation in the EU (Tallberg, 2000). Finally, any new EU Constitution that is eventually adopted is nearly certain to incorporate the Charter of Fundamental Rights. If the charter finally provides citizens with firmer legal ground for antidiscrimination claims, then we are likely to see a proliferation of rights litigation.

D. Products Liability Law in the European Union

Developments in the area of products liability law in the EU reveal important limits of the spread of adversarial legalism in Europe. While political fragmentation and economic liberalization associated with European integration have encouraged an Americanization of the substance of products

liability law, this has not been followed by a shift in legal practice in this area. Traditionally, a variety of legal principles and institutions, such as the need to prove negligence or intentionality and the absence of contingency fee arrangements, class actions, and punitive damages, deterred products liability litigation (Hodges, 2000; Spacone, 2000). As a result of the high burden of proof and institutional impediments, product liability litigation was extremely uncommon.

Following the thalidomide tragedy in the early 1960s, EU member state governments increased their efforts to protect consumers from unsafe products. The commission recognized that differences in the emerging national product safety policies could distort the single market. The threat posed to the single market gave the European Commission a strong incentive to harmonize product safety regulations and products liability law at the European level (Hodges, 2000, pp. 171–177). Moreover, the commission was sensitive to critiques that the EU served the interests of big business, and it was eager to adopt consumer-friendly policies (Stapleton, 2002, p. 1231). Given the EU's small budget and staff, using product liability law to protect consumers had the added advantage that it did not require the establishment of a vast regulatory bureaucracy charged with enforcing product safety standards. Instead, consumers could be legally empowered to protect their own interests in court.

In 1976, the commission proposed a directive establishing strict liability for defective products (European Commission, 1976). After being blocked by some member states for a decade, a compromise was reached and the council adopted the Product Liability Directive in 1985 (Council Directive 85/374). The directive reflected many legal concepts of U.S. products liability law, including the doctrines of strict liability, joint and several liability, and expansive definitions of liable parties and the notion of a “defect.” However, the directive also sought to avoid the perceived excesses of the U.S. system. To satisfy those member states concerned about the negative impact of the directive on European manufacturers, the directive included a mandatory time limit on claims, optional provisions concerning damage ceilings, the developmental risks defense, and liability for primary, unprocessed agricultural products. Although U.S. products liability law clearly served as a reference point for European policymakers, it was as important in highlighting what to avoid as what to emulate.

Debate over the directive resurged in the wake of the mad cow crisis. Initially, the EU adopted an amendment to the directive mandating strict liability for damages caused by primary agricultural products. The European Parliament went further and called for a substantial strengthening of the position of the consumer under the directive (European Parliament, 1998). The commission responded by issuing a Green Paper on a series of possible

revisions that might serve to enhance consumer protection (European Commission, 1999b). Many of these revisions drew on concepts developed in the American case law on product liability, such as rules on discovery, market share liability, reporting requirements on producers that face liability claims, nonmaterial damages, and class action suits. However, business interests expressed considerable opposition to many of these proposals, and for the time being, the commission has not pressed ahead with a further Americanization of products liability law (European Commission, 2001).

Despite the adoption of much of the substance of American products liability law in the 1985 directive, the practice of products liability law in the EU seems not to have been Americanized significantly. The dearth of data makes it difficult to assess the impact of the directive, but clearly, the product liability directive has not stimulated the flood of litigation, the astronomical damage awards, and the unpredictability associated with the American system. While it is quite possible that the directive has led to an increase in claims leading to out-of-court settlements, these settlements remain confidential. The European Consumers' Organisation (BEUC) reports that it has not observed an increase in smaller product liability claims, that it is unaware of any major multiparty actions or large damage awards to consumers under the directive, and that there are still few reported cases based on new standards established by the directive (BEUC, 2000). Recent commission proposals to encourage "effective access to justice" by strengthening legal aid across the EU and introducing a "loser pays" system with possible exceptions for weaker parties in consumer disputes promise to encourage litigation, should they be adopted (European Commission, 2002b). However, for the time being, the institutional impediments and financial disincentives we outlined above continue to discourage product liability litigation.

V. CONCLUSION

While European policymakers may favor some attributes of American regulatory style, such as the emphasis on disclosure and transparency, they are not seeking to emulate the U.S. approach in a broader sense. Indeed, most would view such a development as an abomination that is both at odds with European norms and that threatens to undermine the competitiveness of European industry. The rhetoric emanating from Brussels has emphasized flexible approaches to regulation and governance, relying on tools such as framework laws, voluntary agreements, self-regulation, and the "open method of coordination." Nevertheless, across a broad range of policy areas, the fragmented structure of EU institutions coupled with the liberalization of markets has encouraged a shift to adversarial legalism.

REFERENCES

- Alter, K. (1998). Who are the “Masters of the Treaty?”: European Governments and the European Court of Justice. *Int. Organ.* 52(1):121–147.
- Alter, K. (2001). *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe*. Oxford: Oxford University Press.
- Alter, K., Vargas, J. (2000). Explaining variation in the use of European litigation strategies: European community law and British gender equality policy. *Comp. Polit. Stud.* 33(4):452–482.
- Bell, M. (2002). Beyond European labour law? Reflections on the EU racial equality directive. *Eur. Law J.* 8(3):384–399.
- Betlem, G., Faure, M. (1998). Environmental toxic torts in Europe. *Georget. Int. Environ. Law Rev.* 10:855–890.
- BEUC (The European Consumers’ Organisation), EUC response to the Commission’s Green Paper on Liability for defective products; 2000, BEUC/016/2000.
- Börzel, T. (2003). Guarding the treaty: The compliance strategies of the European commission. In: Börzel, T., Cichowski, R., eds. *The State of the European Union, Vol. 6: Law, Politics, and Society*. Oxford: Oxford University Press, pp. 197–220.
- Burke, T. (2002). The globalization of (disability) rights. Paper presented to the American Political Science Association Annual Conference in Boston, MA, 29 Aug.–Sept. 1.
- Business Week Online. (March 19, 2001). Europe’s Shareholders: To the Barricades. Available at <http://www.businessweek.com>.
- Caporaso, J., Jupille, J. (2001). The Europeanization of gender equality policy and domestic structural change. In: Green Cowles, M., Caporaso, J., Risse, T., eds. *Transforming Europe*. Ithaca, NY: Cornell University Press, pp. 21–43.
- Cichowski, R. (2001). Litigation, compliance and European integration: The preliminary ruling procedure and EU Nature Conservation Policy. Paper presented at the 2001 Annual Meeting of the European Community Studies Association, Madison, Wisconsin, 31 May–2 June.
- Conant, L. (2001). Europeanization and the courts: Variable patterns of adaptation among national judiciaries. In: Cowles, C., Risse, T., eds. *Transforming Europe: Europeanization and Domestic Change*.
- Council Directive on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Concerning Liability for Defective Products, Council Directive 85/374; 1985, O.J. (L210/29).
- De búrca, G. (1995). The language of rights and European integration. In: Shaw, J., Moore, S., eds. *New Legal Dynamics of European Union*. Oxford: Oxford Press.
- Dezalay, Y. (1996). Between the state, law and the market: The social and professional stakes in the construction and definition of a regulatory arena. In: Bratton, W. et al., eds. *International Regulatory Competition and Coordination: Perspectives on Economic Regulation in Europe and the U.S.* Oxford: Clarendon Press, pp. 59–87.
- European Commission. (1976). Proposal for a Directive on Strict Liability for Defective Products; 1974, O.J. (C 241).
- European Commission. (1999a). Financial Services Action Plan. Communication from the Commission; COM (1999) 232 final. May 11, 1999.

- European Commission. (1999b). Green Paper on Liability for defective products. COM (1999) 396 final, 28.07.1999.
- European Commission. (2000a). White Paper on Environmental Liability. COM (2000) 66 final.
- European Commission. (2000b). Report from the Commission on the Application of Directive 85/374 on Liability for Defective Products. COM (2000) 893, 31.1.2001.
- European Commission. (2002a). European Commission, Financial Services Action Plan, Sixth Report, COM (2002) 267, June 3, 2002; Internal Market Directorate General, Toward an EU Regime on Transparency Obligations of issuers Whose Securities are Admitted to trading on a Regulated Market.
- European Commission. (2002b). Commission Proposal for a Council Directive to Improve Access to Justice in Cross-Border Disputes by Establishing Minimum Common Rules Relating to Legal Aid and Other Financial Aspects of Civil Proceedings. COM(2002) 13 final.
- European Parliament. (1998). Opinion of 5.11.98 (O.J. No. C 359 of 23.11.98).
- European Parliament. (2001.) Resolution on the Final report of the Committee of Wise Men on the regulation of European Securities Markets; RSP/2001/2530, March 15, 2001.
- Fligstein, N., Stone Sweet, A. (2001). Institutionalizing the Treaty of Rome. In: Stone Sweet, A., Sandholtz, W., Fligstein, N., eds. *The Institutionalization of Europe*. Oxford: Oxford University Press, pp. 29–55.
- Flynn, L. (1999). The implications of Article 13 EC—After Amsterdam, will some forms of discrimination be more equal than others? *Common Mark. Law Rev.* 36:1127.
- Franchino, F. (2001). Delegation and constraints in the national execution of EC policies: A longitudinal and qualitative analysis. *West Eur. Polit.* 24(4):169–192.
- Galanter, M. (1992). Law abounding: Legalisation around the North Atlantic. *Modern Law Rev.* 55(1):1–24.
- Galanter, M. (1996). The assault on Civil Justice. In: Friedman, L., Scheiber, H., eds. *Legal Culture and the Legal Profession*. Boulder: Westview Press, pp. 79–116.
- Goldthorpe, J. (1984). *Order and Conflict in Contemporary Capitalism*. New York: Oxford U. Press.
- Harlow, C. (1999). Citizen Access to Political Power in the European Union. EUI Working Paper RSC No. 99/2. Florence: European University Institute.
- Hayward, J. (1982). Mobilising private interests in the service of public ambitions. In: Richardson, J., ed., *Policy Styles in Western Europe*. London: George Allen & Unwin, pp. 118–127.
- Héritier, A., ed. (2002). *Common Goods: Reinventing European and International Governance*. Boulder, CO: Rowman & Littlefield Publishers.
- Hodges, C. J. S. (2002). Product liability in Europe: Evaluating the case for reform. *Bus. Law Int.* June 2000.
- IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law). (2000). Complaint Procedures and Access to Justice for Citizens and NGOs in the field of environment within the European Union.

- Report available at http://europa.eu.int/comm/environment/impel/access_to_justice.htm accessed on July 1, 2001.
- Jordan, A., Wurzel, R., Zito, A. (2001). European Governance and the Transfer of 'New' Environmental Policy Instruments in the European Union, Paper presented at the 2001 Biennial International conference of the European Community Studies Association, Madison, Wisconsin, 29 May–2 June.
- Kagan, R. (1997). Should Europe worry about adversarial legalism? *Oxf. J. Leg. Stud.* 17(2):165.
- Kagan, R. (2001). *Adversarial Legalism: The American Way of Law*. Cambridge, MA: Harvard University Press.
- Karmel, R. S. (1999). The case for a European securities commission. *Columbia J. Transnatl. Law* 38:9.
- Kelemen, R. D. (2000). Regulatory federalism: EU environmental policy in comparative perspective. *J. Public Policy* 20(2):133–167.
- Kelemen, R. D. (2003). The EU rights revolution: Adversarial legalism and European integration. In: Börzel, T., Cichowski, R., eds. *The State of the European Union, Vol. 6: Law, Politics, and Society*. Oxford: Oxford University Press, pp. 221–234.
- Kelemen, R. D. (2004). *The Rules of Federalism: Institutions and Regulatory Politics in the EU and Beyond*. Cambridge, MA: Harvard University Press.
- Kelemen, R. D., Sibbitt, E. (2004). The globalization of American Law. *Int. Organ.* 58(1):103–136.
- Kissane, M. E. (1997). Global gadflies: Applications and implications of US-style corporate governance abroad. *N. Y. Law J. Intl. Comp. Law* 17:621.
- Lannoo, K. (2001). Updating EU Securities Market Regulation: Report of a CEPS task force. Brussels: Centre for European Policy Studies.
- Lannoo, K. (2002). *Supervising the European Financial System*. CEPS Policy Brief No. 21. Brussels: Centre for European Policy Studies.
- Lehmbruch, G., Schmitter, P. C. (1982). *Patterns of Corporatist Policy Making*. London: Sage Publications.
- Majone, G. (1993). The European community between social policy and social regulation. *J. Common Mark. Stud.* 31(2):153–170.
- Majone, G. (1995). Mutual Trust, Credible Commitments and the Evolution of Rules for a Single European Market. EUI Working Paper RSC No. 95/1. Florence: European University Institute.
- Mattli, W., Slaughter, A. M. (1998). Revisiting the European Court of Justice. *Int. Organ.* 52:177–209.
- Pollack, M. (1997). Delegation, agency and agenda setting in the European Community. *Int. Organ.* 51(1):99–134.
- Prechal, S. (1995). *Directives in European Community Law*. Oxford, UK: Oxford University Press.
- Radelli, C. (2003). The Open Method of Coordination: A new governance architecture for the European Union? Report No. 1. Stockholm: Swedish Institute for European Policy Studies.
- Rittberger, B., Richardson, J. (2003). Old wine in new bottles? The commission and the use of environmental policy instruments. *Public Admin.* 81(3):575–606.

- Schwarse, J., ed. (1996). *Administrative Law under European Influence*. London: Sweet and Maxwell.
- Shapiro, M. (1992). The giving reasons requirement. *University of Chicago Legal Forum*, pp. 179–220.
- Shapiro, M. (1993). The Globalization of Law. *Indiana Journal of Global Studies*, Vol. 1, Issue 1. Available at: <http://www.law.indiana.edu/glsi/vol1/toc.html>.
- Shapiro, M. (1996). The globalization of judicial review. In: Friedman, L., Scheiber, H., eds. *Legal Culture and the Legal Profession*.
- Shapiro, M., Stone Sweet, A. (1994). The new constitutional politics of Europe. *Comp. Polit. Stud.* 26(4):397–420.
- Somsen, H. (2000). The private enforcement of member state compliance with EC environmental law: an unfulfilled promise? In: Somsen, H., ed., *Yearbook of European Environmental Law*. Oxford: Oxford University Press.
- Spacone, A. (2000). Strict liability in the European union—Not a United States analog. *Roger Williams Univ. Law Rev.* 5:341.
- Stapleton, J. (2002). Bugs in Anglo-American products liability. *S. C. Law Rev.* 53:1225–1261.
- Stone Sweet, A. (2000). *Governing with Judges: Constitutional Politics in Europe*. Oxford: Oxford University Press.
- Stone Sweet, A., Caporaso, J. (1998). From free trade to supranational polity: the European court and integration. In: Sandholtz, W., Stone Sweet, A., eds. *European Integration and Supranational Governance*. Oxford: Oxford University Press, pp. 92–133.
- Suleiman, E. (1974). *Politics, Power and Bureaucracy in France: The Administrative Elite*. Princeton, NJ: Princeton University Press.
- Tallberg, J. (2000). Supranational influence in EU enforcement: The ECJ and the principle of state liability. *J. Eur. Public Policy* 7:104–121.
- Tallberg, J. (2003). *European Governance and Supranational institutions: Making States Comply*. London: Routledge.
- Tate, C. N. Vallinder, T., ed. (1995). *The Global Expansion of Judicial Power*. New York: NYU Press.
- Trubek, D., et al. (1994). Global restructuring and the law: studies of internationalization of legal fields and the creation of transnational arenas. *Case Western Law Rev.* 44:407–498.
- van Waarden, F. (1995). Persistence of national policy styles. In: Unger, B., van Waarden, F., eds. *Convergence or Diversity?* Aldershot: Avebury, pp. 333–372.
- Vogel, D. (1986). *National Styles of Regulation: Environmental Policy in Great Britain and the U.S.* Ithaca, NY: Cornell University Press.
- Vogel, S. K. (1996). *Freer Markets More Rules: Regulatory Reform in Advanced Industrial Countries*. Ithaca, NY: Cornell University Press.
- Warren, M. G. (1994). The European Union's investment services directive. *Univ. PA J. Int. Bus. Law* 15:181–220.
- Wiegand, W. (1991). The reception of American law in Europe. *Am. J. Comp. Law* 39(2):229–249.
- Wiegand, W. (1996). Americanization of law: Reception or convergence? In: Lawrence, F., Scheiber, H., eds. *Legal Culture and the Legal Profession*. Boulder, Colorado: Westview Press, pp. 137–152.

15

Public Policy and Public Participation in the Knowledge Society

Prospects for Decision Making in Science and Technology Policies

Séamus Ó Tuama

University College Cork, Cork, Ireland

I. CONTEMPORARY ISSUES AROUND SCIENCE AND TECHNOLOGY, DEMOCRACY, PROGRESS, AND RISK

Science and technology has introduced us to a previously unimaginable world of wealth, health, comfort, education, recreation, convenience, and many more benefits. It has also brought with it many unwelcome guests and visitors. The guests are those intended outcomes of our deployment of technology; the visitors are often unexpected or unforeseen outcomes.

Much of the current debate around the impacts of science and technology concerns fears about unwanted consequences. The end of the Cold War allowed us to conceive, rightly or wrongly, of a safer military climate. But it did not mean a significantly less contingent* world, as the Chernobyl disaster, the events of 9/11, and a general rise in global terror graphically reminded us.

A great deal has been written and spoken about the risk society.[†] It is not important here to deal in depth with that term, but whatever label we place on it, we live in a planet of new and emerging contingencies, which we need to manage, harness, or contain if we are to prosper. We need to develop new

* Contingent here refers to the uncertainty and unpredictability of life arising from a complex cocktail of factors, including ones resulting from advances in science and technology.

[†] Risk society is a term that gained wide currency following Beck (1992).

ways in which to assess and make decisions about the deployment of new and existing technologies. This is a key problem now because science and technology is transforming our world. In this contingent contemporary reality, we need to make decisions about technologies very few understand. We need to balance progress with risk, caution with lost opportunity. Decisions need to be made at global, supranational, national, regional, and local levels across a complex web of often-interconnected issues.

Most theorists, decision makers, and ordinary citizens see democracy as the preferred model for decision making. There is a high degree of consensus that any institutional arrangements to deal with the new technological and scientific concerns need to be democratic ones. Unanimity dissipates though when it comes to either framing ways to deploy democracy or reaching common understandings of what it means.

The contemporary period is one in which science and technology is playing a significant role in shaping everyday lives. As citizens, this challenges us to address issues around the decision-making process at the level of political participation, regulation, and control of science and technology.

Increasingly, ordinary citizens are called upon to make difficult private and public decisions about science and technology. The climate in which those decisions, discussions, and debates take place has changed considerably in recent decades—civil society* and the public sphere† have undergone major shifts. The meaning of democracy is contested at a time when democracy is seen as the panacea for all issues of governance.

On one side, the influence of Neo-Liberalism places greater emphasis on what are seen as the characteristics of classical liberalism, where the autonomous free-acting individual sits at the center of things. This actor is rational and market-oriented. Decisions are made in terms of rational choice; each individual acts to maximize his or her wealth, health, and happiness. It transfers the emphasis from the collective to the individual or we might say from the public sphere to the private sphere. This derives from an interpretation of early economic thinkers like Adam Smith. The assumption is that society works best when governments allow individuals express their preferences as rational actors and allow a deregulated market respond to these preferences through the laws of supply and demand.

On the other side, civic republicanism and much of liberal thinking from John Stuart Mill in the 19th century to J.M. Keynes and T.H. Marshall in the

* Civil society is a term used in this context to describe the realm in which social and political interaction takes place.

† The Public Sphere is a term developed by Habermas. I use it here to signify that part of civil society that is engaged in public debate around a specific issue or set of issues.

20th century present a case for understanding citizens not just as formally equal, but also as factually equal. From that perspective, notions like society, solidarity, and the common good have a higher premium. While Neo-Liberalism was pushing that agenda to the background in most developed countries from the 1970s, there were countervailing forces changing the political landscape.

These include an erosion of the position, power, and even legitimacy of some of the main pillars of liberal representative democracy. Less people vote and national parliaments concede power both upward to international bodies and downward to regional and local ones. We see a dynamic and fluid web of social movements engage around all the issues of the day from local to global. The media, including the Internet, facilitates public awareness, discussion, and debate around issues and facilitates the formation of public opinion in a process that Strydom (1999b) calls triple contingency. Issues like responsibility and risk emerge as serious concerns.

It is in this context that I wish to propose a model for democratic engagement with issues around science and technology. In designing my model of political participation, I am hoping to address both opinion and policy formation on science and technology issues.

II. DEMOCRATIC ENGAGEMENT AND POLICY FORMATION: A MODEL OF POLITICAL PARTICIPATION

Burns and Ueberhorst (1988) identified four barriers hindering democratic public discussion on science and technology. They are 1) lack of confidence by the public (and politicians) in their capacity to understand the technical issues involved; 2) the technicization of the debate by experts; 3) the public get a chance to address the issues too late in the decision-making chain; and 4) a full menu of alternatives is not presented, and then often in negative terms. Many other theorists, scientists, politicians, the public, and social movements have taken up these real concerns.

Fuller (2000) distinguishes three political perspectives that play a leading role in the debate about the governance of science: communitarianism, liberalism, and republicanism. His critique of communitarianism stems from what he terms “political correctness” and a propensity to make uncritical and direct links between research and policy. The key deficiency in liberalism, from his perspective, arises from confusion between the concepts of the “free market” and “free inquiry.” This has significant implications for the scientific community as it impacts, for instance, on the role of the

university. Fuller holds that republicanism has a greater capacity to address the governance of science and technology in three specific dimensions:

Auditing: Opinions can change for the better on hearing the views of others.

Economic security: People are freer to express their views if they do not fear material repercussions.

Public good: People are capable of distinguishing and favoring the public good over their own self-interests.

These ideas articulated by Fuller are controversial within political thought and have been a matter of contention for centuries, elements of which can be found as early as Plato and Aristotle, through Rousseau and Kant, and continue today.

Bearing in mind Fuller's points and the problems outlined by Burns and Ueberhorst (1988) above, I will try to develop a model of political participation. The model will not be a rigid or institutionally centered one, but one recognizing the changing political and civil society landscape. In other words, it needs to address the process and context of participation, it needs to address the rights on which participation might be built, and it needs to address the complex concerns around rights and responsibility and the rules for engagement.* The model envisaged is one of great complexity and dynamism, a task too ambitious for this chapter, but I hope to at least develop the outlines of the key ingredients of an outline model (Fig. 1).

In Frankenfeld's (1992) technological citizenship, we find the outline of a participative rights model. The changing political landscape in which I locate this discussion is highlighted by the emergence of new social movements (Eyerman and Jamison, 1991), leading to organic government (Burns, 1999). This is infused by responsibility as a moral orientation for practice (Strydom, 1999a; Jonas, 1982). Habermas's (1992, 1996) theory of communicative action provides the basis and orientation for the rules through which political discourse might take place.

The model I propose seeks to actively and concretely engage citizens in the decision-making process in a way neither circumscribed by traditional notions of democracy nor confined to formal institutions.

Frankenfeld (1992) explores how citizens could take greater control of the process of governing science and technology policy, while simultaneously pursuing the good life (the essential objective of all the great emancipatory ideologies). He sees his "technological citizenship" as a way of refocusing how we understand citizenship in the liberal-democratic

* By the rules of engagement, I mean a set of outline rules on how individuals should act towards each other in public discourse.

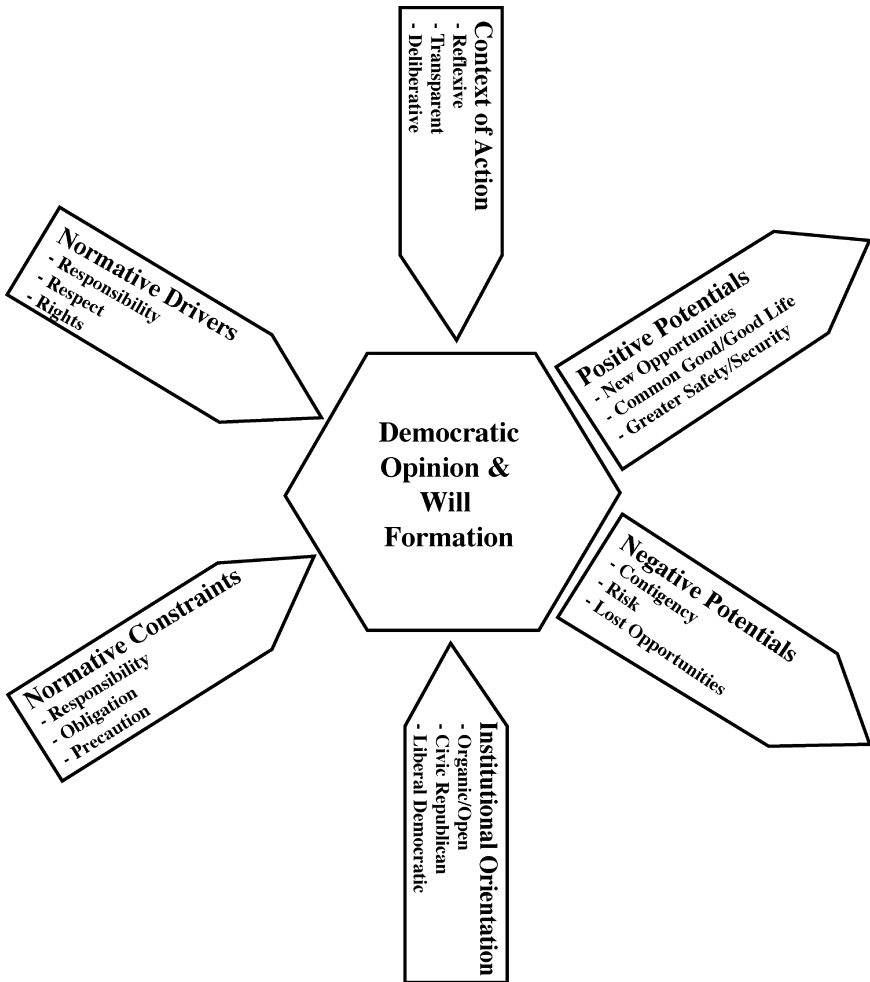


Figure 1 Democratic opinion and will formation around science and technology policy.

tradition. He outlines a new social contract through which citizens would have four key rights enshrined:

- A right to knowledge or information
- A right to participation
- Guarantees of informed consent
- A limitation on the total amount of endangerment

What is important here is how these rights can be elaborated or understood in Frankenfeld's terms.

A right to knowledge or information is a much articulated theme of Western democracies and has given rise to legislation like freedom of information acts in several countries. It is not an unproblematic concept and is related to the "trade-off between freedom and security" (Saloman, 2001, p. 210). This links it to our later discussion on hypercomplexity and hyperrationality. It conflicts in many cases with liberal intellectual property rights, which are designed to allow for patenting and trade secrets. It is the key to Frankenfeld's other three rights, which could not be realized without a right to knowledge. The right to participation could conflict with liberal appreciation of corporate governance and the role of shareholders vis-à-vis the public—an issue increasingly evident at corporate annual shareholder meetings. Guaranteeing informed consent is central to the dispute between the European Union (EU) and the United States about the labeling of genetically modified food ingredients. The Food and Drug Administration does not require food labeling to indicate genetically modified food in the contents, a policy reflected in the U.S. position in the World Trade Organization dispute with the European Union. The European Parliament adopted legislation in July 2003 to make the labeling of genetically modified food mandatory within the European Union. In 1998, consumer fears about genetically modified foods were the chief catalyst in pushing the European Union to place a moratorium on the import of genetically modified food products. By contrast, the United States holds that there is no scientific proof that GM foods cause any risk to health and wish to have free access to EU markets. Frankenfeld's fourth right to limit the total amount of endangerment to personal safety is complex, even if protecting citizens from danger looks like an imperative. Technological citizenship introduces a different power relation between the science and technology complex and ordinary citizens:

... a set of binding, equal rights and obligations that are intended to reconcile technology's unlimited potentials for human benefit and ennoblement with its unlimited potentials for human injury, tyrannization, and degradation (462)

That bid to rebalance the power relation between citizens and various power and economic structures has been a concern of social movements in all developed countries. Social movements have the capacity to simultaneously resonate and create the political landscape by introducing contexts in which issues can be articulated and debated. Eyerman and Jamison (1991) show that social movement does not arise in all contexts and around all issues. They identify the catalysts that lead to the emergence of a social movement as:

- Political opportunity

- An issue
- An opportunity for communication about the issue, allowing both articulation and the dissemination of knowledge (Eyerman and Jamison, 1991, p. 56)

It is “cognitive praxis,” a process of collective learning or collective knowledge production, which especially marks social movements out as a new kind of actor on the political stage. Social movements challenge existing knowledge, expertise, and political practices and thus introduce a new dynamic into the public sphere. The women’s, environmental, and civil rights movements are among the more prominent actors who have helped reshape how society addresses and responds to issues. A leading case is environmental social movements, who have changed how ecological issues are understood and discussed. In this process, they challenge scientific certainty and extend the public sphere on many issues. They often push experts including scientists, politicians, and policy makers onto unfamiliar ground.

The changing political landscape has allowed for a diversity new political actors in the process of governance (Burns, 1999). This phenomenon presents challenges and opportunities. It challenges the traditional roles of parliaments and governments and also offers dynamic possibilities for dealing with issues that cannot easily be handled from the center. In this new context, Burns (1999, p. 170) holds that attempt at central steering, regulating, and monitoring a system like the science and technology complex “is utopian and destined to fail.” He believes that both governments and parliaments are overloaded by the pressures presented through an increase in both the number and complexity of science and technology issues. These challenges are not easily be surmounted by constitutional arrangements. He identifies three deficits or deficiencies:

- Representation deficit—The inability to span the representative challenges of an increasingly diverse and complex world.
- Knowledge and competence deficit—The incapacity to master the range of technical and specialist knowledge demanded in decision making.
- Deficit of commitment or engagement—Representatives have a general spectrum of interests and may not be particularly interested in some issues presented for decision.

To this I would add:

- Single interest deficit—refers to the type of single interest representatives that have been elected to many regional and national parliaments
- Tied identity deficit—refers to supporters of closed regional, ethnic, national, and/or religious identities

Responsibility is central to the model I propose. Its key importance is that it counters a unidimensional notion of rights that neglects the relationship between right and responsibility outlined by Kant. Strydom (1999a) suggests that responsibility now holds the space occupied by debates around rights in the early modern period and by justice in the 20th century.

Kant lays out the foundations of obligation in the *Groundwork*. For him, common human understanding of morality is not something the individual can deviate from by simply changing his or her ends or goals. The “categorical or unconditional imperative” is that there is a universal moral upon which everyone, regardless of their individual desires, must act. Gregor (1993) explains that for Kant, the individual must be aware of his/her autonomy, and it is this capacity for autonomous will that confers human dignity. Being autonomous and under obligation (to act in accordance with the categorical imperative), the individual is giving him/herself laws by which to act as an individual.

The increased awareness of the centrality of responsibility is connected both to the increase in risk and contingency (which forces a realization that certain matters must be addressed for the common good) and also to the ability of social movements to reformulate traditional ways of discussing and dealing with issues (raising issues and framing discussion on them in terms of responsibility). Jonas puts this discussion in context by stating that technology is essentially the sole responsibility of humans, and that it increasingly impacts on humanity and all other life on the planet (Jonas, 1982). He proposes that responsibility increases with power, and science and technology’s capacity for both global and intergenerational harm* demands a response that is more than simple ambivalence. Responsibility goes beyond caring just for the rights of fellow humans; it is also concerned with the exploitation of the planet for the preservation of humanity. There has to be a balance between the good of humanity and the good of all other life.

Understanding of responsibility is considerably deepened by reference to Strydom’s (1999a) concept of *co-responsibility*. Co-responsibility pertains to individuals as members of a collectivity, based on communication and cooperation, and emerges only through a global network of communication at formal and informal levels. Framed[†] like this, responsibility is both a moral imperative and a practical tool for discussion, debate, and decision making. As a practical tool for action, it places limits on how both individuals qua

* Some hazards will persist for many generations, for instance, nuclear waste and potentially the genetic modification of organisms.

[†] I use frame to signify the act of making sense of something in a social or political context.

individuals, and individuals as part of collectivities may legitimately act. This has implications, for instance, for how individual members of corporate boards or government cabinets articulate positions and make decisions. It also has implications for ordinary people in their day-to-day activities and decision making as they too have responsibilities. It puts the idea of a whistle-blower* in a different context, one perhaps not yet fully appreciated in the wider political culture.

Responsibility is related to the concept of precaution. Responsibility is clearly intentional in nature; that is, it is a considered way of behaving. Precaution can be both intentional and instinctive. Prudence or precaution is necessary for animal survival. In the context of this discussion, I will take precaution to be primarily intentional. I consider that the precautionary principle is the outcome of thinking responsibly in the context of Jonas's demand that humans recognize their responsibility for the entire planetary ecosystem.

As yet the "precautionary principle" is not a central cog in policy formation. This can in part be explained by the political and cultural context. The precautionary principle is built on a culture of political responsibility, while much of what is called "progress" or "development" draws on economic rational choice models. This dichotomy can be summarized by the following opposing positions.

Precautionary principle orientation. Evidence of hazard has emerged which is being linked to activity x . It is prudent to desist from activity x , even if cause and effect are not absolutely confirmed. We cannot await conclusive proof, as the consequences may be grave and/or irreversible.

Economic rational choice orientation. Evidence of hazard has emerged which is being linked to activity x . Scientific evidence of cause and effect is inconclusive or contradictory. While the putative harm could be great, there is certainty that activity x is economically important. It is prudent therefore to continue with activity x until the scientific evidence is absolutely conclusive (Ó Tuama, 2004, p. 239).

Trouwborst (2002) proposes that there is a close interrelationship between the concepts of sustainability and intergenerational equity (concern and responsibility for future generations) with the precautionary principle. He identifies five countries (Iran, India, Brazil, Namibia, and Papua New Guinea) that include intergenerational equity in their constitutions. The right

* A whistle-blower is someone within an organization who acts autonomously and without formal knowledge or consent to alert the public, the media, or some external body or group about an activity of her/his organization, which s/he considers to be wrong or illegal or both.

to a safe and healthy environment is recognized in the constitutions of up to 50 countries. Responsibility and rational choice are not comfortable companions. Many Western democracies face a constant dilemma between, on one side, international and domestic discourse on risk and responsibility and, on the other side, a pragmatic rational choice concerned with maximizing perceived national interest both politically and economically. That has implications for all areas of policy, not just science and technology.

Habermas's long-term project of communicative action dovetails with discussion on responsibility and adds an important dimension to this model for democratic engagement around science and technology. He introduces the concept of communicative discourse or practical discourse, which is different from everyday discourse. Communicative discourse is a reflexive process that is rational, dependable, and consistent. He lays down three basic rules that must be followed to achieve these goals. They loosely correspond to Aristotle's threefold distinction between rhetoric, dialectic, and logic:

Rhetoric: Argument is addressed to a universal audience and must be mutually understood; everyone must speak the same natural language; meaning must be clear to both speaker and listener; speakers do not contradict themselves.

Dialectic: Argument is directed toward attaining rationality; speakers seek agreement; they only articulate and support what they believe; and all parties respect these intentions from other participants.

Logic: Argument here proceeds on the basis that only the force of the better argument should be used to persuade; no external or strategic actions should be deployed; the assumption is that a rational basis is used to establish validity claims.

The model presented here attempts to recognize the changing dynamic of political engagement in contemporary society, including concerns about rights to participate and influence decisions, the appreciation of the centrality of responsibility, and the diverging imperatives of risk on one side, and the prospects of the good life on the other. This is especially pertinent in relation to the governance of science and technology.

III. GOVERNING SCIENCE AND TECHNOLOGY

Concern about the governance of science and technology increased considerably during the second half of the 20th century, and it continues today. This does not mean that there is a common agreement on what the central issues are, and it certainly does not mean that there is any common approach to addressing them. Some things are less contentious than others. There is broad

agreement that science and technology plays a greater role in shaping our world today than at any time in the past. There is also agreement that this presents both positive and negative variables, even if there is no unanimity on an exact inventory of positives and negatives nor on how they might impact on life now and in the future. Like any major sociopolitical problem, the analysis we bring to bear on the issues already begins to define how we propose to address them. In this context, seeking a single approach to developing and implementing policy on science and technology would not be fruitful.

Perrow (1999) introduces the phrase “normal accidents” to indicate an inherent potential for accidents in design, equipment, procedures, operators, supplies, and environment of complex science and technology systems. His thesis is that accidents are not extraordinary but commonplace. He says “accidents and, thus, potential catastrophes are inevitable in complex, tightly coupled systems, with lethal possibilities” (Perrow, 1999, p. 354). Such is the complexity and interdependence of systems that an accident in one system can easily lead to problems in a closely connected one. This sort of complex interdependence was clearly demonstrated in the massive electrical blackout that hit the northeast United States and parts of Canada in August 2003. That blackout brought a whole range of services and systems to a halt, ranging from major manufacturing plants to domestic utilities. It needs to be stressed that while accidents are commonplace, that does not mean that they always or necessarily lead to “lethal possibilities.”

Zimmerman (1995) claims that the “large-scale complex systems” controlling science and technology generate their own steering functions and make decisions about risk that were once taken within the political system. This has the impact of shifting a central governance function from the political to “some of the most significant and powerful institutions of our time” (Zimmerman, 1995, p. 86). Because there are insufficient democratic structures involved in steering science and technology, then the technological systems become *de facto* political systems. His arguments in relation to science and technology are similar to those made by Locke and Rousseau about preliberal society. A tyranny arises through the impotence of the citizen to play a meaningful role in the process of governance because of the weakening of the polity. This allows the technological complex to maintain a high level of autonomy and control over its own operations without recourse to a democratic mandate. The key point is that citizens are not adequately engaged in considering what are very high stakes both positively (potential benefits for society) and negatively (potential risks for society). This imposition of risk on citizens “without even their tacit consent is undeniably an act of tyranny,” according to Zimmerman (1995, p. 92).

Beck (1992, p. 184) develops this theme by suggesting that “progress replaces voting.” He suggests that a *volte-face* has emerged between the roles

of “the political” and the “nonpolitical.” Democratic constitutions remain in place, but “the political system is being threatened with disempowerment” (Beck, 1992, p. 187). He maintains that the polity can no longer make the important decisions on the direction, scope, risk, or endangerment of the advances in science and technology that are shaping society. Instead, these decisions are being made in a nonpolitical context according to purely technoeconomic criteria.

What Beck is describing, Bohman (1996) characterizes it as hyper-complexity and hyperrationality or we might call it a “tightly coupled” approach. This suggests that the best way of making policy for a hypercomplex system—one which is so complex few if any can fully comprehend it, it is rapidly changing, and has global consequences and potential intergenerational impacts—is to reduce the influence of external variables, including public opinion. In other words, apply hyperrationality to the issues. This is like attempting to create laboratory conditions for policy making. The best minds are applied to the issues in a concentrated, focused, and objective way in the expectation that they will reach the most rational conclusions for policy options. This approach makes many assumptions about the nature of science, scientific method, democracy, and policy that are problematic and are strongly at variance with the democratic model proposed above. In this discussion, I do not want us to develop a defense of democracy on some sort of nostalgic grounds, but to acknowledge its strengths in helping society to make beneficial decisions and, in the terms of John Stuart Mill, to also educate and develop our critical faculties as citizens in control of our own destiny.

Lukes’ (1974, p. 24) contention that agenda setting is “the supreme and most insidious exercise of power,” which prevents citizens “from having grievances by shaping their perceptions, cognitions and preferences,” is given a subtle reformulation by Sclove (1995). He argues that technological development needs to be addressed through posing “appropriate questions.” He contends that “technology is implicated in perpetuating antidemocratic power relations and in eroding social contexts for developing and expressing citizenship” (Sclove, 1995, p. 7). He holds that many of the negative and unforeseen consequences of science and technology have arisen because we have been unable to ask, or did not realize that we should have been asking, questions aimed directly at the social aspects of technology. One source of not asking is down to the sheer complexity of the issues. His views seem to be borne out by the European Commission report, *Late Lessons from Early Warnings* (EEA, 2001). That report lists 12 significant problems related to science and technology that arose because appropriate questions were not asked. The problems identified arose in respect of fisheries, nuclear radiation, benzene, asbestos, polychlorinated biphenyls (PCBs), halocarbon damage to the ozone layer, DES (the link between prenatal exposure to the synthetic

estrogen diethylstilbestrol and vaginal cancer), the use of antimicrobials in food production (often referred to as antibiotics), sulfur dioxide, methyl-*tert*-butyl ether (MTBE) as a lead substitute in petrol or gasoline, contamination of the North American Great Lakes, hormone growth promoters, and BSE (mad cow disease).

Appropriate questions are ostensibly simple, like: what problems do we need to resolve? Is this the best way to solve problem *x*? Should we tackle other problems first? Are there alternative ways of solving these problems? Are there alternative technologies that are cheaper, safer, or better? We need to be careful not to dupe ourselves into thinking that we can always know the questions to ask or that we can always anticipate scientific discovery, potential costs, and benefits. What Selove and others hope is that greater public engagement can help society develop the faculties to deal with issues in a more informed and competent way. Perrow (1999) offers the example of the “externalities”^{*} involved in electricity generation by nuclear plants or the pollution from fossil fuel plants that are not built into the price paid by the consumer. More searching questions about the “externalities” involved with nuclear plants might have delayed or prevented their development (Perrow, 1999, p. 341).

IV. THE CENTRALITY OF SCIENCE AND TECHNOLOGY TODAY

The juncture we have reached today has been in gestation since the 17th century. The process of institutionalizing science and the later revolutions in chemistry, biology, and physics have all contributed. However, it has taken on an entirely new force since World War II. In that period, science and technology have become the turbines of production taking on the scope, complexity, and dynamism we associate with them today. Radical advances in microbiology, microelectronics, and microphysics are central to this new phase. These advances are both about scale and depth. Space exploration, weapons of mass destruction, and the speed and extent of electronic communications are all evidence of scale. Depth is clearly visible in the capacity to genetically decode and clone complex organisms and in advances in nanotechnology.[†] Contemporary technology is highly complex, so much so that

* Externalities are costs and/or benefits that impact on society, but are not included in the market price.

† Nanotechnology refers to the field of research and manufacturing where the characteristic dimensions are less than about 1000 nm.

some large technological installations like nuclear power plant cannot be scientifically tested before construction; this is only possible once all the components are in place.

This level of complexity and unpredictability informs Perrow's (1999) idea of normal accidents, discussed above. It is a symptom of what Rycroft and Kash (1999, p. 16) describe as synthetic reality, a situation that is arising because "complexity is increasing, and so is the rate of change." A simple illustration of that trend is that the SIM card used in contemporary cellular or mobile telephones has roughly the same capacity as the computer used a few decades ago in the Lunar Module of the United States Apollo missions.

Advances in science and technology transform both our physical and our sociopolitical reality. One of the most important examples of this is the invention of the printing press. The printing press made printing more efficient, cheaper, and accessible and, in doing so, it extended the availability and promoted the production of books, pamphlets, and other printed documents. This process democratized the meaning of the written word, information, knowledge, and culture. Printing also facilitated scientific advance by making the sharing of information and concepts easier and more efficient, thus hastening the development of a scientific community. In the political realm, it was a key catalyst in the dissemination of ideas, thus changing political discourse and ultimately causing a huge upheaval in Europe's political order. It is not surprising given its capacity to disseminate ideas that it also became the focus of state regulation and control.

In our era, the Internet is seen by many as the equivalent of the printing press in terms of its capacity to alter reality. Poster (1990, p. 128) suggests that the very nature of "computer writing" is such that it impacts on how we understand "the subject." The Internet intensifies that process. We have, for instance, seen several cases of individuals presenting themselves as someone else to entrap vulnerable children. It also opens up a whole new set of dimensions like the ability of political actors to share information, virtual communities to be formed, information to be shared, and so on. The Internet like the printing press is more than its constitutive parts, and its full impact cannot be appreciated for some time yet. As it unfolds, it continues to present a diverse range of policy dilemmas. An appreciation of the extent of this can be garnered from such contemporary debates as those around child pornography, international terrorism, Internet crime including the dissemination of damaging viruses, copyright issues, and the exclusion of a huge proportion of the world's population from access to new information and communications technologies.

The global announcement of the results of the human genome survey in 2000 is another extremely important milestone. The dramatic consequences of

9/11 and the upheavals in the political culture it produced have eclipsed it as a topic of political, media, or indeed public concern. Like 9/11, its significance is greater for its resonance and its capacity to open a new chapter in human history. Former U.S. President Bill Clinton described it as “the most important, most wondrous map ever produced by humankind” (Clinton and Blair, 2000). He also recognized the serious challenge of “the horizon that represents the ethical, moral and spiritual dimension of the power we now possess” (Clinton and Blair, 2000). British Prime Minister Tony Blair echoed the same sentiments in his opening words:

And the decision for us really as humanity is whether we are going to engage in the right cooperation across national frontiers so that we shape our destiny in a way that genuinely does benefit all our people (Clinton and Blair, 2000)

With how much certainty can we say we are pursuing Tony Blair’s goal for genuine human benefit? Rifkin (1998) suggests that we need to know if this journey represents “our fondest hopes and aspirations” or “our darkest fears and misgivings” (Rifkin, 1998, p. xii) where humans are “lost and cast adrift in this artificial new world we have created for ourselves” (Rifkin, 1998, p. 115). It is a path toward what Rifkin describes as eugenics,* filled with questions and unforeseeable consequences. He claims that genetic technologies are “by their very nature, eugenics tools” (Rifkin, 1998, p. xii). On this same topic of advanced eugenics, Kamm (2002) raises an essential political dilemma about the capacity of democracy to deliver good government. This has echoes of Bentham’s concerns in the 19th century, where good government was his primary objective, democracy ultimately fitted into his model only as a means for achieving that goal. It is becoming increasingly clear that eugenics, among a host of other scientific challenges, is posing a new set of demands on the very processes of public will formation and decision making. Dahl (1985, p. 8) suggests “that the democratic process is not well equipped to deal with questions of exceptional complexity.” The extent of the test facing us can be explained by pursuing the eugenics theme further.

Eugenics throws up two sets of highly complex issues. First, it holds the prospect of developing an essentially new evolutionary path for *Homo sapiens*. Altering the human genotype will change the individual and that individual’s offspring. Rifkin (1998, p. 3) says “[m]eritocracy could give way to genetocracy, with individuals, ethnic groups, and races increasingly categorized and stereotyped by genotype.” For him, this opens the possibility

* Eugenics is a controversial philosophy and/or practice that proposes controlled (pseudo)-scientific methods to improve the human population.

for an advanced eugenics by an elite or elites, producing “‘works of art,’ continually editing their DNA codes for therapeutic and cosmetic ends” (Rifkin, 1998, p. 129). We can see this in traditional evolutionary terms as an acceleration of the normal gradual process, but it may also represent a potential third punctuations* in human evolution.

The second eugenic set of issues addresses the fundamentals of enlightenment. The process of removing a transcendent god[†] and deconstructing cosmic order as the steering mechanism of human life is the task of the enlightenment. It is making god redundant or perhaps superceded. Avise (1998) makes a nice analogy between genes and gods, and he concludes that perhaps the creatures created by the gene gods have now acquired the knowledge and technology to turn the tables on their creators, reversing a 4-billion-year trend of genes determining the evolutionary path. Instead of seeing genes as gods, humans are in fact adapting them as tools, like stones, fire, and metal to be used to shape the environment for human utility and advantage.[‡] Genetic technology can be used to shape the external environment as in GM foods, and also the shape and nature of human beings. It is a big step and may be the ultimate political challenge. The timescale is not immediate, but is dramatically imminent in the timescale of evolution.

Debate around the governance of science and technology is seen at all levels from the local to the global. From a policy perspective, I believe this is an important issue at three levels:

Cause: Identifying and dealing with problems that arise from science and technology

Process: How can we democratically identify the issues and make relevant policy

Ends: What are the risks and/or lost opportunities that need to be dealt with

To deal with these aspects of policy, we need to take on board key concerns like the role and perception of expertise, how the public can participate in the process, and how we might better appreciate the full context of science and technology now and into the future.

* Punctuated equilibrium holds the view that evolution follows a path of long periods of stasis or minimal change followed by shorter periods of rapid evolution. For discussion on punctuations, see Chapter 14 of Devillers and Chaline (1993).

[†] The term transcendent has many related philosophical meanings. I use it here to refer to the notion of a god that is above and prior to human experience and existence.

[‡] This view has been expressed by senior Roman Catholic clergy in relation to genetically modified foods (see Vatican Backing sparks GM row: Report set to anger Catholics in developing world. *The Guardian*, August 14, 2003).

V. SCIENCE, THE PUBLIC, AND EXPERTISE

Within Europe, the shift in public opinion on science and technology is reflected in the Eurobarometer 55.2 (2001). That report indicates that while a majority of Europeans still have a positive attitude toward science and technology, there is skepticism about its capacity to solve a series of specific problems (Table 18:29). When asked for a measure of their esteem for certain professions, respondents gave a mixed message. They ranked doctors at 71.1%, scientists at 44.9%, and engineers at 29.8%.

What is reflected in these findings is that there is a challenge to the normative basis of scientific knowledge. That is presented in the literature as a move from “hard facts–soft values” to “soft facts–hard values.” Using Jasanoff (1986) as a basic template, I wish to present that as three points on a continuum:

- Hard facts–soft values: Scientific knowledge is pure, rational, and untainted by nonscientific exigencies.
- Definite facts–definite values: Scientific knowledge is generated from both internal and external norms. The internal ones build on the application of scientific method and the use of “peer review”; the external ones emerge from broader sociopolitical realities emanating from the public sphere and/or from parts of the scientific community itself.
- Soft facts–hard values: Scientific knowledge is heavily accented by the political orientation of individual scientists and/or the scientific community. It is merely a “camouflage for constellations of values and preferences” (Jasanoff, 1986, p. 70).

This template is useful in contemplating the role expertise can play in policy formation. The hyperrational approach discussed above draws on the *hard facts–soft values* model. In that model, the view of the expert has primacy and public opinion in little more than an irritant. The other end of the continuum represented by *soft facts–hard values* gives a far more central role to public opinion, even where it might be contradicted by scientific argument. An indication of this trend can be appreciated by the inclusion of a recognition of the importance of indigenous and local knowledge in Article 8 (j) of the *International Convention on Biological Diversity** and in national legislation like the *Canadian Species at Risk Act (2003)*[SARA], which, in the *Stew-*

* More details on the *International Convention on Biological Diversity* are available at: <http://www.biodiv.org>.

ardship Action Plan 10.2.c, acknowledges the importance of “community and aboriginal traditional knowledge” (Fig. 2).*

On the hard-facts side, Aronowitz (1996) describes as “scientificity” the perspective of some scientists and medics who view themselves as the custodians of enlightenment, reason, and rationality. This standpoint can be understood as a sort of two-way mirror, dividing the world of science (inner room) and the rest of society (outer room). Those scientists with privileged knowledge operate behind the mirror in an inner room dedicated to the acquisition of specialized and rarefied knowledge. They do not have to deal with the gaze and interference of those at the outer room (wider society) who are prevented from seeing through because of their lack of expertise. However, they can see wider society from their side of the mirror and even contribute to political discussion outside their own field of competence because they operate at a higher intellectual plane. This idea of a barrier of cognitive authority is explored by Cozzens and Gieryn (1990) who suggest that science engages in what they call “boundary issues.” Scientists are the only ones who fully understand the language and knowledge inside the boundary (inner room), while the outer-room nonscientific knowledge is of a lower and less important cognitive class.

Latour’s (1987) *Science in Action* gave new insights into the relationship between science and technology and the wider community. This again highlights a view of an inner room where scientific method is adopted to elucidate a complex and dynamic reality. The outcome of this activity is presented as one of orderly discovery or invention. Each block of knowledge is placed on a previous block of knowledge. This does not allow that the process is often not incremental in this way, but depends on tentative and even serendipitous steps and draws from a wider spectrum of knowledge and discovery.

Latour also dismantles the boundary between the inner and outer rooms. He shows that science is an integral part of wider society. Scientists are scientists, but they are also citizens, which has become increasingly important in terms of understanding their role and responsibilities.

The idea of expertise and its contribution to the policy-making process has become something of a battleground. Using a series of case studies some dating from the 1960s, von Hippel and Primack (1991) highlight the interaction between political expediencies and scientific advice. They refer specifically to advice to the executive branch of government in the United States. Public skepticism of official scientific advice is a strong theme emerging from their work. This skepticism has two manifestations: first, a lack of public

* More details on the *Canadian Species at Risk Act (2003)[SARA]* can be found at: <http://www.sararegistry.gc.ca>.

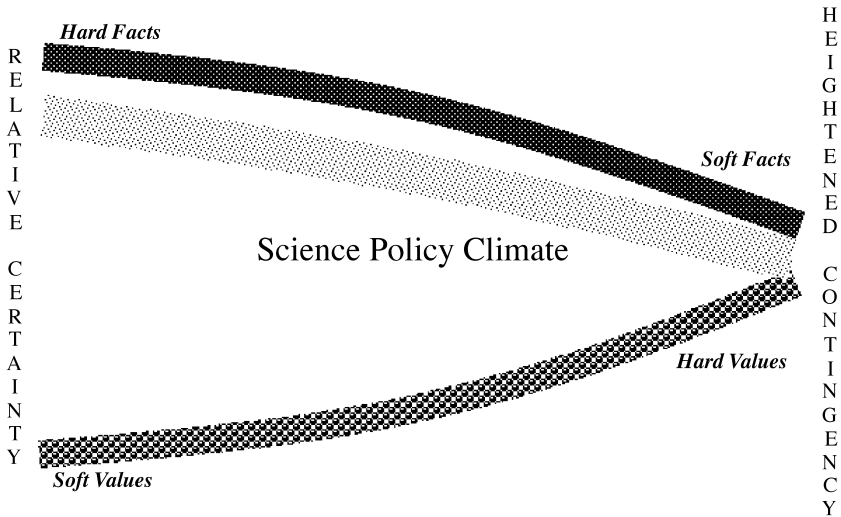


Figure 2 Facts and values in scientific policy.

confidence in scientific advice emanating from government, and second, less confidence in the objectivity of science.

Likewise, Jasanoff (1990), in examining the role of scientific advisory committees in America, questions why the seemingly objective input of experts does not lead to greater consensus around policies adopted. This public skepticism has many sources including the role of experts, the role of the public, and ultimately, even classic political questions about power and the separation of power. A traditional hard-facts model is what Aronowitz (1996) suggests based on the notions that 1) mathematics is the only language through which to decipher and understand nature and 2) scientific experimental method is the only path to legitimate and verifiable knowledge. This myth, as Latour and Woolgar (1986, p. 17) point out, is perpetuated in part by social scientists:

Rather than making scientific activity more understandable, social scientists have tended through their use of highly specialised concepts to portray science as a world apart

There is a growing realization, even within the scientific community, that much knowledge is “provisional”: “Scientific expertise is then as much about stating what is unknown, or uncertain with differing degrees of probability, as about setting out commonly agreed and accepted views” (COM, 2002, 713:3). That changes the climate in which scientific policy is both framed and implemented.

VI. CONCLUDING REMARKS

Never before has humanity been faced with so many possibilities. Science and technology has generated a whole new set of vistas for us, both positive and negative. Science and technology will not, however, solve all our problems, and those problems it will solve and those possibilities it will present us need to be brought under more democratic control. That has been the central orientation of this chapter.

Why does science and technology need to be democratically steered? That fundamental question is about how we view the process of government itself and has been much debated in political thought since Aristotle and Plato to now. Today, democracy is promoted as the model for good governance, especially by politicians and political theorist from the developed countries. However, it is not always clear what is meant by democracy nor what areas it should cover. Bauman (1998, p. 66) sees power seeping away from the nation state through the pressures of economic globalization where the economy becomes “progressively exempt from political control.” This has serious implications for the meaning of democracy as a vibrant and potent means by which citizens control their world. This is a point reinforced by Dahl’s (1999, p. 926) contention that supranational organizations can be designed to circumvent democratic control, identifying both the International Monetary Fund and the European Central Bank as examples. This ties in directly with the discussion about regulation of what Zimmerman (1995) calls the “large-scale complex systems” that control science and technology and Beck’s (1992) contention that that system operates in a way that disempowers the political system and, with it, democratic institutions. Democracy holds little meaning unless it allows ordinary people to have a say over the most far-reaching developments that impact on their own lives, the lives of future generations, the human species itself, and all life on this planet.

In this chapter, I presented a democratic model that might help to address the governance of science and technology. Here I wish to briefly revisit three aspects of that model and my rationale concerning them.

First, it is important to address what Fuller (2000) describes as “free inquiry.” Here we are talking more specifically about the scientist as a researcher. It is not easy to distinguish between the scientist’s research and his or her individual career because of how so much research is organized and funded. Scientists working within the industrial environment cannot pursue fully free inquiry, and even in research institutes and universities, research is dependent on sources of funds. The direction and nature of inquiry can be heavily influenced by career opportunities, even at the level of advancing to postgraduate research.

However, we must not undervalue the idea of free inquiry. To emphasize this, I will refer to a gathering of scientists just over 50 years ago in Hamburg at the International Science and Freedom Congress* in 1953. It came in the direct aftermath of the previously unimaginable atrocities of the Holocaust and the devastation of the atomic bombs in Nagasaki and Hiroshima. In both instances, scientific and technological knowledge and expertise had been used to cause incredible human loss and suffering. The delegates in Hamburg recognized the awful legacy of totalitarianism and the importance of freedom. There was a strong sense that free inquiry was a fundamental aspect of that freedom:

I believe . . . that science is a great adventure into the unknown and that this adventure cannot effectively be conducted by men who are not absolutely free (Apéry, 1955, p. 53).

The second point I wish to visit is the idea of the free market in liberalism. Regulation is seen as interference with the free market, and science and technology is an extremely important actor in the economy. Placing regulations and control on science and technology would be placing regulation and control on the free market. Addressing this means addressing much of the classical political thought of recent centuries, of revisiting thinkers like Locke, Rousseau, Adam Smith, and Bentham. The free market is not a priori; it is a means by which human society can organize itself for maximum utility. If it works, then it retains its utility; if it does not work, then it is problematic. The extent of absolute and relative poverty in the world would suggest that at the very least, there are problems with the model. Holding up the free market as an absolute act of faith may not be the most sensible way to approach the resolution of the many problems we face today.

The discussion in this chapter relies heavily on the idea of democracy. I wish to revisit that topic as my third point. A wide range of democratic models and democratic instruments have been theorized and tested over the centuries. Many have been used in recent decades to address science and technology issues, like consensus conferences, citizens' juries, public inquiries, referenda, etc. In this chapter, I did not explore any of those methods. Instead of concentrating on the mechanisms for delivering democratic decision making, I focused on two imperatives for realizing democracy—deliberation and responsibility.

* The Science and Freedom Congress brought together many distinguished intellectuals. It was convened by the *Congress for Cultural Freedom*, which was part of the America's anticommunist drive.

Responsibility is not a new idea. Why it has become so important today has something to do with the process of change that has emerged through the Enlightenment in what I will call the Europeanized world.* The Enlightenment was about removing god from the center, about humans, through reason, attempting to understand their world in a more secular context. Science emerged as a new secular religion. Science has lost some of its luster as we discussed above, particularly in relation to the shift from hard facts and soft values to soft facts and hard values. Liberalism too is a secular religion, but it does not, in the Neo-Liberal manifestation, have much to say about responsibility. The realization of finite resources, risk, and contingency highlights a set of problems that cannot simply be addressed by the outcome of rational actors operating in a free market. The enlightenment removed cosmological certainty[†] and, with it, moral certainty. In the absence of moral certainty, there is still a need for a normative ethical code for action. Kant addressed this problem in the context of rights and obligations through his categorical imperative. The discussion of responsibility in this chapter has been about refocusing on the need for responsibility, contextualizing it in terms of the contemporary reality (Jonas), and finally, embedding it in a collective or democratic context through co-responsibility (Strydom).

The final major component in my model is about deliberative processes of opinion and will formation (Habermas). In other words, it is about how we as citizens and as inhabitants of this planet can engage each other in democratic processes that can lead to us reaching some common understandings (recognizing that all such understandings are provisional) in order for us to develop responsible policies to deal with advances in science and technology. The idea is not to prescribe the context in which discussion takes place, but to set out the sorts of rules we need to include in order that deliberation is open, rational, fair, transparent, and reflexive. A key essential is that all participants are afforded social respect and that decisions reached are aimed at the common good and not vested interests.

We are faced with many challenges. We have fantastic new possibilities emerging through science and technology. We also have incredible risks and

* I am using the term Europeanized world to signify those social and political cultures that have been heavily influenced by the settlement of Europeans and European ideas. This includes countries like United States, Canada, New Zealand and Australia, as well as most of Europe.

[†] What I mean here is that explanations about the origins of the universe and especially attempts to prove the existence of god on the basis of the fact that things exist became open to increasing challenge with the enlightenment.

responsibilities. My belief is that humans need to take greater overall control over their own destiny. For Plato and Locke, there was a need for a strong captain on the ship. Perhaps we do need strong captains. But the passengers need at least to know the destination, whether the fare is too great, is the weather likely to be fair, and is the ship seaworthy. Humans have a long history of taking on the unknown of going over the horizon for the first time. Humans also have a long history of prudence, of mixing precaution with risk, and of weighing up the possibilities. We need to continue to take risks, but those risks need to be weighed against the common good and the future of all life on the planet.

REFERENCES

- Apéry, R. (1955). *Discussion: The Organization of Science I. Science and Freedom*. Proceedings of the Hamburg Congress on Science and Freedom, 1953. London: Martin Secker & Warburg, pp. 47–57.
- Aronowitz, S. (1996). The Politics of the Science Wars. In: Ross, A., ed. *Science Wars*. Durham, NC: Duke University Press, pp. 202–225.
- Avise, J. C. (1998). *The Genetic Gods: Evolution and Belief in Human Affairs*. Cambridge, MA: Harvard University Press.
- Bauman, Z. (1998). *Globalization: The Human Consequences*. Oxford: Polity.
- Beck, U. (1992). *Risk Society: Towards a New Modernity*. London: Sage.
- Bohman, J. (1996). *Public Deliberation: Pluralism, Complexity, and Democracy*. Cambridge, MA: MIT Press.
- Burns, T. R. (1999). The evolution of parliaments and societies in Europe. *Eur. J. Soc. Theory* 2(2):167–194.
- Burns, T. R., Ueberhorst, R. (1988). *Creative Democracy: Systematic Conflict Resolution and Policymaking in a World of High Science and Technology*. New York: Praeger.
- Clinton, B., Blair, T. (2000). *Remarks by the President, Prime Minister Tony Blair of England (via satellite) etc. on the Completion of the First Survey of the Entire Human Genome Project* (Press Release June 26, 2000). Washington: Office of Science & Technology Policy.
- COM. (2002). *713 Communication from the Commission on the Collection and use of Expertise by the Commission: Principles and Guideline—Improving the Knowledge Base for Better Policies*. Brussels: Commission of the European Communities.
- Cozzens, S. E., Gieryn, T. F., eds. *Theories of Science in Society*. Bloomington, IN: Indiana University Press.
- Dahl, R. (1985). *Controlling Nuclear Weapons: Democracy Versus Guardianship*. Syracuse, NY: Syracuse University Press.

- Dahl, R. (1999). The shifting boundaries of democratic governments. *Soc. Res.* 66(3):915–931.
- Devillers, C., Chaline, J. (1993). *Evolution: An Evolving Theory*. Berlin: Springer-Verlag.
- EEA. (2001). *Environment Issue Report No 22, Late Lessons from Early Warnings: The Precautionary Principle 1896–2000*. Luxembourg: European Environment Agency/Office for Official Publications of the European Communities.
- Eurobarometer 55.2. (2001). *Europeans, Science and Technology*. Brussels: European Commission.
- Eyerman, R., Jamison, A. (1991). *Social Movements: A Cognitive Approach*. Cambridge: Polity.
- Frankenfeld, P. J. (1992). Technological citizenship: a normative framework for risk studies. *Sci. Technol. Human Values* 17(4):459–484.
- Fuller, S. (2000). *The Governance of Science*. Buckingham: Open University Press.
- Gregor, M. (1993). Kant on obligations, rights and virtue. *Jahrbuch für Recht und Ethik, Bd. 1 Annual Review of Law and Ethics*. Vol 1. Berlin: Duncker & Humblot, pp. 69–102.
- Habermas, J. (1992). *The Theory of Communicative Action*. Vol 2. Cambridge: Polity Press.
- Habermas, J. (1996). *Between Facts and Norms (Faktizität und Geltung)*. Cambridge: Polity Press. William Rehg (trans.).
- Jasanoff, S. (1986). *Risk Management and Political Culture*. New York: Russell Sage Foundation.
- Jasanoff, S. (1990). *The Fifth Branch: Science Advisers and Policymakers*. Cambridge, MA: Harvard University Press.
- Jonas, H. (1982). Technology as a subject for ethics. *Soc. Res.* 49, 891–898.
- Kamm, F. M. (2002). Genes, justice, and obligations to future people. *Soc. Philos. Policy* 19(2):360–388. Summer.
- Latour, B. (1987). *Science in Action*. Milton Keynes: Open University Press.
- Latour, B., Woolgar, S. (1986). *Laboratory Life: The Construction of Scientific Facts*. Princeton: Princeton University Press.
- Ó Tuama, S. (2004). The challenges of science and technology policy. In: Collins, N., ed. *Issues in Irish Politics Today*. Manchester: Manchester University Press, pp. 226–253.
- Perrow, C. (1999). *Normal Accidents: Living with High-Risk Technologies*. Princeton, NJ: Princeton University Press.
- Poster, M. (1990). *The Mode of Information*. Cambridge: Polity Press.
- Rifkin, J. (1998). *The Biotech Century*. London: Victor Gollancz.
- Rycroft, R.W., Kash, D.E. (1999). *The Complexity Challenge; Technological Innovation for the 21st Century*. London: Pinter.
- Saloman, J. -J. (2001). Science, democracy and technological risks. In: de la Mothe, J., ed. *Science, Technology and Governance*. London: Continuum, pp. 210–222.
- Sclove, R. E. (1995). *Democracy and Technology*. New York: Guildford Press.
- Strydom, P. (1999a). The challenges of responsibility for sociology. *Curr. Sociol.* 47(3):65–82.

- Strydom, P. (1999b). Triple contingency. *Philos. Soc. Crit.* 25(2):1–25.
- Trouwborst, A. (2002). *Evolution and Status of the Precautionary Principle in International Law*. Hague: Kluwer Law International.
- Von Hippel, F., Primack, J. (1991). Scientists as Citizens. In: Von Hippel, F., ed. *Citizen Scientist*. New York: Simon & Schuster, pp. 1–15.
- Zimmerman, A. D. (1995). Towards a more democratic ethic of technological governance. *Sci. Technol. Human Values* 20(1):86–107.

16

Translating Public Participation into Planning Policy—The Israeli Experience

Deborah F. Shmueli

University of Haifa, Haifa, Israel

Pnina O. Plaut

Technion Israel Institute of Technology, Haifa, Israel

I. INTRODUCTION

Public participation, transparency, consensus, and collaboration are concepts generally accepted within highly developed countries of the world as planning dogma. Important questions relating to this dogma include the following: when integrated into the planning process, does it bring about consensus more effectively? How do the various concepts underlying the dogma differ from one another? What have been the results when there have been systematic efforts to incorporate one or more of them? Can the experiences in countries where the dogma has been incorporated into the planning processes be readily transferred to other countries? This paper explores the results of the transfer of these concepts to the Israeli scene and the lessons learned that may have relevance to countries where planning is at a similar or less developed level than Israel's.

An important starting point in conflict management is the dedication of planners and behavioral scientists to the value of collaboration and participation, as well as the reluctance of lawmakers and administrators to declare themselves as publicly opposed to them. People are more committed to results into which they have had input; collaboration may generate new and creative ideas; future conflict or problems may be averted. However, definitions and perceptions of public participation and consensus vary widely, depending on both personal predilections and the roles into which individ-

uals are cast. In reality, what is embraced in theory is not always comfortable in practice.

Traditional methods of eliciting participation are frequently ineffective, often lacking transparency, and yielding recommendations that fail to be incorporated into the decisions made by public officials and agencies. Even when they are incorporated, less than whole-hearted commitment by official agencies may undermine the fulfillment of the participatory inputs during the implementation process.

Transparency or openness has been advanced as a basis for securing greater accountability from decision makers, holding them to compliance with law, guaranteeing public access to the records, and promoting public participation. Broad access to information inevitably draws more stakeholders into dispute negotiations and presumably leads to greater collaboration and ultimate consensus. However, as Marshall and Ozawa point out (in press), transparency may also result in excessive legal challenges to decisions, resulting in delays and costs.

Some of the most familiar participation venues are informational meetings, public hearings, citizen commissions, "blue-ribbon" committees, opinion polls, and focus groups. The degree of credence given the outcomes varies with circumstances, politics, and the power positions of the various players. Too often, such participation mechanisms are pro forma or window dressing, designed to provide added legitimacy to predetermined decisions.

Arriving at consensus through shared decision making is an exercise in problem solving that seeks to address the needs of all interests. While this kind of problem solving usually involves compromise or negotiation, these are not necessarily the best tools for shared decision making. The process of dialogue and inquiry may cause the different parties to view their initially perceived interests in different lights and to recast them (Penrose 1996, cited in Jackson, 2002).

This paper briefly reviews trends in the impact of citizen participation mechanisms upon policy making over three decades. The experiences are drawn from North America, Europe, and Australia. In Israel, the aforesaid concepts in planning dogma have influenced current planning thinking, but in practice, the results have been mixed. Israeli planning policy makers are still searching, through experimentation, for appropriate participation mechanisms within its planning system. The paper analyzes the characteristics of a number of informal participatory efforts which have occurred in Israel over the last few years in the context of the experiences of those developed nations with long histories of participatory processes in planning.

The cases chosen are among the more innovative participatory experiments within the Israeli milieu. They include a participatory strategic

planning process in one of the country's northern regional councils, a proposed housing and open space development on Haifa's Mount Carmel, and the restoration of the Alexander watershed in the Central Coastal Plain. Given that these experiences are relatively new and ongoing, the objective is not to evaluate the outcomes, rather it is to identify process characteristics which may be useful indicators as to where these experiments may lead. The cases provide insights into the degree to which the adoptive/adaptive process has been absorbed within the Israeli policy-making structure. Although Israel is a developed country, it is still a maturing society and therefore may have elements in common with planning practices and policies in less developed countries as well. This study raises the additional question of whether the Israeli experience is transferable to societies and cultures with even shorter histories of participatory efforts.

II. THREE DECADES OF PARTICIPATION TRENDS—UNITED STATES AND EUROPEAN EXPERIENCE

Studies of participatory planning date back to the mid-1960s and 1970s (Davidoff, 1965; Arnstein, 1969; Mazziotti, 1974; Piven and Cloward, 1979; Fagence, 1977; Kraushaar, 1988; Gans, 1991; Checkoway, 1994; Innes, 1996), as citizen participation processes evolved in the United States and parts of Western Europe. Many studies focused on the development of formal participation mechanisms in planning processes. These processes were prescriptive, with some of the most familiar venues being public hearings, citizen, and "blue-ribbon" committees and focus groups. Legislation mandating participation processes was enacted in the United States on both the federal and state levels and in Britain on the local level through the passage of various Town and Country Acts.

Much of this activity took the form of "participation by protest," as formal pressure groups used the process to influence the media in attaining their goals. Participation soon developed into a forum for ritualized conflict between governmental agencies and opposing interest groups (O'Riordan, 1977). In Canada, participation evolved from the stage of "participation by invitation" to "participation through negotiation" and then "litigation" (Bregha, 1977).

Arnstein's (1969) "Ladder of Citizen Participation" quickly became a vehicle which planners used to assess the democratic goals of public participation (Bailey, 1975; Estrin, 1979). What started out as the promise of a new

democratic process in the 1970s seemed to be turning out, as Arnstein had warned, to be exercises in manipulation. Not only politicians, but also planning bureaucrats sought to manipulate public involvement as a means of enhancing their own values and power—a process that sometimes backfired as citizen—participants saw themselves being outmaneuvered by those who could shape the agenda for their own ends through control of information (Sewell and O’Riordan, 1976). Many of these efforts involved large numbers of participants, were very time- and money-intensive, and offered little opportunity for dialogue. Participation in the 1980s was broadened through the added focus of decision makers on the citizen role as consumer. This created a framework for information flow from citizens to decision makers to be used for needs assessment and from decision makers to the public in the mode of informing.

Frustration with the participatory processes during the 1960s, 1970s, and into the 1980s led theorists studying participation in policy contexts to begin thinking in other directions. In the late 1970s, the application of negotiation theory to local and regional planning issues arose from incrementalist planning theory and the need to do step-by-step work and cope with pluralistic needs and preferences (Susskind and Ozawa, 1984; Susskind and Cruikshank, 1987; Lax and Sebenus, 1986; Forester, 1992).

Building on the contributions of negotiation theory, Habermas (1981) introduced theories on the transformative impact of collaborative and deliberative planning, which, although proposed in the 1980s, became widely accepted only in the 1990s, when they led to strategies of interactive and collaborative participation. This theory of communicative rationality explained how structured negotiation among all of the stakeholders could result in the formulation of positive public policy. Through such a process, planning could alter the frames within which policy is understood (Throgmorton, 1996). In a similar vein, Forester (1999) suggested that the participatory collaborative planning process can transform relationships, identities, agendas, and values. According to Elliott and Stiffler (2002), this transformative aspect of collaboration is conducted at three socioecological scales: 1) the individual and group levels, whereby the knowledge base is expanded and positive relationships are fostered; 2) the organizational and professional, whereby collaborative processes lead to adoption of standard operating procedures, best management practices, and programs that embody collaborative decision making and implementation; and 3) the societal–environmental, whereby civic culture, political structures, and environmental systems are altered by the impacts (cumulative and particular) of collaborative decision processes.

The collaborative methods allow multidirectional flows of communication around tasks and issues, involving the public directly with planners and

decision makers, permitting learning and change to take place on all sides (Innes and Booher, 2000). The networks which emerge out of this strategy of participation become important to the implementation process, as well as to the deliberations leading up to the decision. Such a strategy expresses the desire for governments to strengthen and revitalize civic culture by improving the nature of public discourse through deliberative democracy (Weeks, 2000; Marshall and Ozawa, in press). The process continued to evolve into the 1990s, as planners and decision makers came to recognize that power sharing was in their own best interest. Without genuine collaborative participation, officials lacked the necessary information possessed by grassroots groups that could enable them to adjust their actions to win public support (Innes and Booher, 2000).

Many planners continue to believe that the greatest value of the collaborative process lies in the input of citizenry into the shaping of public policy by administrators (Vigoda, 2000). Others, however, herald such partnerships as a basis for initiating a cultural revolution in the operations of modern bureaucracy which would lead to the sharing of power by officials with those whom they had long viewed as “clients” (Vigoda, 2002). Such proponents see collaboration as providing social institutions with the capacity to deal with this global era’s rapid growth of technology and worldwide communications and the fragmentation of communities (Friedman, 2000). In likening the evolution of our dynamic, complex society to an organic, living system rather than to a machine that produces predictable results, Kauffman (1995) endows collaborative dialogue with the capacity to fill the void left by the isolated actions of formal governmental institutions.

In embracing collaboration as a learning system, Frank and Elliott (2002) hold that social capital builds up in the course of the collaborative process. This provides the capacity for collectively addressing problems that are too complex, unique, or burdensome for existing power structures to tackle (or even recognize) in isolation. Such practices as representation of interests, deliberation, and flexibility have proven successful in reaching agreement within the process of collaboration. Presenting diverse interests in a deliberative format provides an arena for laying bare the complexities of the social and environmental systems within which planning takes place (Margerum, 1999; Connick and Innes, 2001). This enables workable solutions to be reached that are holistic rather than ones that reflect the perceptions of a single agency, discipline, or narrow legal codification.

The difficulties in implementing shared decision making are not to be lightly dismissed. While institutionalization of a professional approach to such collaboration may be able to address such obstacles as lack of standardization and clear assignment of responsibility, the exercise of power and protection of interests remain important considerations for stakeholders in agreeing to par-

ticipate in the collaborative processes. As a consequence, the deliberations often give voice to such contradictions as rigidity and flexibility, system maintenance and reform, certainty and uncertainty, and efficiency and redundancy.

In keeping with the theory of communicative rationality, advocates hold that collaborative frameworks for representation of interests, deliberation, and flexibility increase responsiveness, in contrast to the more limited responsiveness that characterizes the more traditional decision-making approaches (Frank and Elliott, 2002). On the other hand, critics charge that it is naive to assume that communicative rationality automatically produces good decision making because it does not necessarily address the roles of power, objective standards, and accountability (Amy 1987, 1990; Rabe, 1988). They argue that the collaborative process may be manipulated to support the status quo, circumventing national interests and democratic processes in favor of parochial interests and economic gain.

Recent literature review articles addressing the topic of collaborative processes have a limited scope inasmuch as they focus only marginally on impacts, confining their reviews to studies of evaluation criteria and methodology (Innes, 1999; Innes and Booher, 1999; McEwen, 1999; D'Estree et al., 2001). A major challenge in evaluating the impact and effectiveness of collaboration stems from the fact that measurement mechanisms must differ to account for the scale at which the impact takes place—the individual, the collaborative group, the professions and organizations, and the socioeconomic system (Elliott and Stiftel, 2002). In addition, the multitude of preliminary activities involved in the collaborative process, such as stakeholder outreach, education, team building, and defining the rules of engagement, consumes considerable time and resources. To measure only the benefits of the collaboration without measuring the cost of the inputs may provide a misleading picture of the efficiency of the process.

Efforts to broaden the evaluation of collaborative approaches in planning and policy making include Jackson's (2002) study of the 10 years of experience with the emerging models of "new" public involvement in British Columbia. He concluded that there is broad acceptance for the concept of shared decision making and consensus over its potential as a new departure in community control. However, he also observed that it is not appropriate for all types of planning nor should it be seen as a replacement for other forms of public involvement. In Australia, a 3-year collaboration effort among the stakeholders sharing the Murray Darling Basin is underway, employing a program of "cultural translation," whereby the translation of the values and cultures of different participating groups in an intractable conflict has been employed to cope with the communication breakdowns that result from clashes of values (Elix, 2002). Elliott and Stiftel (2002) are

currently engaged in an evaluation of collaborative experiences in two U.S. states—Florida and Georgia. Since the mid-1980s, Florida's widespread use of institutionalized collaborative planning in environmental and land-use decisions has been a notable exception to the normal pattern of episodic use of the process. In contrast, Georgia has had only a decade of ad hoc collaboration in such policy making.

Disappointment with both process and outcomes during those first three decades has not put an end to group public participation. Instead, there continues to be increasing awareness that public participation in the planning and decision-making process is a critical element in striking a balance between the competing aims of development and environmental protection. Agenda 21 in the Agreements of the 1992 Rio Conference (the Earth Summit) recognized this need for public participation in achieving sustainable development, and the hundred signatory states committed themselves to this end.

Vigoda (2002) has pointed to the inherent tension in public policy making between better responsiveness to citizens as clients and effective collaboration with them as partners. The relatively closed hierarchical nature of governance structure runs counter to true collaboration, which is based on free flow of information, agreements on mutual gain, and more equitable distribution of power and resources. Creating frameworks to attain true collaboration has, for the most part, been left to the initiative of government and planning specialists. It may well be argued, as does Vigoda (2002), that the collaborative approach requires the public to share the responsibility for framing the process, as well as participating in it.

The following table represents a summary of both the traditional and current state-of-the-art types of participatory processes (Table 1).

III. THE ISRAELI CONTEXT

A. The Centralized Nature of Israeli Planning

Israel is a society that plans spatially—public and voluntary institutions, corporations, government, and many individuals pride themselves on trying to make rational and effective decisions about the future (Shachar, 1996). Decisions affecting individuals or households which are subject to official regulations tend to be limited to such items as extensions to residences and the walls, fences or shrubs that may be used to designate residential plot boundaries, or to beautify grounds. Communities must address larger issues which surface in the course of urban renewal, building new neighborhoods, improving transportation and utility infrastructures, and constructing or demolishing public facilities—projects that often clash with the value of

Table 1 Public Participation Modes

Public participation characteristics	Goals	Methods	Representation	Communication	Outcomes
Traditional citizen involvement, prevalent in the 1960s, 1970s, and 1980s	Informing policy makers to improve decisions Prevention of public opposition	Public hearings Focus groups Citizen commissions Task forces Public opinion polls	Broad citizen participation, often divided into special interest groups	Formalistic Bureaucratic Unidirectional	Prescriptive and ritual processes Polarization of positions and lawsuits
Consensus building, collaborative policy making and deliberative democracy, evolving trends 1980s–current	Mutual learning and change of positions on the part of both policy makers and stakeholders Legitimacy of public decisions Improving the nature of public discourse Revitalize civic culture	Informal open discussions Structured negotiations among stakeholders Ad hoc groups Partnership programs Consensus building Structured community dialogue: sample surveys, workshops, simulation exercises, information tabloids	Stakeholders responsible to their constituencies	Informal face-to-face Multidirectional Interactive interchange	Learning and cooperative processes Shared decision making Credibility of outcomes Potentially supportive of the status quo and parochial interests
					<i>Outcome challenges:</i> Designing objective standards Assigning responsibility and accountability Rectifying power imbalances in negotiations

preserving open space. Corporations pursue specific strategies in locating industrial plants or businesses, and government affects regional spatial use by adoption of environmental standards, locating major infrastructure projects, or land-use zoning. It is the coordination of these larger decisions which especially challenges planners. When such decisions are not coordinated, they may meet the needs of one special interest group, while ignoring the needs of others (Shmueli, 1998).

The planning process in Israel is predominantly rational, incremental, statutory, hierarchical, and top-down. Within it, the role of the professional planner is that of technical expert, with little scope for influencing policy decisions (Alterman et al., 1986). Information sources are often comprehensive surveys using statistical databases and maps, previously approved plans, and interviews with decision makers and members of planning advisory and steering committees. While undeniably efficient, this approach frequently leads to inflexibilities that ignore creative alternatives. It also favors the already powerful interests, fostering resentments by slighted constituencies, and creating difficulties in implementation.

In Israel, bureaucratic decentralization and political reform that would give greater power to regional and local forms of government have been slow to come—particularly since most of the tax base and taxing powers continue to reside with the central government. Moreover, government agencies responsible for national planning and land management retain the legal powers to make major decisions which influence where people will settle, especially since most of the new suburban and exurban settlements as well as new cities are built on national, not private land (Alterman, 1995; Shmueli and Kipnis, 1998).

Nevertheless, the radical political, economic, and strategic changes that have taken place in the past decade, including privatization of large-scale enterprises owned by the government and the General Confederation of Labor (Histadrut), are beginning to have an impact on the planning process. In addition, the unprecedented growth of high-tech industry and financial services, fueled by the market economy and international trade, has shifted the national attention away from the focus on rural settlement that characterized the early Zionist enterprise to urbanized activities. Cities, while still dependent on central governmental funding, are seeking to exercise greater independence in directing these funds to social and economic spheres. This is not to say that the central governmental institutions do not continue to play an important role. However, the receptivity to decentralized approaches to planning has increased in recent years—not simply in the bureaucratic, governmental sense, but also in the broadening of planning functions and responsibilities to include nongovernmental bodies and local interests. This has paved the way for participatory planning.

B. Israeli Institutionalized Participatory Planning

While the public participatory process in Israel commands widespread attention among public, as well as civic groups, its weakness lies in its overly narrow application. This is in marked contrast to the role played by public participatory mechanisms in many Western countries with much longer experience with the process.

The essential weakness of institutionalized public participation in Israel is that, in most cases, the process is limited to public comment on plans only when they are presented at the final stage. The legislative basis for this is the 1965 Planning and Building Law, which requires planning authorities to publicize projects and hear public opposition only *after* the authorities have made their choice from the options available to them, and the projects which have been crystallized await final approval.

Even at this point, the definition of “public” is narrowly limited to those who can prove a direct connection to the land in question. In addition, the Society for the Protection of Nature in Israel, an environmental NGO, also has the right to present opposing arguments at this time. This procedure (of 11th hour objection by directly affected parties) results in participation being negative by definition and is viewed by localities and developers as an obstacle to progress.

While public objections before the final stage of project approval may still result in project delay, they rarely bring about significant changes to, or cancellation of, the proposed project. Because of this lack of transparency during most of the planning process and the development of plans without early public knowledge or participation, the proposed projects often are technically and professionally impressive, but may not be implementable for lack of broad consensus among the affected parties.

The last decade has witnessed growth in the number of NGOs in Israel, accompanied both by demands for participation and by expanded use of litigation by individuals and groups of citizens and NGOs over planning projects. Such opposition often leads to unnecessary and intolerable delays. This poses the dilemma—on the one hand, greater participation is an enlightened solution, particularly on the local level, where planners and some local political leaders have taken steps to incorporate public input and participation into the planning process (on the negative side, these efforts are usually ad hoc and noninstitutionalized, taking different forms and using different methods and instruments).

On the other hand, there is a strong tendency on the part of the national government to limit the involvement of the public in planning and statutory processes. In 2002, the Israeli parliament voted to establish a new planning apparatus—the National Commission for Planning and Building National

Infrastructure. Under this law, “infrastructure” includes construction of housing projects of at least 1000 units. The new commission is to be composed of governmental representatives only, aided by a private environmental consultant, and each project must meet a timetable of specifically stipulated planning stages. Involvement and influence of the public, NGOs, and environmental agencies participating in the planning process are highly restricted. The bill also created a local construction licensing board for issuing permits for national infrastructure projects that will include two members only and with no possibility of appeal of decisions reached. (Under the previous system, appeals were possible.)

IV. PARTICIPATION IN ISRAELI PLANNING—SELECTED CASE STUDIES

Early steps in public participation that extend beyond statutory requirements were stimulated by Project Renewal—a project initiated in the 1980s as partnerships between various municipalities in Israel and American Jewish philanthropic organizations—the United Jewish Appeal and local Jewish Federations. The participation process was advanced by Israeli planning specialists who had criticized the obstacles to participatory techniques inherent in Israeli planning law (Alterman et al., 1986; Vranesky and Alterman, 1994). Another attempt was the development of community-based organizations in Jerusalem whose goal was to stimulate neighborhood social and economic development (Carmon, 1989; Forester et al., 2001). However, these efforts have had little impact to date in gaining general acceptance. They have been dependent upon short-term funding sources and the efforts of a handful of committed individuals, rather than being integrated within the country’s overall planning system.

In recent years, in response to the conflicts engendered by development proposals, a myriad of informal participatory experiments has been initiated to try to break the deadlocks between policy makers and activist citizen groups. These experiments are relatively new and ongoing. We have selected three cases: a participatory strategic planning process initiated by a regional council in northern Israel, a local prestatutory planning process in urban Haifa, and a regional collaborative land management plan in metropolitan Tel Aviv.

These three case studies were chosen because they provide a set of different venues and planning projects. They vary in the selection, inclusiveness, and size of the participatory bodies; the degree and timing of involvement in the various stages leading up to the decision-making process;

and the impact of participation upon the outcomes. The following highlights these differences:

I. Participation selection

- Misgav Strategic Plan—participation limited to invited officials and professionals of Jewish communities and selected Jewish residents. Bedouin representatives and residents excluded.
- Carmelite project—participation open to all. In addition, selected targeted outreach.
- Alexander Watershed—participation by all targeted stakeholders and by participants drawn from the general public in response to open invitation.

II. Structural role within planning process

- Misgav—participation part of formal planning process for developing comprehensive strategic master plan. Plan intended to guide statutory outline schemes to be prepared by planning professionals without further public participation.
- Carmelite—participation precedes formal planning process required for specific development project.
- Alexander—participation part of formal planning process for abating pollution and developing comprehensive strategic master plan and statutory outline schemes.

III. Nature of participation

- Misgav—participation qualified. Goals, developed by initiators prior to onset of participatory process. Alternatives formulated by initiators midway during process and offered to participants for discussion and vote without possibility for amendment.
- Carmelite—no interactive dialogue. Initiators provide specific details of the development project to which participants were invited to voice opinions without response from initiators or developer.
- Alexander—collaborative participation by initiators and other stakeholders in goal setting and formulating alternatives in developing the comprehensive strategic plan. Participation continued into drafting of statutory outline schemes. However, inability of participants to achieve consensus over the scale of open space development necessary to support pollution abatement measures magnifies imbalance of power between

other stakeholder groups and the initiators. The latter retain decision-making powers in formulating the outline schemes. As a result, passage of the outline schemes continues to be blocked in the local and district planning committees by various stakeholders.

The following table provides detailed characteristics of the three cases (Table 2).

A. Misgav Regional Council—Strategic Planning Process

In 1993, the Misgav Regional Council became one of two regional councils to initiate a strategic regional master plan with the participation of its residents. The council established a Municipal Strategic Planning Unit (MPU) with support from the Ministry of the Interior and the American Jewish Joint Distribution Committee to develop the plan. These MPUs had been set up in the early 1980s to help regional councils plan for the rapid growth of localities within the rural parts of the country, while seeking to overcome the constraints of their traditional managerial structures (Janner-Klausner, 1994).

The Misgav Regional Council and its then 20 Jewish communities were established in 1982 as a part of a national effort to expand the Galilee's Jewish population. At the start of the strategic planning process in 1993, the Misgav Regional Council had grown to approximately 29 settlements (22 community settlements, 6 communal agricultural settlements*, 1 Bedouin village, and a number of scattered Bedouin settlements with no legal status) (Misgav Regional Council, 1995). The Jewish settlements represented two-thirds of the region's population, and the Bedouin represented one-third. The small Jewish exurban communities averaged 70 families and are perched on the hills of the Lower Galilee. Their residents were attracted to the rural periphery of such nearby urban centers as metropolitan Haifa and Carmiel by the beauty and tranquility of the rural setting and the social cohesiveness offered by small-community living. Drawn from the middle-upper socioeconomic bracket, they enjoy a governance lifestyle that is highly participatory in local decision making.

While public participation was a heralded goal of Misgav's master planning process, the reality proved quite different. The structure and functions of the participation of the Jewish settlements were closely managed by government officials, while the Bedouin settlements were excluded from the process and treated in completely separate fashion.

* Five kibbutzim and one moshav, some of them already in the process of converting to community settlements.

Table 2 The Three Cases—Comparative Elements

	Strategic plan for the Misgav Regional Council 1993–1994	Carmelite Project in Haifa 2000	Alexander River Watershed Restoration 1995–current
Description of nature of project	Regional strategic master plan for ethnically mixed ex-urban region	Specific local development project initiated by religious order	Regional watershed master plan and outline schemes
Objective	To formulate a strategic plan with public participation	Elicit public opinion in order to reduce opposition	Remove pollutants, restore landscapes and ecosystems, develop a comprehensive master plan, and outline schemes for the entire river basin
Basis for selecting participants	Five focus groups and six subgroups which include council employees and residents, Bedouins excluded	Open to general public, via media	Open invitation to public; targeted stakeholder identification
The Initiators	The Regional Strategic Planning Unit funded by the Misgav Regional Council, Interior Ministry, and Joint Distribution Committee	Municipality and environmental groups	MOE, JNF, and the Emek Hefer Regional Council

Extent of integration into Formal Planning process	Informal (master plans are not statutory but serve as policy guides for the development of statutory outline schemes) Limited dialogue	Informal; demonstration project	Formal, successful at master plan; unsuccessful at local statutory outline schemes
Character of dialogue with public (deliberative?)	Provide information to authorities and also to public	Information provided to public and responses received	Deliberative
Role of public participants	Incremental stages throughout process, excluding goals, alternatives, and decision making	Preliminary, before formal process commences	Information and some negotiation
Stage of the planning process	Yes	Yes	Throughout the process, not including decision making
Was the participation prescriptive and the stages planned a priori?	No	No	No
Was there any delegation of powers? Shared decision making?			

Nearly 4% of the region's 7000 Jewish population in 1995 participated in various phases of the process—the initial brainstorming forum, working groups, and general informational meetings. However, participation was minimized or excluded from such critical stages as problem definition and alternative choices for development. Instead, the Regional Council leadership and the MPU planners decided on the goals of the plan, selected the members of the public who would participate, and the stages at which participation would occur. The public was able to critique plan components and programs, but the officials and technocrats retained veto power. Interviews with public participants (Sternberg, 1997) indicated considerable disappointment with a process that provided a “rubber stamp” for the plan, as well as with the results.

Planning for the Bedouin population, then approximately 3500, was treated in a separate, nonparticipatory process on the grounds that these encampments were not “legally authorized” settlements. In developing the plan for the Bedouins, the little participation that took place was highly manipulative. The result of planning separately for the two sectors was to sidestep one of the major challenges of the Misgav region—crafting measures that would enhance coexistence between Jews and Bedouins. This failure was keenly felt when the Israeli–Arab unrest that attended the outbreak of the Second Intifada in October 2000 hit the Misgav region especially hard.

Characteristics of the process:

- Incomplete representation of interests—Bedouins were excluded.
- Minimal flexibility—the agenda was set by local officials.
- Deliberation—limited to stages programmed by decision makers.
- Transparency only in those stages in which public was included.
- No consensus or shared decision making.
- Learning process—limited.
- Limited evidence of communicative rationality (structured negotiations among Jewish stakeholders only).
- No cultural translation of values.
- Future conflict not averted.
- Some participatory ideas picked up in current planning processes—particularly in the Bedouin communities.

Most of the Bedouin settlements have now been granted the status of legally authorized settlements, and a new planning process is currently underway which has broadened the level of participation within the Bedouin communities. While the current process is still not a comprehensive approach to planning for the Jewish and Bedouin populations in an integrated fashion, it does attempt to redress the separate treatment of the Bedouins within the master plan framework. Although ongoing participatory efforts within the

recently recognized Bedouin villages indicate that some lessons have been learned from previous deficiencies, the lack of comprehensive collaborative planning for all Misgav residents, Jewish and Arab, particularly limits the impact of Bedouin on the planning of the region as a whole. Moreover, as a consequence of their disappointment with their prior experience, a number of Bedouin communities are requesting to separate from the Misgav Regional Council and form a separate Bedouin Regional Council.

B. Haifa—Experiment in Community Participation: Carmelite Project, Preceding Formal Planning Process

In recent years, grassroots community organizations have sprung up in many parts of Israel, often to be dismissed by planning authorities and developers as “knee-jerk” opponents of all development proposals. Haifa, a large coastal city and Israel’s main port, has spread rapidly up the slopes of Mount Carmel and along its top. In addition, metropolitan Haifa sprawls northward along the coast. Both of these unbridled urban expansions endanger highly fragile environments.

In the 1990s, the speed of development sparked sharp conflicts between activist civic groups and developers. The environmental issues are multifold: preservation of the coastline and industrial pollution of its waters; dense building along the narrow crest of Mount Carmel; public demand for protecting and enhancing green areas lying in the depressions between the spurs of the mountain; and the proposed location of roadways. Conflicts between the citizens and the developers spilled over to undermine the confidence of community organizations in the desire and capacity of the city’s leaders and planning authorities to preserve Haifa’s unique environmental characteristics for present and future generations.

The response of Haifa’s mayor to public demand for meaningful participation in local planning was to initiate a pilot effort that involved the public in the planning of a large proposed development. In 2000, the mayor formed a small steering committee composed mainly of academics who had criticized the development trends, some municipal officials, an independent architect, and representatives of environmental groups. Their role was to devise participatory processes which could be applied to future policy planning. The committee chose as a pilot the Carmelite development project. This project had been proposed by the Carmelite order of monks for a large tract of land located within its property on the crest of Mount Carmel. It involved extensive land development and conversion of open space, including construction of apartment units on undeveloped land, as well as commercial, tourist, garden, religious, and educational facilities. The Carmelite site is on a prominent spur of the mountain, which affords panoramic views of the

Mediterranean, the Lower City and port, and the hills and forests of the Lower Galilee. The sweeping land-use changes proposed the historical heritage of the site and its physical and visual impact, as well as the precedent that would be established for future large developments stimulated widespread public interest in the project.

As a pilot program, the mayor and the committee designated the participatory steps to be “prestatutory.” Thus the participatory process would not displace the rights of individuals and groups under the Planning and Building Law to file objections to the plan that would be submitted to the authorities nor would it substitute for the professional evaluation procedures which would be conducted by the planning authorities and the municipality.

The participation program was composed of six stages (Gilboa and Plaut, 2001):

- Stage 1: Initial notification
Informed the general public about the Carmelite plan and its general characteristics through newspapers, internet site, and direct mailings.
- Stage 2: Presentation of the plan to the public
Organized two open assemblies to present the plan and enable the general public to voice views and objections to municipal authorities and the developer. About 700 people attended the meetings. The process was set up for unidirectional communications, no dialogue or reactions.
- Stage 3: Feedback
 - A. Published the recorded comments made by those attending the assemblies.
 - B. Distributed questionnaires to attendees to gain richer information about reactions to specific aspects of the plan, as well as to the participation process. Both sets of responses were analyzed by independent professionals, chosen by the municipal officials in conjunction with community representatives.
- Stage 4: Focused discussion groups
Five discussion groups were constituted, comprised altogether of about 100 people drawn from the neighboring areas, the city at large, environmental groups, and academic institutions.
- Stage 5: Summary document on positions and reactions of the public
An executive summary was publicized to the general public through the local media. It was also presented to the professional staff and

officials at city hall, particularly those involved in the approval and related regulatory processes, and to the members of the city council.

- Stage 6: Response by the developer and counter-response from the public

The developer prepared a response to the concerns and objections that had been voiced and to the alternative proposals raised in the participatory process. The developer's amended proposal was then presented to the Steering Committee and the Planning Authorities, spelling out the alterations made to the project plan. This response was then circulated among community groups and representatives for an additional round of responses and reactions.

The developer has since submitted a plan to the municipality incorporating selected inputs received during the process. The plan has yet to be submitted to the planning committees, and therefore it is unclear whether or not public objection to the developer's submission will be reduced.

Characteristics of the process:

- Triggered “participation by protest”—direct result of continual confrontation between citizen groups and local government
- Representation of interests—open and inclusive
- No flexibility in either the participatory or the planning processes
- Deliberation among community participants; little deliberation between participants, and the developer and local decision makers
- Transparency—partial: good information flow at onset of process, none in agenda setting or subsequent decision making
- No communicative rationality (absence of structured negotiations among all stakeholders)
- Standard operating procedures not changed, planning and policy-making culture not altered
- No shared decision making
- Still unclear whether conflict has been averted or reduced

C. Restoration of the Alexander River Watershed—Central Region

The 32-km Alexander River flows through largely agricultural land in the northern part of the Tel Aviv metropolitan area, the country's most densely populated region. The river, whose watershed spans 550 km², flows from the city of Nablus in the Palestinian West Bank to its outlet at the Mediterranean Sea, north of the city of Netanya. The basin's features include natural and built landscapes, villages, and extensive areas given over to field crops, orchards, and truck farming (Israel Ministry of Environment Bulletin, 2002).

Two central problems have plagued the river for years: pollution from a variety of domestic, agricultural, and industrial sources and development pressures in the open space surrounding the river which threaten its potential for leisure, recreation, and agriculture.

In 1995, an Alexander River Restoration Administration, a 17-member voluntary body, headed by the Ministry of Environment (MOE), the Jewish National Fund (JNF), and the Emek Hefer Regional Council, was established. Its mandate was to remove pollutants, restore landscapes and ecosystems, and develop a comprehensive master plan for the entire river basin which would define the restoration policy. This was to be carried out through 135 projects which were to be guided by planning outline schemes. The inevitable conflicts between seemingly opposing interests such as ecology, flood control, economic development, tourism, and landscape preservation were to be addressed within the framework of working groups and meetings. The aim of this approach was consensus building (Israel Ministry of Environment Bulletin, 2002).

From the outset of the preparation of the master plan, the process was open to all interested stakeholders and the general public. In terms of river pollution, stakeholders in both the Palestinian and Israeli areas worked together. The dialogue was open, yet there was a clear hierarchy of power, enabling the initiators (the MOE, JNF, and the Emek Hefer Regional Council) to set most of the agenda. When the dialogue centered around general principles, consensus was easily reached. The master plan was approved by all 17 stakeholder institutions, the planning committees, and the government. However, intense opposition built up against the detailed outline schemes that were subsequently prepared between 1997 and 1999 and were prerequisites to the according of legal status for the plan. Because of serious discussion among the stakeholders, these outline schemes, which included zoning maps and guidelines, became mired in controversy and have yet to be passed.

The major conflict involves the development of open spaces. Proponents claim that restoration of the river and its maintenance depend on the future revenues from the proposed projects. Opponents strongly oppose the scale of the developments proposed in the outline schemes, arguing that their negative environmental and ecological impacts will be irreversible. The ultimate decisions were made by the initiators, who are among the advocates of development. The participating stakeholders did not feel that they had gained a greater understanding of one another's positions and interests, nor did the process foster better working relations. The mistrust grew as the conflicts became clearer and better defined (Yona, 2003).

The process was participatory but not collaborative. As long as the issues on the agenda were general and theoretical, consensus was reached. When

the different stakeholder interests were exposed, collaboration and shared decision making broke down, and the stakeholder participants became alienated from the process. While recent efforts to improve the water quality of the river have been successful, most of the stakeholders continue to oppose the outline schemes designating the development of open spaces to support the water quality improvements. Some stakeholders feel manipulated, and the negative aspects of the participation processes endanger the positive outcomes (also achieved through participation) which have already been realized.

Characteristics of the process:

- Representation of interests—targeted to include all interested stakeholders, Israelis, Palestinians (transboundary), and general public
- Deliberative
- No flexibility—agenda set by initiators
- Transparency—yes
- Consensus building—part of the master plan, but broke down with outline schemes
- Impact of process on agencies and stakeholders both positive and negative; process intensified negative relationships among stakeholders and between them and the initiating agencies
- Potential for professionals to incorporate collaborative techniques into future processes
- Communicative rationality (structured negotiations among all stakeholders) succeeded only partially
- No shared decision making
- Process may backfire; future conflict not averted

V. CONCLUSION

A country that is highly developed, forward-looking, and democratic, with grassroots traditions of cooperation and communication in its historic land settlement process and structures, would appear to offer a promising venue for public participation and collaboration in formulating contemporary planning policies. Although Israel fits this characterization, it has thus far failed to embrace the participatory planning process wholeheartedly. The processes it has recently emulated are the traditional ones practiced in the early years of participation within Western societies which have, in recent years, been replaced by more collaborative approaches. Israel's planning policy makers and bureaucrats have, for the most part, regarded collaboration, transparency, and shared decision making as impediments to rational,

technical planning models. They continue to follow statutory laws and structures that are top-down and narrow, pursuing implementation of the planning process in ways that pay only lip service to interests of many stakeholders.

A number of factors contribute to this bias against collaboration:

1. The lingering effects of the rigidly hierarchical (British) Mandatory Planning Law, although Israel gained its independence over a half century ago.
2. The legal frameworks that are the residuals of the strong centralized and paternalistic grip over the political and economic system held by Israel's Socialist Labor Party for the first three decades of the country's development.
3. The strength of the entrenched agricultural lobby and the lobbies for the industrial and business sectors that have led to Israel's remarkable recent economic development.
4. Preoccupation of the general public and the political parties with the Arab-Israeli conflict and the debate over Israel's West Bank settlement policy, pushing concerns about public policy and environmental issues into the background.
5. Absence of a strong, independent voice from among the academicians who could provide leadership in shaping grassroots public opinion in favor of collaborative planning processes. Most have been co-opted within the existing planning bureaucracy.

That Israel lags behind West European and North American countries in embracing state-of-the-art approaches to participatory planning is not surprising. Application of such tools has to contend with the structural rigidities of Israeli planning policies. These rigidities mirror the regulatory processes common to all branches of Israeli government—the products of a highly centralized, hierarchical, and heavily bureaucratized system that leaves little room for grassroots opinion or input.

The roots of this system, whose origins hark back to the British Palestine Mandate, were deeply ingrained in the philosophy and practice of the Israel Labor movement which dominated the scene during the formative years of statehood. While political power has shifted back and forth between the right-wing nationalist Likud party and Labor during the past quarter of a century, the centralized system has undergone little change.

What makes the Israeli planning scene an anomaly in its slowness to respond to outside influences is the fact that the country and its society have been so open to forces of globalization in so many spheres of economic and social activity. Few states are as highly exposed to transnational channels of communication and scientific informational networks as Israel. It is a nation

with the highest per capita ratios of scientific papers, science/technology employees, high-tech start-ups, and university graduates. Host to branches of the world's leading high-tech research and development centers, and wide open to venture capitalists, the country has consistently supported scientific interchanges and remains on the cutting edge of innovation.

Nonetheless, Israel has failed to adopt many of the integrated and transnational approaches that have become imbedded in participatory processes within planning policies in other countries and appears to be immune to much of the diffusion dynamics such as those described by Tews et al. (2003) in their study of the spread of environmental policy regulations. Israeli policies exhibit little of the "vertical diffusion" identified by Tews et al., whereby national policy initiatives are modified through adaptation of external innovations, or of the "multilevel governance" diffusion which takes place in Western Europe where external policy innovations are directly adopted by European Union member states. Despite some innovations that have been adopted within the Israeli scene, such as the Environment Impact Statement (EIS) (adopted but not sufficiently adapted) and master planning models (a direct output of the British Mandate period, with little of the adaptations which Britain has implemented in the United Kingdom since that period), Israel remains at the "national" or "early diffusion" stage (Tews et al., 2003, pp. 7–8), rather than having moved to the more advanced stage of diffusion in which transnational influences play so striking a role in policy innovation.

The resistance of the Israeli planning and policy-making establishment to the influence of "herding" insofar as that process leads to significant policy liberalization is clear from the foregoing and other case studies. The Ministries of Interior (where planning resides) and Environment keep a tight rein on the participation processes, although they have felt obliged from a public relations standpoint to initiate them. In his work on the role of "herding" in the liberalization of the telecommunications and electricity industries, Levi-Faur (2003) observes that emulation of external experiences can be a major stimulant for policy makers in their search for policy solutions. Certainly, new technologies have speeded up the process of privatization and liberalization of regulations in much of the Western world. But planning the holistic use of space at the macro- and microlevels within Israel touches on a variety of interests and concerns that often go well beyond solutions to specific planning problems. Immigration and security, for example, are spatially rooted forces that run roughshod over planning and environmental issues, not only for national policy makers, but also for most of the general public.

Herding theory may well capture the behavior of Israeli planners. The stress of day-to-day preoccupation of policy makers and practitioners in finding solutions for housing, the attending pressures of immigration, and

managing urban sprawl, or protecting citizenry through fencing barriers and bypass roads leaves the focus on the emulation, rather than the adaptive stage of the more advanced concepts of collaborative participation.

The diffusion of planning policy innovation therefore would require not only a more flexible governance structure that gives real voice to local authorities and public input from all groups in the decision-making process. It also requires a change in focus on the part of the national government whereby improved planning policies and implementation measures become a national priority. This, in turn, will depend heavily on a change in the mindset of the Israeli public overwhelmed as it is currently by concerns for personal safety in the face of terrorism. With peace, normalized ties with the Arab states, and greater economic integration with the European Union, the diffusion of planning policy innovations is likely to escalate rapidly, as regulatory practices become liberalized in response to global socioeconomic forces and to the influences of herding. Until that time, planners who seek change will have to be contented with introducing adaptive measures slowly and on a case-by-case process.

The three cases that have been presented illustrate the obstacles that face attempts to transfer the collaborative dogma of American and European planners to the Israeli scene. The changes discussed have been adoptive, emulative, and shallow, rather than adaptive and in response to learning experiences. However, the cases also offer a note of optimism in that they point to initial efforts to emulate participatory processes which may lead to collaborative and consensus building structures adapted to local and regional planning policies.

The Israeli experience suggests that the adoption and adaptation of Western planning dogma takes time. Currently, such adaptation has to work within or around centralized statutory laws. As the overall political-economic system evolves and greater balance among national, regional, and local forces is achieved, collaboration and shared decision making is likely to become embedded within the formal planning process. At such a time, the Israeli approach could become a bridge between Western-style planning and that of Third World countries which, if they practice planning at all, now do so through highly centralized structures under authoritarian governments. Israel has long played a technical assistance role in the developing world in the fields of agricultural improvement, irrigation engineering, rural development planning, as well as in military training. In recent years, Israel has also been providing professional and technical expertise and support in the communications and other high-tech industries to former Soviet bloc East European nations which are seeking to wean themselves away from their strongly centralized planning traditions. When it improves and develops its own internal planning processes, it will be well positioned to contribute a mean-

ingful set of collaborative and participatory approaches to planning policy making elsewhere.

REFERENCES

- Alterman, R. (1995). Can planning help in a time of crisis? Planners' responses to Israel's recent wave of mass immigration. *J. Am. Plan. Assoc.* 61(2):156–176.
- Alterman, R., Vranesky, A., Churchman, A. (1986). *Participation in the Framework of the Israeli Planning and Building Law: Existing and Potential*, Technion. Haifa: Center for Urban and Regional Research [Hebrew].
- Amy, D. (1987). *The Politics of Environmental Mediation*. New York: Columbia University Press.
- Amy, D. (1990). Environmental dispute resolution: The promise and the pitfalls. In: Vig, N. J., Kraft, M. E., eds. *Environmental Policy in the 1990s: Toward a New Agenda*. Washington, DC: CQ Press, pp. 211–234.
- Arnstein, S. (1969). A ladder of citizen participation. *J. Am. Inst. Plann.* 35(4):216–224.
- Bailey, J. (1975). *Social Theory for Planning*. Routledge.
- Bregha, F. J. (1977). Further directions for public participation in Canada. In: Sadler, B., ed. *Involvement and Environment*. Vol. 1. Edmonton: Environment Council of Alberta.
- Carmon, N. (1989). *Neighborhood Rehabilitation in Israel: Evaluation of Outcomes*. Haifa, Israel: Samuel Neaman Books, Technion [Hebrew].
- Checkoway, B., ed. (1994). Paul Davidoff and advocacy planning in retrospect. *J. Am. Plann. Assoc.* 60(2):139–161.
- Connick, S., Innes, J. (2001). *Outcomes of Collaborative Water Policy Making: Applying Complexity Thinking to Evaluation*. Berkeley, CA: University of California at Berkeley, Institute of Urban and Regional Development.
- Davidoff, P. (1965). Advocacy and Pluralism in Planning. *J. Am. Inst. Plann.* 31:596–615.
- D'Estree, T. P., Fast, L. A., et al. (2001). Changing the debate about 'success' in conflict resolution efforts. *Negot. J.* 17(2):101–113.
- Elix, J. (2002). A Clash of Values—Intractable Environmental Conflict in Australia. Paper presented at Conflict Studies: The New Generation of Ideas Conference, Boston, MA, October 24–26.
- Elliott, M., Stiffler, B. (2002). Systemic and cumulative effects of collaborative planning in Florida. Paper presented at the 44th Annual Conference of the Association of Collegiate Schools of Planning, Baltimore, MD, November 21–24.
- Estrin, D. (1979). The public is still voiceless: Some negative aspects of public hearings. In: Sadler, B., ed. *Involvement and Environment*. Vol. 2. Edmonton: Environment Council of Alberta, pp. 81–87.
- Fagence, M. (1977). *Citizen Participation in Planning*. Oxford: Pergamon Press.
- Forester, J. (1992). Envisioning the politics of public-sector dispute resolution. *Stud. Law Polit. Soc.* 12:247–286.

- Forester, J. (1999). *The Deliberative Practitioner: Encouraging Participatory Planning Processes*. Cambridge, MA: MIT Press.
- Forester, J., Fischler, R., Shmueli, D. (2001). Neighborhood planning in Jerusalem: A profile of Sarah Kaminker. *Israeli Planners and Designers: Profiles of Community Builders*. Albany, NY: State University of New York, pp. 115–137.
- Frank, K., Elliott, M. (2002). Impacts of collaborative processes: Theoretical framework and literature review. Paper presented at the 44th Annual Conference of the Association of Collegiate Schools of Planning, Baltimore, MD, November 21–24.
- Friedman, T. L. (2000). *The Lexus and the Olive Tree*. New York: Anchor Books.
- Gans, H. (1991). Planning, social planning and politics. In: Gans, H., ed. *People, Plans and Policies*. New York, NY: Columbia University Press, pp. 159–168.
- Gilboa, I., Plaut, P. O., eds. (2001). *Public Participation in the Carmelite Project, Stella Maris, Haifa, Israel, June, Haifa*. Israel: Municipality of Haifa.
- Habermas, J. (1981). *The Theory of Communicative Action: Reason and the Rationalization of Society*. Boston: Beacon Press.
- Innes, J. E. (1996). Planning through consensus building: A new view of the comprehensive planning ideal. *J. Am. Plann. Assoc.* 62(4):460–472.
- Innes, J. E. (1999). Evaluating consensus building. In: Susskind, L., McKernan, S., Thomas-Larmer, J., eds. *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement*. Thousand Oaks, CA: Sage.
- Innes, J., Booher, D. (1999). Consensus building and complex adaptive systems: A framework for evaluating collaborative planning. *J. Am. Plann. Assoc.* 65(4):412–423.
- Innes, J., Booher, D. (2000). Public Participation in Planning: New Strategies for the 21st Century, Working Paper 2000-07. Paper presented at the 42nd annual conference of the Association of Collegiate Schools of Planning, Atlanta, GA, November 2–5.
- Israel Ministry of Environment Bulletin. (2002). *Restoration of the Alexander River*, pp. 22–29.
- Jackson, L. S. (2002). *Consensus Processes in Land Use Planning in British Columbia: The Nature of Success, Progress in Planning*, 57, Part 1. Pergamon Press.
- Janner-Klausner, D. (1994). Municipal strategic planning: The reshaping of Israeli local government. *Progress in Planning*. Pergamon Press. 41(3) 204–306.
- Kauffman, S. (1995). *At Home in the Universe: The Search for the Laws of Complexity*. London: Viking.
- Kraushaar, R. (1988). Outside the whale: progressive planning and the dilemmas of radical reform. *J. Am. Plann. Assoc.* 54(1):91–100.
- Lax, D., Sebenus, J. (1986). *The Manager as Negotiator*. New York, NY: The Free Press.
- Levi-Faur, D. (2003). Herding towards a new convention: On herds, shepherds, and lost sheep in the liberalization of the telecommunications and electricity industries. Conference Paper for The Workshop on the Internationalization of Regulatory Reforms, Center for the Study of Law and Society, University of California, Berkeley, April 25–26.

- Margerum, R. D. (1999). Integrated environmental management: the foundations for successful practice. *Environ. Manag.* 24(2):151–166.
- Marshall, G., Ozawa, C. P. (forthcoming). Mediation at the Local Level: implications for Democratic Governance, In: Bogason, Peter, ed. *Tampering with Tradition: The Unrealized Authority of Democratic Agency*.
- Mazziotti, D. (1974). The underlying assumptions of advocacy planning: pluralism and reform. *J. Am. Inst. Plann.* 40(1):38–47.
- McEwen, C. A. (1999). Toward a program-based ADR research agenda. *Negot. J.* 15(4):325–338.
- Misgav Regional Council, Strategic Planning Unit. (1995).
- O’Riordan, T. (1977). Participation through objection: Some thoughts on the UK experience. In: Sadler, B., ed. *Involvement and Environment*. Vol. 1. Edmonton: Environment Council of Alberta.
- Penrose, R. W. (1996). Shared Decision-Making in Public Land Planning: An Evaluation of the Cariboo-Chilcotin CORE Process, Unpublished Master’s Thesis, Simon Fraser University, School of Resource and Environmental Management, Report No. 187, April.
- Piven, F., Cloward, R. (1979). *Poor People’s Movements: Why They Succeed. How they Fail*. New York, NY: Vintage Press.
- Rabe, B. G. (1988). The politics of environmental dispute resolution. *Policy Stud.* (3):585–601.
- Sewell, W. R. D., O’Riordan, T. (1976). The culture of participation in environmental decision-making. *Nat. Resour. J.* 16:1–21.
- Shachar, A. (1996). National planning at a crossroads: The evolution of a new planning doctrine for Israel. In: Gradus, Y., Lipshitz, G., eds. *The Mosaic of Israeli Geography: At the Close of the Twentieth Century*. Negev Center of Regional Development, Beer Sheva. Israel: Ben Gurion University of the Negev Press, pp. 3–12.
- Shmueli, D. F. (1998). Housing and highway planning in Israel: An environmental debate. *Urban Stud.* 35(11):2131–3146.
- Shmueli, D., Kipnis, B. (1998). Participatory planning and ethnic interaction in Ma’alot-Tarshiha—A Jewish–Arab community. *Appl. Geogr.* 18(3):225–241.
- Sternberg, D. (1997). Public Participation Approaches in Strategic Planning in Rural Regions: Misgav and the Upper Galilee Regional Councils, Department of Geography, University of Haifa, Israel, unpublished Masters Thesis [Hebrew].
- Susskind, L., Cruikshank, J. (1987). *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*. New York, NY: Basic Books.
- Susskind, L., Ozawa, C. (1984). Mediated negotiation in the public sector: The planner as mediator. *J. Plann. Educ. Res.* 4(1):5–15.
- Tews, K., Busch, P.-O., Jergens, H. (2003). The Global Spread of Environmental Policy Regulations: diffusion dynamics as drivers, conference paper for The Workshop on the Internationalization of Regulatory Reforms, Center for the Study of Law and Society, University of California, Berkeley, April 25–26.
- Throgmorton, J. A. (1996). *Planning as Persuasive Storytelling: The Rhetorical Construction of Chicago’s Electric Future*. Chicago, IL: University of Chicago Press.

- Vigoda, E. (2000). Are you being served? The responsiveness of public administration to citizens' demands: An empirical examination in Israel. *Public Admin. Rev.* 78(1):165–191.
- Vigoda, E. (2002). From responsiveness to collaboration: Governance, citizens, and the next generation of public administration. *Public Admin. Rev.* 62(5):527–540.
- Vranesky, A., Alterman, R. (1994). Citizen participation in planning: The law, administrative rules and the opinions of decision-makers. *Ir Ve-'ezor (City Reg.)* 43:123–150 [Hebrew].
- Weeks, E. (2000). The practice of deliberative democracy: Results from four large-scale trials. *Public Admin. Rev.* 60(4):350–362.
- Yona, E. (2003). Typology of Collaborative Natural Resource Management Processes: Alexander River Restoration—Participatory or Collaborative? Department of Geography, University of Haifa, Israel, unpublished Masters Thesis [Hebrew].

17

Political Participation and Market Citizenship in a Global Economy

*The European Union in Comparative Perspective**

Ian Bartle

University of Bath, Bath, UK

I. INTRODUCTION

Markets are extending their reach into more and more areas of modern life. Most areas of the economy are now subject to competition and the market is increasingly encroaching into government and public administration. Beyond the nation state, globalization and regional integration are distinctive trends of our time and the market is a dominant feature of these trends. At the same time, national, transnational, and global citizenship and participation, together with notions of transnational and global civil societies, have emerged as prominent political themes.

Prima facie, however, the rise of the market does not appear to be a fertile ground for the development of citizenship and political participation. The rise of market methods in government, the “new public management” (NPM), has been accompanied by a change in the role of the citizen to a business-like “customer” or “client” (Vigoda, 2002; Box, 1999). The emphasis in NPM is on “responsiveness to citizens as clients” rather than “collab-

*The author wishes to acknowledge funding from the ESRC project “Strategies of Civic Inclusion in Pan-European Civil Society” as part of the “One Europe or Several?” programme (Research Grant: L213252022).

oration with citizens as partners” (Vigoda, 2002). At best, it seems that the values of “collective citizen deliberation and public interest are secondary” and will reduce the opportunities for collective decision making by citizens (Box, 1999, p. 20). The idea of equal rights for all is at the heart of citizenship, yet rights in markets are limited to economic actors and are dependent on financial status. Citizenship and participation, in contrast, are political concepts in which all individuals have rights irrespective of economic status. Citizenship and political participation therefore appear to clash with markets, and, as markets develop, they would appear to be more and more difficult to establish. Moreover, markets are becoming more global, but despite the rise of global civil society, the notion of citizenship is conventionally perceived as a national concept in which membership of a national community is the principal defining feature. Also, civil society and citizenship, on one hand, and markets, on the other hand, are often seen as separate spheres of human activity—the former being a collective, communal, and nonprofit-oriented activity, and the latter being individualistic and profit-maximizing (Keane, 2003, p. 75).

Yet markets and participation and citizenship are not necessarily incompatible opposites; they can be complementary and have close linkages. It is possible in NPM, for example, to argue that responsiveness to customers and collaboration with citizens can be complementary processes (Vigoda, 2002). Also, while noting the threat of economic thinking to public service values, Box (1999) argues that there are ways of preserving public service and citizenship values within a market environment. Although contemporary global capitalism is commonly perceived as “disembedded” from social and political institutions, it has been argued that even in the current globalizing world, markets and civil society are mutually dependent (Keane, 2003, pp. 75–90). With regional economic integration and globalization, there is also pressure for the enhancement of citizenship and participation in political processes and some manifestations of the creation of new processes of citizenship and participation in a market environment.

Although citizenship is traditionally a national concept, more and more transnational and cosmopolitan concepts of citizenship have been articulated (Bellamy and Warleigh, 1998). The most developed examples of these processes are in the European Union (EU). The expression “market citizenship” has been coined to signify EU citizens’ rights, which stem from the Treaty of Rome and the single market and have developed beyond economic actors to include all citizens (Downes, 2001). Also, the single market program and increasing economic integration in the 1990s have led to pressures for more participation in the policy and regulatory process. In recent years, there have been initiatives, most notably associated with the Commission’s White Paper on Governance published in 2001 (Commission, 2001a), to enhance the

participation of societal groups such as representatives of consumer and environmental interests. In other world regions that are experiencing economic integration, there are also some nascent trends toward greater participation, particularly of civil society groups.

A number of questions arise: Can the pressures for increased participation be clearly linked to increased economic integration in Europe? What mechanisms are proposed for enhancing participation and what prospects do they offer? Are similar processes evident in other integrating world regions? This chapter explores the ways in which markets may lead to pressures for greater citizenship and participation. It examines the manifestations of participation and citizenship, which have derived from markets particularly in the EU but also briefly in other world regions. The chapter commences by considering the connection between citizenship, participation, and markets. It looks at manifestations of these connections in the form of EU “market citizenship” and the role of the citizen–consumer in the regulatory state. “The European Single Market, Participation, and the White Paper on Governance” section examines how these processes operate in the EU’s single market with specific focus on the ideas detailed in the Commission’s White Paper on Governance. “Economic Integration, Participation, and Other World Regions” section then looks at the extent to which these processes are evident in other world regions in which economic integration is developing. It is concluded that economic integration and new markets do lead to pressures for more political participation, but the manifestations are highly dependent on the political and institutional context. A rather pessimistic conclusion about the effectiveness of new forms of transnational participation is drawn, but these conclusions are not unexpected given not only the lower level of institutionalization of transnational governance but also the problems of fostering authentic political participation at national level.

II. CITIZENSHIP, POLITICAL PARTICIPATION, AND MARKETS

In Marshall’s (1950) classic formulation, citizenship starts from civil rights and moves to political and social rights. At the core of this schema is the notion of rights. Civil citizenship confers equal legal rights—rights such as private property and freedom of speech. Political citizenship involves the right to vote in elections and to serve in legislative and executive political authorities. Social citizenship involves the right to certain standards of economic and social welfare. As well as the notion of “citizenship-as-rights,” two other concepts sit at the heart of traditional ideas of citizenship: “citizenship-as-belonging” and “citizenship-as-participation.”

The notion of belonging, or membership of a community, particularly the nation state, is a defining feature of traditional citizenship. Nationality determines citizenship and, outside the nation state, citizenship has no meaning (Kuhnle, 1991). In recent years, however, concepts of citizenship, which transcend the nation state, have emerged. The emergence of “cosmopolitan citizenship” and a “global civil society” is connected with the decline of the nation state as the central political unit and the rise of subnational and transnational political units (Delanty, 2000; Keane, 2003). This, together with globalization and global problems such as environmental damage and weapons of mass destruction (Rotblat, 1997), has created a strong foundation from which postnational ideas of citizenship have developed. A “cosmopolitan globalist” perspective stresses rights and justice as opposed to membership and identity as in nationally centered ideas of citizenship (Bellamy and Warleigh, 1998). The EU is an arena in which a particularly strong set of postnational ideas of citizenship has emerged. The EU, however, is often conceptualized as a “mixed polity” and, likewise, a mixed conceptualization of citizenship, which stresses both the communitarian and membership aspects of national citizenship and the rights and justice aspects of cosmopolitan citizenship, is appropriate (Bellamy and Warleigh, 2001).

The notion of participation is an aspect of Marshall’s political citizenship, but participation has become much more central in contemporary ideas of citizenship. The possibility of political participation by citizens is particularly manifest at local level. Box (1997, p. 2) deploys the term “citizen governance” to denote a process of local government that attempts to balance efficient service provision with “democratic processes, which allow citizens to govern their communities.” For practical reasons, participation by citizens seems particularly appropriate at local level, less so at national level, and almost not at all at transnational level. However, one response to the legitimacy problems within the EU is for the enhancement of civic inclusion and political participation. With the growth of transnational governance within the EU, new forms of civic inclusion and participation may be able to guarantee political legitimacy, social cohesion, and effective government. Participation, in the sense of increased electoral rights for EU nationals and nonnationals in all EU countries, has also been stressed (Day and Shaw, 2002), whereas the participation of nongovernmental organizations (NGOs) within the EU policy process is seen as a way of bridging the gap between the EU and its citizens (Warleigh, 2001).

A. The European Single Market and Market Citizenship

In all these concepts of citizenship, the connection with markets is not explicit. There is, nevertheless, a correlation between the trends of globalization and

regional integration of the late 20th century and the emergence of transnational ideas of citizenship (Keane, 2003). "Market citizenship" is one particular concept that has emerged in the EU, which clearly links markets with citizenship within a transnational environment. This concept encapsulates the apparent paradox of the economic concept of the market and the political concept of citizenship. The expression has been coined to signify EU citizens' rights, which stem from the Treaty of Rome and the single market. The expansive interpretation by the European Court of Justice (ECJ) has led to rights developing beyond economic actors to include all citizens (Downes, 2001) and EU political citizenship because the Maastricht Treaty owes much to the "legacy of the market citizen" (Everson, 1995).

The narrow basis of market citizenship in the EU, however, can be interpreted negatively. Everson (1995) argues that with such limited foundations, attempts to broaden the conception of EU citizenship are doomed to fail. The Treaty of Rome prescribes a number of rights to citizens of EU member states, which are based on being an economic actor in the common market. From the four freedoms of the common market (freedom of movement of goods, services, capital, and persons) derive a number of rights that apply to citizens of EU member states. On this economic basis, market citizenship is limited firstly by its exclusiveness. That is, in contrast to most contemporary political notions of citizenship, it extends only to the citizens of EU member states who are economic actors and participants in the European single market. Second, market citizenship only extends to "citizenship-as-rights," whereas contemporary notions of citizenship also stress "citizenship-as-participation." The attempts to create a political notion of EU citizenship seem to be highly constrained by the notion of the market citizen (Everson, 1995). In the Maastricht Treaty, a bold attempt was made to establish a status of EU citizenship, which applies to all citizens of the member states. Yet Everson argues that this is very limited as the primary rights are those of mobility within the EU, which pertain primarily to the market citizen. Broader political rights, such as those of participation, are very much secondary and limited. The attempt to create a political idea of EU citizenship is therefore very much constrained by the "troublesome legacy of the European market citizen" (Everson, 1995, p. 87).

However, a more positive view of market citizenship can be postulated. Market citizenship, although in itself is a very limited idea from the 1960s to early 1990s, seemed to have developed far beyond a limited economic concept of citizenship, thus appearing to have the capacity to grow beyond itself toward something akin to political citizenship. A significant way by which this has occurred is by expansive interpretation by the ECJ of the social policy provisions relating to employment law in the Treaty of Rome. Since the 1970s, there have been a number of cases, principally based on the free movement of

persons, which have expanded the legal notion of citizenship rights from the restricted group of economic actors to all citizens of EU member states (Downes, 2001). This movement from the exclusive category of economic actors toward the inclusive category of all citizens takes the notion of citizenship from the needs of the market (the market citizen) toward an incipient form of EU citizenship:

Although the rights are built upon the foundation of economic activity, and so can be described as “market rights” or rights pertaining to “market citizenship,” their extent and implementation by the ECJ goes far beyond the needs of the integrated labour market. (Downes, 2001, pp. 96–97)

At the very least, it appears that the ECJ has the capacity to extend the rights of the market citizen to something like that of a political citizen.

There is a stronger foundation than court judgements, and pressures for citizenship rights can grow out of the process of market creation and the political and institutional context. It is particularly the difficulty of separating the economic sphere of life from the social and the political that means that economic forces can have social and political reverberations. This idea rests on one of the central aspects of political economy, which is that “economic action is embedded within dense networks of social and political institutions”; thus social and political issues cannot be isolated from the economic issues (Leibfried and Pierson 2000). At the EU level, the single market, which is supranational, and social policy (and citizenship), which is predominantly national, also cannot be neatly segregated. The political context has proved important for ECJ activism and judgements. Downes, for example, argues that the motive force behind the development of the market citizen “has more to do with the ECJ’s recognition of the EU’s need to win the hearts and minds than it has to do with any direct economic imperative” (p. 97). Because the Treaty of European Union (agreed in 1991) provided a treaty basis for a more complete notion of citizenship and appeared to herald stronger political advocacy of union citizenship, the ECJ has reined back its proactivism. In the development of social policy in the EU, it is not the court alone but the process of market creation and the institutional environment as a whole which lead to pressures for increased rights of citizenship. Although EU social policy is limited in its scope and effects compared to national social policy, Leibfried and Pierson (2000, p. 268) argue that “the economic and institutional dynamics of creating a single market have made it difficult to exclude social issues from the EU’s agenda.” The development of EU social policy has been linked to economic pressures, and social policy issues such as gender equality, health, and safety, and labor mobility are closely allied with citizenship.

B. The Regulatory State and the Citizen–Consumer

The connection between markets and citizenship is not confined only to transnational developments. The rise of competition and new markets is part of a general Europe-wide phenomenon of the regulatory state at national level (Majone, 1994, 1997), and there are pressures for greater citizen rights and participation that derive from the citizen as a consumer. These pressures can be understood from an examination of the shift from the “interventionist state” to the “regulatory state,” which involves economic and institutional dynamics. In the interventionist state, accountability and legitimacy could be achieved (if not necessarily adequately) by ministerial responsibility and parliamentary accountability. The traditional relationship between the state and citizen in public administration was based on public service and trust (Haque, 1999). Less salient were citizens’ political rights of public accountability and participation. In the utilities in Britain, for example, traditionally there was some limited representation of consumer issues in the utilities with varying forms of consumer councils, but they were weak and legitimacy was highly dependent on parliamentary accountability (Thatcher, 1998). In the new regulatory state, like the “new public management,” legitimacy and accountability are principally achieved by competition and business-like practices, which are perceived to lead to the delivery of better services. Citizens’ rights are principally limited to being an active consumer making choices in a competitive market place (Prior et al., 1995, p. 15). The utility industries are an excellent example of this transformation; once nationalized monopolies, they are now mostly privatized and operating in competitive markets.

The regulatory state, however, may pose a threat to the achievement of legitimacy because of the privatization of provision, and the delegation of responsibilities by ministers to technocratic agencies and individual market rights may be insufficient. There are questions about whether the new relationship between the state and the citizen in relation to public services is adequate (Haque, 1999). One fundamental problem of the notion of “citizens as consumers” is that the ability to pay becomes central to the relationship. In the utilities, there are doubts about whether the citizen only as consumer is adequate for the provision of essential services when competitive markets often tend to favor economically strong consumers (Graham, 2000; Ernst, 1994, p. 192).

However, traditional ways of achieving citizens’ rights, accountability, and legitimacy are being reshaped to suit the regulatory state and offer the possibility of enhanced notions of citizenship, particularly citizenship-as-participation. New roles for achieving legitimacy and accountability can be envisaged by enhancing the role of the citizen, as a consumer or environmental interest, in the regulatory process. As a result, pressure could arise for

both new citizenship-as-rights and citizenship-as-participation. Citizenship-as-rights could include, for instance, the entitlement to an affordable service or to consumer information on products and services (Sauter, 1998). Citizenship-as-participation could also extend to the right of participation in the regulatory process. The latter might be practically realized through public interest groups (PIGs) representing citizens' interests, such as consumer or environmental interests, having a significant role in the regulatory process.

In Britain, there is some evidence of new markets creating pressures for a more participatory form of regulation and the institutional tradition playing an important role in structuring new forms of participation. The rapid shift toward a market-oriented regulatory state has left systems of accountability and legitimacy with much "catching up" to do (Graham, 1998). In the 1990s, a crisis of accountability in regulation, with questions about service quality and those responsible, was perceived and led to questions about the new model. The neoliberal approach to the problem is that citizens are consumers in markets and the problems will subside when fully competitive markets are established. This catching up, however, could involve alternatives or complements to the promotion of competition based on new systems of citizenship in regulation. Ernst (1994) suggests a "social citizenship" approach to utility regulation, which recognizes collective rights as well as individualist consumer rights and argues for a more active role for regulators in promoting these rights. A policy response of the Labour Government since 1997 has been to draw from the British tradition of consumer councils in the utility industries by attempting to strengthen the role of the consumer, increase regulatory transparency, and open access to information. The proposals, enacted in the Utilities Act 2000, contain elements of citizenship, which include the strengthening the rights of disadvantaged consumers and ensuring that all can benefit from competition (Graham, 2000, p. 148), and proposals for strengthening the role of consumer councils, by creating statutorily independent consumer councils, suggest the possibility of increased citizen participation.

In Europe, however, there are different ways of legitimizing the regulatory state, indicating the importance of political and institutional contexts (Lodge, 2001, 2002). In Germany, for example, the creation of new markets in the utility industries such as energy and telecommunications is much more recent than in Britain, so pressures for more participation are not as established. So far, it appears that the institutional environment will lead to a different system of responding to citizens' interests. Forms of consumer representation do not form part of the administrative tradition in Germany as in Britain. The tradition is more legalized, and processes of litigation and court judgements play a much more central role in establishing rights vis-à-vis markets in Germany.

C. Economic and Institutional Dynamics

Within the ideas of both market citizenship and the citizen as consumer, economic and institutional dynamics are essential elements in the emerging forms of citizenship. In relation to EU market citizenship, the *economic dynamics* of market creation can lead to spillover pressures, whereby economic changes can have negative social effects and lead to pressures for positive social policies involving stronger notions of citizenship. The responses of various social actors can then put pressure on the member states and European institutions for social policies at EU level. In utility regulation, the dynamics of the privatized markets and consumer expectations can lead to pressures for more participation and greater rights. Secondly, the *institutional dynamics* of the EU can lead to more social policy. Falkner (1998, pp. 200–204) argues that a historical institutionalist framework is necessary to understand the development of EU social policy. It is not only the judgement of the ECJ which can develop social policy, nor just the activism of the commission, but also the Council of Ministers, which can develop an EU interest and act as “more than an assembly of autarkic national ministers” (Falkner, 1998, p. 201). The pressures for an enhanced EU citizenship emerging from a limited market citizenship can therefore be perceived as arising from the development of the single market and its institutionalization.

The recent developments of the EU’s single market appear to bring together the above trends of market citizenship in a transnational environment and the regulatory state. “The European Single Market, Participation, and the White Paper on Governance” section examines these trends and the emerging proposals for greater participation, particularly associated with the commission’s White Paper on Governance.

III. THE EUROPEAN SINGLE MARKET, PARTICIPATION, AND THE WHITE PAPER ON GOVERNANCE

The creation and completion of the single market is one of the most significant projects of European integration, and its regulation is an important dimension of the EU policy process (Majone, 1996). Much of the development of the single market parallels the rise of the regulatory state and the liberalization of key industries in Europe. We therefore have what appear to be very good economic and institutional conditions for the development of pressures for more participation—not only are new markets being created, but their regulation is conducted within the EU’s highly institutionalized system. The EU’s single market has been developing for many years and, correspondingly, there have been pressures for more participation of public

interests for many years (e.g., consumer and environmental groups) (Wallace and Young, 1998). Although public interests such as consumer and environmental groups have become more involved at EU level (Greenwood, 1997), one of the main obstacles to greater participation is the relative weakness and lack of resources of public interests. For example, on commission committees, environmental interests are often lone and weaker voices who have not been able to prepare adequately in comparison to industry interests. The environment directorate notes that in response to policy proposals, it can get swift and detailed responses from industry in ways that environmental interests cannot match (Interview with DG Environment, 2002). Environmental and consumer interests also complain that some Directorate Generals (DGs) such as agriculture and enterprise are rather closed (Interview with EEB, 2002; Interview with Euro Coop, 2002). There is, therefore, a constant refrain that the voice of public interests toward the commission is weak and needs empowering in some way.

The European Commission's White Paper on Governance issued in 2001 represents a clear and thorough statement of the problems and offers some solutions (Commission, 2001a). One of the key aspirations of the paper is "better involvement and more openness" (p. 4), and a key principle of good governance is "wide participation throughout the policy chain—from conception to implementation" (p. 10). These were reflected and developed in two commission working groups on "better regulation" (Commission, 2001b) and on "consultation and participation of civil society" (Commission, 2001c). The solutions focus on participation by some form of empowerment of public interests, or more specifically involvement and empowerment of civil society. This is also linked to citizenship as civil society is seen as offering a bridge between EU institutions and the citizens. Some possibilities for enhancement of participation include coregulation, greater institutionalization of civil society [e.g., in the Economic and Social Committee (ESC)], and improvements on existing forms of consultation with the commission in the regulatory and policy process. One particular regulatory approach suggested is "coregulation," which, with echoes of Ayres and Braithwaite's (1992) "responsive regulation," is seen to promote inclusion and involvement of "stakeholders," while being flexible and effective. The empowerment of public interests in regulation is an established idea to promote participation (Ayres and Braithwaite, 1992). Ayres and Braithwaite envisage an enhancement of participation in the regulatory process (p. 17) by empowering the citizens by giving them the right to participate in local area decision making and in public interest associations up to the national level. They envisage a form of "tripartism" in which "PIGs" would be empowered in regulatory decision making. They are reluctant to define exactly who the PIGs are but envisage the likes of environmental, social, and labor interests. Perhaps the

most significant public interests, in industries such as the utilities, are consumer and environmental interest groups.

A. Coregulation

Coregulation and a related concept, “enforced self-regulation,” are two means suggested to achieve flexibility and to enable greater participation in regulation (Ayres and Braithwaite, 1992). The essence of “coregulation” can be understood from the prefix “co,” which is used to signify “jointly,” indicating that there are at least two parties involved in the formation and implementation of regulation. The two parties may be the regulated party and the regulatory agency; it may involve a group of regulated parties such as industry associations and the regulator, or it may involve the regulated party and other interested and affected interests such as public interests. The term “stakeholder” is often used to define members of the group who are either affected in some way, either directly, by regulation, or indirectly, by being affected by the conduct of the regulated. In practice, coregulation often means the involvement of stakeholders or groups representing civil society. For the UK telecommunications regulator OFTEL, for example, coregulation involves the participation of OFTEL in stakeholder groups (OFTEL, 2001). These can be when OFTEL backs stakeholder-led initiatives through statutory backup powers, and when OFTEL participates in stakeholder groups in the development and implementation of regulation. The European Commission, in relation to the White Paper on Governance, notes that “coregulation is an approach in which a mixture of instruments is brought to bear on a specific problem, typically involving both primary legislation and self-regulation, or, if not self-regulation, at least some form of direct participation of bodies representing civil society in the rule-making process” (Commission, 2001b, p. 6).

There is, however, a breadth and a certain fuzziness in the idea of coregulation. Two aspects, which have different objectives and are of especial importance for citizenship and regulation, can be discerned. The first aspect stresses efficiency and effectiveness. In this aspect, flexibility and having a mixture of regulatory tools available are necessary, and these can involve some kind of combination of self-regulation and statutory regulation. The aim is to achieve some of the objectives of “better regulation” noted in the White Paper, such as proportionality, proximity, and timeliness. The second aspect focuses on inclusiveness and participation, and involves the participation of various stakeholders in the various stages of regulation. With the involvement of public interests as stakeholders, this is closely connected to participatory notions of citizenship and democratic legitimacy. These two aspects are not necessarily incompatible, but they do appear to be rather odd

bedfellows and conflicts may well arise. Both aspects are stressed in the introduction to the White Paper and the working paper on regulation, but it is open to question as to whether both objectives can simultaneously be achieved.

The aspects of coregulation, which stress inclusion and participation, seem to offer the potential for the development of a participatory system of regulation. However, among European civil society groups, such as EU level environmental and consumer groups, there is skepticism about the commission's ideas of coregulation. A concern is that the force of law will be diminished and, with it, the environmental and consumer interest. For example, the European Environmental Bureau (EEB), which has represented eight environmental groups on governance issues, notes that voluntary agreements on regulation may lack the strength and breadth of applicability compared to regulations based on statutory law (Interview with EEB, 2002) and the pressure on governments to create strong regulatory bodies might also be reduced (EEB, 2001). Enforcement is also a concern of the European consumers group BEUC, which argues that the level of commitment to coregulatory agreements may vary significantly and that the diminution of the statutory dimension may encourage free riders who are not party to agreements (BEUC, 2002).

The multinational environment and variable political and legal contexts of the EU also militate against coregulation, particularly the implementation of coregulatory agreements. BEUC, for example, notes that coregulation agreements will not bind all market players and the legal status of such agreements may vary from country to country with corresponding variations in the implementation (BEUC, 2002, p. 9). Cross-national political differences are also noted by the EEB. In The Netherlands, for example, a country with relatively high environmental standards and awareness, industry knows that if voluntary agreements and related processes such as benchmarking fail, political pressure will soon rise for strong legislation (Interview with EEB, 2002). The same cannot be said about some other European countries, nor, importantly, about the EU as a whole, where there is less political consciousness.

Participation in coregulatory bodies is also seen by civil society groups as problematic. A problem is the high level of resources required for committed participation in such bodies. BEUC, for example, notes that the "level of resources required on both sides would in itself prevent coregulation from becoming a general or common method of rule making in the Single Market" (BEUC, 2002, p. 9). Environmental groups go further and emphasize the massive asymmetry in resources between industry and themselves (Interview with EEB, 2002; Interview with Greenpeace, 2002). Not only is industry well established in standards organizations, but they are able to

produce much more substantially developed proposals. Environmental interests could therefore be very much weaker partners in these bodies.

There are also concerns about the closed nature of coregulatory processes. Although environmental groups would like coregulatory bodies to be more transparent, they are concerned about being co-opted in to the process and possibly losing public support. This point is echoed by the European Citizens Advisory Service (ECAS), which notes that a process of regulation, which is drawn up by stakeholders, could reinforce the general impression that the process is dominated by a closed elite group (Interview with ECAS, 2002). If the aim is connecting the EU, its policies, and regulations with the citizens, then there is a problem of membership of coregulatory bodies and who writes the rules. In addition, questions such as who selects the members and how easily members are replaced in response to citizens' concerns are raised by public interests. The commission argues that coregulation agreements will only apply when the decision to be made is relatively technical and uncontroversial (Commission, 2001b), apparently justifying a closed process. However, although some decisions may be uncontroversial, as ECAS points out, the same decision which is uncontroversial in one area may turn out to be highly controversial in another (ECAS, 2002). How is the public to know when decisions become controversial? Are they to depend on the vigilance of underresourced public interest groups?

B. The Economic and Social Committee

A second possibility for the enhancement of participation in policy making is to exploit an existing institution of the EU, namely, the ESC. The ESC is an advisory body, which is a forum for dialogue and represents various economic and social interest groups in the EU policy process. Its original role was the facilitation of dialogue between the so-called "social partners" (i.e., business and trade unions), but has expanded in recent years to encompass a wide range of social interests—organized civil society. It claims to be "the representative of organized civil society in the EU political and institutional system" (ESC, 2001, p. 2) and to offer "a bridge between Europe and its citizens" (ESC, 2002). More specifically, the ESC could operate as a focal point for the development of coregulation agreements, which could strengthen public interests by formalizing their role and improving information provision.

The expansion of the ESC in itself is an indication of the way in which economic and institutional dynamics can create pressures for more participation. The development of the single market in Europe cannot be limited only to producer interests, but also affects a broader range of public interests. Also, the existing institutional arrangements are often drawn on and devel-

oped—in this case, a broadening of the role of the ESC and the possibility of an enhanced role in regulation. Again, it can be asked how the possibilities of an enhanced role for the ESC would affect public interests and what their opinion is.

However, like coregulation, civil society groups doubt the effectiveness of the role of the ESC in this way. Although the benefits it offers in terms of putting forward opinions, information provision, and networking are noted, consumer interests do not see it as an effective solution for the effective participation of civil society (Interview with Euro Coop, 2002; BEUC, 2002). BEUC, for example, is “strongly against” the use of the ESC as a means of connecting civil society to the EU because of the diversity of interests involved (BEUC, pp. 4–5). Environmental interests also oppose the use of the ESC to represent civil society, seeing it primarily as a forum for the social partners to engage in dialogue, and environmental interests would rather engage directly with the decision-making institutions (EEB, 2002). Similar opinions are voiced by ECAS on the potential of the ESC to offer a bridge between the EU and the citizens. ECAS argues that, rather than having an advisory institution acting as a focus for civil society, the decision-making institutions should be more proactive in reaching out not only to civil society organizations but also to citizens (Interview with ECAS, 2002).

C. Better Consultation

A third possibility for the enhancement of participation, which again exploits existing institutional processes, is to improve the processes of consultation between the commission and civil society interests in the policy process. Better consultation, transparency, and information provision by the decision-making institutions throughout the policy cycle are the strongest and most consistent messages that come across from consumer and environmental interests. Greenpeace, for example, notes that although there are public hearings and formal consultation processes, these are not sustained throughout the policy process (Interview with Greenpeace, 2002). Some interests (e.g., local or regional governmental bodies) which are sometimes supportive of stronger environmental policies in the formal consultation processes are not active, nor called on at other crucial times. In the crucial stage of drafting of proposals, for example, consultation processes are informal and dominated by the stronger lobbyists. Both consumer and environmental interests note that some DGs tend to favor industry, particularly at decisive times in the policy process (BEUC, 2002, p. 5; Interview with Euro Coop, 2002; Interview with Greenpeace, 2002). The commission does, of course, dispute a systemic bias; nevertheless, they do say that they receive faster and more detailed responses from industry at crucial stages. Also, “better and faster regulation”

is routinely stressed by the commission, but as ECAS notes, there can be good reasons why the legislative process should not be too quick, particularly to enable all interests to be involved (ECAS, 2002, p. 6). Another complaint of these interests is the closed nature of the council. The EEB calls for the end of secrecy in the council with publicization of debates or actions (EEB, 2002) and BEUC bemoans the “closed shop” culture of the council at all its levels and the nondisclosure of working documents and agendas (BEUC, 2002, p. 4).

Inclusiveness therefore could be improved by a comprehensive, sustained, and committed thrust to develop and implement high standards of consultation in terms of timing, with whom and how. This would involve the identification of the affected interests at the outset of the policy or regulatory proposal, and a commitment to sustained participation of the interests. The identification of affected interests is not easy; interests themselves are not always sure of the significance of a policy proposal. One technique to aid the process would be to extend the use of regulatory impact assessments, which has been called for by consumer organizations. The UK’s National Consumer Council (NCC), for example, argues that the costs and effects, including spillovers, of all policies should be examined thoroughly (NCC, 2002). They suggest a two-stage process with an early general review and a more detailed full assessment when the policy is more developed. Clearly, this could contribute to identifying the affected interests early in the policy process and making consumers better-informed. In mid-2002, the commission responded by proposing initiatives on better consultation and extending its impact assessment to all social, economic, and environmental areas (Commission, 2002). It is too early to say whether these initiatives will represent a small, and perhaps reluctant, incremental step, or whether they will show real commitment to participation.

IV. ECONOMIC INTEGRATION, PARTICIPATION, AND OTHER WORLD REGIONS

In the EU, therefore, there are clearly many ways in which participation could be enhanced, although not all of them are appropriate and effective. The pressures for participation and the variety of possible forms are clearly linked to economic integration and the high degree of institutionalization in the EU. The EU is one of several instances of regional economic integration in the world, and, as the most developed and institutionalized, is sometimes seen as “a paradigm for the new regionalism” (Schulz et al., 2001, p. 22). This raises the question as to whether similar processes can be observed in other regions of the world. On one hand, this may seem unlikely given that no other world

region appears to be following the EU's high degree of institutionalization and quasi-state political form (Schulz et al., 2001, pp. 250–266). The development of the “market citizen” to something akin to political citizenship was very dependent on judgements of the supranational ECJ, with powers over national law unique to the EU. On the other hand, it has been argued above that economic integration, which is also taking place in many regions outside the EU, can lead to pressures for more participation by a wide range of interests. Also, civil society and global governance have become significant themes in contemporary international political economy with linkages to globalization (Keane, 2003; Scholte, 2002), indicating that the pressures for participation are likely to be evident in many world regions.

The North American Free Trade Association (NAFTA), like the EU, is centered on developed countries and, like the rejuvenation of the EU since the mid-1980s, is an example of “new regionalism.” Economic integration based on promoting free trade is at its core, but unlike the EU, it lacks any substantial political structures that could provide obvious targets for civil society actors to participate. The creation of NAFTA was very much accomplished by intergovernmental negotiations and participation only by business elites (Marchand, 2001). Nevertheless, it has proved impossible to separate the economic sphere from spilling over into other areas such as the social and environmental areas, and it has triggered off significant activism of a wide range of civil society interests. Rather than participation in the NAFTA process, this activism—which consisted of interests such as environment, consumer, social interests, and labor, as well as some right-wing interests concerned about U.S. primacy and possible loss of some sovereignty—was primarily focused on opposing the NAFTA system. Although much of this activism was U.S.-oriented, there was a significant strengthening of transnational activism. In contrast to the EU where the regional framework is established and broadly accepted, most of the activism has been against the NAFTA agreement in itself. Nevertheless, civil society opposition did manage to get the Clinton Administration to negotiate some concessions to labor and environmental interests (Marchand, 2001, p. 206). Economic integration has therefore triggered activism of national and transnational civil societies in North America, but the form of integration, based on free trade and minimal institutions, has meant that the activism has primarily been oppositional, rather than aiming at greater participation and incorporation.

In other world regions, trends of economic integration and civil society activism and pressures for participation can be discerned. Expectantly, however, institutional and political variations mean that there are substantial cross-regional differences in the development of these processes (Schulz et al., 2001). In the Association of South East Asian Nations (ASEAN), for example, there are some nascent tendencies toward transnational activism,

for example, in relation to the environment that is affected by economic development. Although noted as the “absent friend” of regional integration in southeast Asia, there is a small but discernable increase in national and transnational activism by environmental interests in the region (Öjendal, 2001, pp. 162–164). The political priority of the region is one of nation building, which tends to militate against extensive transnational activism and the development of institutions, which could be the focus of that activism.

At the world level, particularly in relation to forums such as the United Nations (UN) and the World Trade Organization (WTO), processes of economic integration and pressure for greater participation by civil society are also evident. The global market is not proving to be an economic process that is hermetically sealed from other activities in society, but is a process leading to greater transnational societal links, and citizens are becoming more interconnected across the world (Edwards, 2002). This is eroding closed and elite systems of global governance in which a diverse range of interests in civil society is seeking more inclusion and participation. Existing institutions also provide a focal point for such aspirations for inclusion. In the UN, for example, the Economic and Social Council (ECOSOC) has been established for many years, with some NGOs having consultative status (Alger, 2002, p. 95). A wider range of civil society interests, increasingly from areas outside of Europe and North America that have tended to dominate, is pressing for greater involvement in the ECOSOC. Some parallels with the EU are also evident (e.g., for fairness and access, there needs to be a structuring of the process of involvement, but at the same time, there is an awareness of becoming too bureaucratic and rigidly organized) (Edwards, 2002, p.74). At the WTO, there is also similar pressure for inclusion, which has developed notably since the mid-1990s. In the agreement in 1996 establishing the WTO, specific reference was given to NGOs and their role vis-à-vis the WTO. Continuing subsequent pressure has led to recent initiatives to improve relations with NGOs such as regular briefings for NGOs, more opportunities to present position papers, and observer status at dispute resolution proceedings (WTO 2003).

V. CONCLUSION

This chapter has presented evidence that economic integration and the emergence of new transnational and national markets can create pressures for political citizenship and participation. These processes are distinctive in the EU: the narrow idea of the “market citizen” in which economic actors exercise market freedoms has expanded and developed into something more like political citizenship, and the increasing economic integration in the 1990s

has led to pressures for more participation by civil society in EU policy and regulatory processes. At national level in Europe in newly liberalized sectors, individual choice in the market place is proving insufficient and pressures for more participation have developed. The rise of the market is also a phenomenon of globalization and regional integration, and there is varying evidence of more participation in global and regional governance structures.

Comparison of the EU with the national level in Europe and other global regions indicates that the ways in which pressures for participation are manifested depend not only on markets but also on the political and institutional contexts. In regulation, as Ayres and Braithwaite (1992, pp. 97–100) note, an appropriate institutional environment is necessary for the development of an effective form of participation. Despite evidence of convergence to the regulatory state in Europe, there is no single model of participation and citizenship developing. There are institutional differences in the forms of consumer–citizen involvement, transparency, and accountability in utility regulation, for example, between Britain and Germany (Lodge, 2001). At the EU level, the manifestations of ideas such as coregulation, the development of the ESC, better consultation procedures, and more extensive use of regulatory impact assessments are particular to the EU institutional environment. The institutional environment of the EU seems suited to the enhancement of consultation procedures with civil society and the use of impact assessments.

The institutional environment, however, can also constrain the emergence of effective participatory mechanisms. Coregulation, for example, is constrained by the decentralized system of market governance, which is deeply ingrained in the EU. Decentralization is reflected by the prominence of “negative integration,” which is concerned with the removal of barriers rather than “positive integration” in which central policies are drawn on to solve market failures (Scharpf, 1999), and the “open method of coordination,” a decentralized form of policy learning and coordination, has been stressed in recent years (Hodson and Maher, 2001). This does not appear conducive to the successful development of coregulation at EU level, which requires the incorporation of a variety of interest groups into a single and clear EU level process. Some of the processes of coregulation are also similar to those of the open method of coordination. Like coregulation, the open method appears to foster participatory governance while enabling greater technocratic learning by the diffusion of best practices within particular policy areas. However, the public visibility of the open method is low, which can lead to closed processes; in addition, the decentralized nature of the open method requires increased participation at the local and national levels and integration into the open method, which has not been a central element of its development (Radaelli, 2003).

There are also concerns that the form of participation developing in the EU is elite-oriented, with little connection with civil society and citizens. Armstrong (2002), for example, notes that civil society “is a concept more inclined to jump the gap between society and transnational structures of government than it is to bridge the gap” (p. 131). Coregulation processes, for example, may become closed—open only to those civil society groups able to jump across the gap to transnational government but then cannot easily maintain the links with society. Even without coregulation, EU-level civil society groups appear to reflect this distancing of the policy elite from the citizens. The majority of EU NGOs are federations of national associations and their main focus of action is at national level, with the EU federation used mainly for representation in Brussels. Although NGOs have a high standing in public and could be champions of the citizens in Europe and offer a bridge between the citizens, civil societies, and EU institutions, NGOs in practice have proved unable to fulfil that promise (Warleigh, 2001). There may be some nascent trends; Greenpeace, for example, has claimed to have made attempts to develop EU-wide campaigns and raise the consciousness of their members toward the EU (Interview with Greenpeace, 2002); however, EU-level NGOs make few conscious efforts to reach out to the citizens.

Comparison with other forms of regional and global governance further indicates the importance of institutions and political contexts. Some parallels with the EU are evident in the pressures for more incorporation of civil society interests in the Economic and Social Council of the UN. However, the comparative lack of institutionalization of NAFTA and its limitation to free trade agreements negotiated by governmental and corporate elites have meant that the principal form of activism outside these elite circles is opposition to NAFTA, rather than participation with its political structures, as in the EU case. Although there is some evidence of transnational activism in the ASEAN, the political priority of nation building militates against pressures for participation in transnational political structures. This is evidence to support the notion that there is a danger in perceiving the EU as the paradigm of regional integration (Marchand et al., 1999, p. 903). Marchand et al. note that there is a tendency to use highly institutionalized forms of regional governance such as the EU as a means of understanding general processes. Highly institutionalized forms are, however, special cases of regional integration from which general understandings should not easily be drawn.

Although this chapter concludes that transnational markets and civil society and processes of political participation are closely linked, the conclusions drawn about the emerging forms of transnational political participation are somewhat pessimistic. Even in the EU, the most developed transnational arena, although better consultation procedures appear to offer

some promise, proposals such as coregulation and strengthening of the ESC do not appear to mitigate the relatively closed and elite-oriented processes. The limited ambitions of many in the EU toward enhancing participation can be lamented, but in mitigation, the problems of participatory governance are not limited to the transnational level. To draw from the work of Fox and Miller (1995, 1997) on political participation in the United States, significant improvements may require an “authentic discourse” between citizens and the policy elite. This discourse may exist within social subgroups or “neotribes,” but there is great difficulty transferring it to larger polities. If transferring the discourse to larger and highly institutionalized polities, such as in the United States, is difficult, transferring to less institutionalized transnational arenas is a mammoth task.

REFERENCES

- Alger, C. (2002). The emerging role of NGOs in the UN system. From Article 71 to a People’s Millenium Assembly. *Glob. Gov.* 8:93–117.
- Armstrong, K. A. (2002). Rediscovering civil society: the European Union and the White Paper on Governance. *Eur. Law J.* 8(1):102–132.
- Ayres, I., Braithwaite, J. (1992). *Responsive Regulation. Transcending the Deregulation Debate*. Oxford: Oxford University Press.
- Bellamy, R., Warleigh, A. (1998). From an ethics of integration to an ethics of participation. Citizenship and the future of the European Union. *Millennium* 27(3):447–468.
- Bellamy, R., Warleigh, A. (2001). Introduction: the puzzle of EU citizenship. In: Bellamy, R., Warleigh, A., eds. *Citizenship and Governance in the European Union*—18. London: Continuum, pp. 3–18.
- BEUC (2002). The European Consumers Association. Response to the White Paper on Governance. Brussels, 28/3/02. BEUC.
- Box, R. (1997). *Citizen Governance. Leading American Communities into the 21st century*. London: Sage.
- Box, R. (1999). Running government like a business. Implications for public administration theory and practice. *Am. Rev. Public Adm.* 29(1):19–43.
- Commission. (2001a). European Governance. A White Paper. Brussels, 25/7/01. European Commission.
- Commission. (2001b). White Paper on European Governance. Report of the Working Group “Better regulation”. Brussels, May 2001. European Commission.
- Commission. (2001c). White Paper on European Governance. Report of the Working Group “Consultation and Participation in Civil Society”. Brussels, June 2001. European Commission.
- Commission. (2002). Better Consultation and Accountability: A Modernisation Plan for Clearer and Better European Legislation. Brussels, 5/6/02. European Commission.

- Day, S., Shaw, J. (2002). EU electoral rights and the political participation of migrants in host polities. *Int. J. Popul. Geogr.* 8:183–199.
- Delanty, G. (2000). *Citizenship in a Global Age. Society, Culture, Politics*. Buckingham: Open University Press.
- Downes, T. (2001). Market citizenship: functionalism and fig-leaves. In: Bellamy, R., Warleigh, A., eds. *Citizenship and Governance in the European Union*. London: Continuum, 93–106.
- European Citizens Action Service (ECAS). Issues in Better EU Regulation. An ECAS Response to the Commission's White Paper on European Governance. Brussels, 29/3/02. ECAS.
- Edwards, M. (2002). Herding cats? Civil society and global governance. *New Econ.* 9(2):71–76.
- European Environmental Bureau (EEB). (2002). A First Response from the European Environmental Bureau to the White Paper on Governance. Brussels, 3/12/01. EEB.
- EEB. (2002). European Environmental Bureau and the "G8" Group of European Environmental Associations. Initial Contribution to the Convention on the Future of Europe. Brussels, 18/4/02. EEB.
- Ernst, J. (1994). *Whose Utility? The Social Impact of Public Utility Privatisation and Regulation in Britain*. Buckingham: Open University Press.
- Economic and Social Committee (ESC). (2001). Opinion of the Economic and Social Committee on Organised Civil Society and European Governance: The Committee's Contribution to the Drafting of the White Paper. Brussels, 25/4/01. ESC.
- Economic and Social Committee (ESC). (August 2002). Institutions of the European Union: The European Economic and Social Committee. (http://www.europa.eu.int/institutions/esc/index_en.htm).
- Everson, M. (1995). The legacy of the market citizen. In: Shaw, J., More, G., eds. *New Legal Dynamics of the European Union*. Oxford: Clarendon Press, pp.73–90.
- Falkner, G. (1998). *EU Social Policy in the 1990s. Towards a Corporatist Policy Community*. London: Routledge.
- Fox, C. J., Miller, H. T. (1995). *Postmodern Public Administration. Toward Discourse*. Thousand Oaks: Sage.
- Fox, C. J., Miller, H. T. (1997). The Depreciating Public Policy Discourse. *Am. Behav. Sci.* 41(1):64–89.
- Graham, C. (1998). Is there a crisis in regulatory accountability? In: Baldwin, R., Scott, C., Hood, C., eds. *A Reader on Regulation*. Oxford: Oxford University Press.
- Graham, C. (2000). *Regulating Public Utilities. A Constitutional Approach*. Oxford: Hart.
- Greenwood, J. (1997). *Representing Interests in the European Union*. London: Macmillan.
- Haque, M. S. (1999). Relationship between citizenship and public administration. *Int. Rev. Adm. Sci.* 65(3):309–326.
- Hodson, D., Maher, I. (2001). The open method as a new mode of governance: the case of soft economic policy coordination. *J. Common Mark. Stud.* 39(4):719–746.

- Interview with DG Environment. (2002). European Commission, DG Environment. Brussels, 25/03/02.
- Interview with ECAS. (2002). European Citizens Action Service Brussels, 25/03/02.
- Interview with EEB. (2002). European Environmental Bureau. Brussels, 22/03/02.
- Interview with Euro Coop. (2002). European Community of Consumer Cooperatives. Brussels, 19/03/02.
- Interview with Greenpeace. (2002). Greenpeace International—European Unit. Brussels, 10/05/02.
- Keane, J. (2003). *Global Civil Society?* Cambridge: Cambridge University Press.
- Kuhnle, S. (1991). Citizenship. In: Bogdanor, V., ed. *The Blackwell Encyclopedia of Political Science*. Oxford: Blackwell, pp. 94–95.
- Leibfried, S., Pierson, P. (2000). EU social policy. Left to courts and markets? In: Wallace, H., Wallace, W., eds. *Policy-Making in the European Union*. 4th ed. Oxford: Oxford University Press, pp. 267–292.
- Lodge, M. (October 2001). From varieties of the welfare state to convergence of the regulatory state? The “Europeanisation” of regulatory transparency. *Queen’s Papers on Europeanisation*. Belfast (<http://www.qub.ac.uk/ies/onlinepapers/poe10-01.pdf>).
- Lodge, M. (2002). Varieties of Europeanisation and the national regulatory state. *Public Policy Adm.* 17(2):43–67.
- Majone, G. (1994). The rise of the regulatory state in Europe. *West Eur. Polit.* 17:77–101.
- Majone, G., ed. (1996). *Regulating Europe*. London: Routledge.
- Majone, G. (1997). The new European agencies: regulation by information. *J. Eur. Public Policy* 4(2):262–275.
- Marchand, M. H. (2001). North American regionalisms and regionalisations in the 1990s. In: Schulz, M., Söderbaum, F., Öjendal, J., eds. *Regionalisation in a Globalising World. A Comparative Perspective on Forms, Actors and Processes*. London: Zed Books, pp. 198–210.
- Marchand, M. H., Bøås, M., Shaw, T. M. (1999). The political economy of new regionalisms. *Third World Q.* 20(5):897–910.
- Marshall, T. H. (1950). *Citizenship, Social Class, and other Essays*. Cambridge: Cambridge University Press.
- The National Consumer Council (NCC). (2002). European Governance: A White Paper. London, July 2001. NCC.
- Office of Telecommunications (OFTEL). (July 2001). The Benefits of Self and Co-regulation to Consumers and Industry. London. OFTEL.
- Öjendal, J. (2001). Southeast Asia at a constant crossroads. An ambiguous “new region”. In: Schulz, M., Söderbaum, F., Öjendal, J., eds. *Regionalisation in a Globalising World. A Comparative Perspective on Forms, Actors and Processes*. London: Zed Books, pp. 147–172.
- Prior, D., Stewart, J., Walsh, K. (1995). *Citizenship: Rights, Community and Participation*. London: Pitman.
- Radaelli, C. M. (May 23, 2003). *Policy Learning and the Open Method of Coordination. Paper prepared for the conference Policy Learning and the New European Governance*. London.

- Rotblat, J. (1997). *World Citizenship: Allegiance to Humanity*. Basingstoke: Macmillan.
- Sauter, W. (1998). Universal service obligations and the emergence of citizens' rights in European telecommunications liberalisation. In: Freedland, M., Sciarra, S., eds. *Public Services and Citizenship in European Law*. Oxford: Clarendon Press, pp. 17–143.
- Scharpf, F. W. (1999). *Governing in Europe. Effective and Democratic?* Oxford: Oxford University Press.
- Scholte, J. A. (2002). Civil society and democracy in global governance. *Glob. Gov.* 8:281–304.
- Schulz, M., Söderbaum, F., Öjendal, J. (2001). *Regionalisation in a Globalising World. A Comparative Perspective on Forms, Actors and Processes*. London: Zed Books.
- Thatcher, M. (1998). Regulating the regulators: the regulatory regime for the British privatised utilities. *Parliam. Aff.* 51(2):209–222.
- Vigoda, E. (2002). From responsiveness to collaboration: governance, citizens and the next generation of public administration. *Public Adm. Rev.* 62(5):515–528.
- Wallace, H., Young, A. R., eds. (1998). *Participation and Policy-Making in the European Union*. Oxford: Clarendon Press.
- Warleigh, A. (2001). “Europeanizing” civil society: NGOs as agents of political socialization. *J. Common Mark. Stud.* 39(4):619–639.
- World Trade Organisation (WTO). *Relations with Non Governmental Organisations/ Civil Society* http://www.wto.org/englis/forums_e/ngo_e/intro_e.htm.

Index

- Actors, 29
 - proglobalization, 31
- Administration
 - Latin America
 - isomorphism, 316
- Administrative actors
 - national reform, 145
- Administrative descriptive studies, 298
- Administrative reforms
 - globalized world, 307
- Administrative traditions, 313
- Adversarial legalism
 - case studies, 357–364
 - European Union, 351–364
 - expansion, 353
 - expansion explanation, 354
 - general trends, 355–357
 - spread, 354–355
 - trends, 355–357
- Advertising restrictions, 192
- Africa, 332, 338
- Age restrictions, 192
- Albania, 331
- Alberta Teachers Association, 233
- Alexander River Watershed
 - Restoration, 408–409, 413–415
- Ambulance inventories, 276
- American legal style, 351
 - Europe, 352
- American regulatory style, 351, 364
- Amsterdam Treaty, 113, 361–362
- Anticorruption activity, 19
- Anticorruption donor coordination meeting, 332
- Anticorruption network design, 343
- Anticorruption policy globalization, 325–345
 - applications, 343–345
- Anticorruption practitioner knowledge management, 338
- Anticorruption program
 - operational needs of, 341
- Anticorruption's first wave of reforms, 330–337
- Anticorruption's second wave of reforms, 340–343
- Anticorruption waves
 - comparison, 338
- Antidiscrimination policies, 361–362
- Anti tobacco activity, 14
- Argentina
 - World Bank, 169
- Asia, 338
- Assimilation
 - convergence, 245

- Auditing, 372
- Austria
 - coercive pressure, 145
 - European Union pressure, 136–140
 - international business strategy, 137
 - key actors
 - policy process, 147
 - regulation, 352
 - social democratic corporatism, 124
 - telecommunication system strategies, 123
- Austrian's People's Party, 137
- Awareness raising programs, 332, 333

- Baltic republics, 331
- Bangemann Report*, 109
- Banking institutions
 - globalization, 78
- Banking legislation, 85
- Banking policy
 - globalization, 78
- Banking regulations
 - liberalization, 79
 - policy, 79
 - variety of forms, 72–73
- Banking regulation systems
 - policy, 81
 - policy discourse, 85
 - politics, 80
- Banking regulation systems failures
 - Britain, 81
- Banking state regulations
 - convergence, 79
 - globalization era
 - convergence, 67–90
 - divergence, 67–90
 - Switzerland, 77–78
 - United States, 75–77
- Banking supervision
 - instruments, 84
- Banking systems
 - problems, 73
- Barker, Danna Lee
 - Mexico, 15
 - United States, 15
- Barker's classic study, 2
- Basel Committee, 82
 - European Union, 82
 - framework, 85
 - national representatives, 83
- Bedouin settlements, 410
- Belgium
 - healthier
 - availability, 281
- Best practices, 341
 - anticorruption policy globalization, 325–345
- Blair administration, 32
- Bolivia, 330, 331, 333
 - diffusion process, 171
- Border healthier, 274
- Borders, 291
- Brazil
 - World Bank, 169
- Bretton Wood agreements, 261
- Bretton Woods system, 73
- Bring back the States, 25–44
- Britain
 - banking regulation systems failures, 81
 - regulation, 352
- British American Tobacco, 208, 213
- Broadcasting
 - international regulatory competition, 113
 - United States, 115
- Broadcasting and telecommunications
 - convergence, 108–112
- Broadcasting liberalization, 103–106
- Brown vs. Education Board, 235
- Bulgaria, 331
- Bureaucratic decentralization
 - Israel, 403
- Business practices
 - globalization, 28

- California effect, 93
- Cambodia, 331
- Canada
 - children's disability policy, 229–234

- Canadian Charter of Rights and Freedoms*, 231
- Capacity building, 196, 332
 organizations, 56
- Capitalism historical, 251
- Carmelite Project in Haifa, 408–409, 411–413
- Central banking
 diffusion model, 177
 European origin, 178
 institutional design, 174
 Latin America, 163
 monetary policy, 165
 reform, 175
 regulatory design, 164
- Central Europe, 330
- Central government urban sprawl, 258
- CESR, 360
- Children's disability
 adverse social effects, 221
 education system, 234
 North American case study, 224–243
 policy, 221–248
 Canada, 229–234
 globalization, 229
 major structural changes, 237
 Mexico, 238–247
 United States, 234–238
 policy accountability, 232
 policy arena, 244
 policy development, 228–229
 policy reform, 234
 political effects, 221
 reconnected, 244
 social participation, 221
- Chile
 governance regulation, 169
 regulatory institutions, 168
- Christensen, Robker K., 10
- Chummy cooperative regulation style, 352
- CIET International, 333
- Cities
 globalization, 249–251
- Citizen-consumer, 429–430
- Citizenry, 399
- Citizenship, 431–438
- City-state
 relationship, 261
 traditional roles, 262
- Civilian public employment, 307
- Civil rights, 361–362
 anti discrimination policies, 361
 discrimination litigation, 361
- Civil service
 administrative models, 310–314
 aspect reforms, 309
 conceptualization, 298
 downsizing, 18
 institutions, 298–300, 318
 models, 310–314
 policy, 309
 procedures, 304
 public institution model, 312
 rules, 304
 system
 administrative reality, 313
 administrative traditions, 317
 political reality, 313
 reform fields, 305
 reform strategies, 302–305
 social reality, 313
- Civil service systems
 Latin America, 315
 Latin American
 weak institutional base, 318
- Civil society, 21
- Clinton Administration, 32
- Closed communities, 267
- Closed model, 311
- Closed policymaking networks, 352
- Closed technocratic learning system, 319
- Codified global knowledge, 341
- Codified knowledge
 international transfer, 341
- Codified local knowledge, 342
- Coercive isomorphism, 312
- Cognitive praxis, 375
- Collaboration, 399, 400

- Collective knowledge, 375
- Collective learning, 375
- Commission consultation process, 108
- Commitment deficit, 375
- Committee of European Securities Regulators (CESR), 360
- Common Agricultural Policy, 210
- Communications Bill, 2002, 106
- Communications Review, 1999, 109
- Communicative action, 378
- Community participation, 411–413
- Community Tobacco Fund, 211
- Comparative law, 352
- Comparative public policy, 352
- Competence deficit, 375
- Competition policy, 112
- Competition states, 92
- Concessionaires
 - government relations, 163
- Conditional access rules
 - digital television, 115
- Conditional access systems, 111
- Constructural learning mechanisms, 317
- Consumer protection, 364
- Continental European Policy, 100
- Contracting system, 287
- Convergence, 196–198
- Convergent policies, 208–213
- Converging Communications Sector
 - converging policy, 112–113
- Coregulation, 433–435
- Corporatism, 352
- Corporatist healthier state, 269
- Council of Europe's Group of States
 - Against Corruption (GRECO), 331
- Council of Ministers, 94
 - 1999 Communications Review, 110
- Country characteristics, 74
- Cross-border banking, 74
- Cross-border cooperation, 275
- Cross-border health care
 - contracting, 287
- Cross-border healthier, 268, 282
 - authorization process, 276
 - Europe, 270
 - mechanisms, 284–296
 - patients, 281
- Cross-national diffusion, 157
- Cross-National Policy
 - solidarity, 267–295
 - territoriality, 267–295
- Cross-national policy
 - healthier, 267–295
- Debordering states
 - Euregions, 289–292
- Debt crisis, 158
- Decentralizing production, 250
- Decker cases, 278–281
- Definite facts-definite values, 385
- Democracies
 - Latin America, 159
- Democracy, 369–371
- Democratic defect
 - criticisms, 355
- Democratic deficit, 355
- Democratic engagement
 - policy formation, 371–378
- Democratic opinion, 373
- Denmark
 - tobacco control, 198
- Deregulatory competition
 - pressures, 115
- Detest Telecom, 101
- Dialectic, 378
- Diffused institution, 299
- Diffusion
 - analysis, 6
 - contagious perspective, 5
 - convergence theories, 7
 - literature, 6
 - logical institutionalize advantages, 5
- Diffusion instruments, 199–206
- Diffusion process, 301
- Diffusion T, 4
- Digital convergence, 108
- Dirigisme, 352

- Disability, 222–224
 - definition, 222
 - economics, 224
 - globalization, 224
- Disability policy, 246
 - children
 - convergence, 15
 - civil-rights-based approach, 234
 - community living group analyst, 229
 - constructivist, 225
 - employment opportunities, 228
 - focus population and sampling, 226
 - integration, 230
 - interview structure, 226
 - tensions, 237
- Disability reconstruction, 223
- Dolowitz and Marsh policy transfer
 - framework, 327
- Domestic framing, 142
- Domestic legislation
 - Telecommunication sector reforms, 129
- Domestic policy
 - international integration, 70
- Domestic policy makers
 - cross-national learning, 126
 - international institutions, 126
- Domestic political process, 70
- Domestic power balance, 145
- Donetsk action, 333
- Donetsk Regional Civic Movement
 - “Partnership for Integrity”
 - Anti-corruption Action Plan-2000, 334–336
- Donor-funded anticorruption activity, 333
- Duopoly, 133
 - national strategy, 145
 - telecommunications sector, 134
- Dutch
 - administrative execution, 279
 - benefit-in-kind system, 279
 - health authorities, 279, 286
 - contracting system, 288
- [Dutch]
 - health consumption
 - restrictions, 279
 - healthier system, 280
 - budgeting, 286
 - patient opportunities, 186
 - restrictions, 279
 - health sector
 - European market legislation, 273
 - private insurers, 281
- Eastern Europe, 330, 338
- Ebenezer Howard, 255
- ECJ, 94, 354, 355
- Economic actors
 - Telecommunication sector, 128
- Economic and Monetary Union, 96, 270
- Economic and Social Committee (ESC), 435–436, 439
- Economic cooperation and development, 223
- Economic dynamics, 431
- Economic globalization, 69
- Economic growth issues, 256
- Economic integration, 437–439
- Economic liberalization, 352, 354
- Economic rational choice orientation, 377
- Economic reforms
 - diffusion widespread, 158
- Economic security, 372
- Economic social committee, 22
- Economic structure
 - cross-country structure, 148
- Education
 - federal role, 235
 - Education Act*, 234
 - Educational Placement of Students with Special Needs*, 232
- Education policy
 - civil-rights paradigm, 235
- Education system
 - Mexico, 241

- EEB, 434
- Electricity regulation
 - Latin America, 164
- Empowerment, 356
- Endangerment, 373
- Enforced self-regulation, 433–435
- Engagement deficit, 375
- Enlightened self interest, 328
- Environmental inspector, 359
- Environmental NGOs, 359
- Environmental protection, 357
- Environmental regulation
 - case studies, 357–359
- Environmental regulation
 - private enforcement, 358
- Environmental tobacco controls, 193
- Environmental tobacco smoke, 202
- Epistemic communities, 178, 329
- Equal Treatment Framework
 - Directive, 2000, 362
- ESC, 360, 435–436, 439
- EU decision making, 355
- Eugenics, 383
- Euregions, 271–273
 - experiments
 - lessons, 281–289
- Euro, 360
- Europe
 - central bank independence, 178
 - healthier
 - frontier workers, 283
 - healthier challenges, 290
 - healthier systems, 268–270
 - national level, 284
 - international politics, 271
- European Commission, 98
 - coercive adaptation, 138–140
 - defective products, 363
 - European vulnerability, 103
 - globalization, 103
 - political reality, 99
 - regulatory policy, 109
- European Commission Communities, 108
- European Commission Green Paper, 99
- European Commission White Paper on Governance, 431–437
- European Consumers' Organization, 364
- European Court of Justice (ECJ), 94, 354, 355
- European Economic Area Treaty, 12
- European Environmental Bureau (EEB), 434
- European healthcare
 - international politics, 271
- European healthcare system, 267
- European industry
 - competitiveness, 364
- European integration, 271–273, 272
 - banking regulation, 87
 - economic liberalization
 - fragmentation, 362
 - political fragmentation, 362
- Europeanization, 86, 104
- Europeanization literature
 - European Union regulations, 127
- Europeanization mechanisms, 126
- European law
 - recent developments, 358
- European legal services, 356
- European-level regulatory response, 97
- European open network provision
 - principles, 132
- European Parliament, 354
- European Parliament and Council
 - audio visual policy, 110
- European Parliament Members' Directives, 106
- European policy makers, 364
- European regulatory styles
 - generalizations, 352
- European Securities Committee (ESC), 360
- European single market, 426–428, 431–437
- European states, 289–292

- European territory
 - integration, 273
- European Union, 197, 209
 - adversarial approach, 359
 - adversarial legalism, 351–364
 - adversarial legalism expansion, 351–367
 - alternative system, 40
 - Americanization, 360
 - anti discrimination, 362
 - Austria government, 138
 - citizenship, 21
 - coercive impact, 149
 - commission's capacity, 356
 - communications regulatory framework, 110
 - competition commissioner, 101
 - directives, 14
 - EC Treaty, 98
 - enforcement actions, 358
 - environmental directives, 357
 - European Commission
 - Communities, 108
 - evolution, 12
 - flexible regulations, 360
 - free movement, 17
 - global forces, 93
 - globalization, 9
 - globalization relationship, 93
 - healthcare authorities, 292
 - healthcare improvements, 292
 - international governing body, 26
 - international order, 39
 - judicialized approach, 359
 - judiciary approach enforcement, 361
 - liability mandarin, 363
 - liberalization, 12
 - member countries, 146
 - national health authorities, 278
 - national legal institutions, 353
 - officials, 31
 - perception, 39
 - policy diffusion, 353
 - policy transfer, 94–96
 - T 1, 96
- [European Union]
 - political authority, 354
 - political institution, 9
 - political participation, 21
 - process, 35
 - product liability law, 362–364
 - products liability law, 362–364
 - regulatory commissions, 360
 - response, 98
 - social dimension, 361
 - Telecom and Broadcasting Sectors, 91–120
 - Television Without Frontiers, 104
 - tobacco control, 210
 - tobacco supporters, 194
 - treaties, 355
- European Union Commission, 138
 - coercive adaptation, 138–140
 - monitoring role, 136
- European Union legislation, 143, 150
- European Union liberalization
 - telecommunication market, 135
- European Union participation, 142
- European Union policy transfer, 116
- European Union relationship
 - globalization, 93
- EU securities regulation
 - Americanization, 360
- Evidence-based conclusions, 333
- Evolution review process, 300
- Expertise, 386
- Face-to-face exchange, 251
- Face validity, 199
- Federal Communications Commission, 100
- Federalism
 - national approaches, 244
- Financial services
 - reform, 175
- Food labeling, 374
- Former Soviet Union, 331
- France
 - regulation, 352

- France Telecom, 101
- Free inquiry, 371
- Free market, 371
- French Regulatory Authority, 102

- Galton problem, 5
- Gateway cities, 262
- General Agreement Tariffs and Trade, 94
- General Education Law*, 240
- General practitioners
 - referral, 276
- Georgia, 332
- Germany
 - banking crisis, 77
 - banking state regulations, 77–78
 - politicization, 63
 - regulation, 352
- Global change, 20
- Global cigarette taxes, 204
- Global cities, 250
 - globalization, 251
- Global diffusion
 - public and management, 3
- Global economy
 - market citizenship, 423–442
 - political participation, 423–442
 - positioning, 34
- Global financial market
 - developments, 42
- Global free trade regime, 115
- Global international trade
 - public management, 225
- Globalization, 25, 45, 249–251
 - business practices, 28
 - complexity, 41
 - component, 31
 - conclusion, 42–43
 - critics, 2
 - debate, 27–29
 - developments, 263
 - diffusion process, 156
 - dynamics, 302
 - European Commission, 103
 - European Union relationship, 93
 - [Globalization]
 - evolutionary process, 62
 - filters, 87
 - financial sphere, 73
 - health care, 16
 - impact, 37–38
 - influences, 303
 - institutional promotion, 18
 - international agencies, 303
 - international nongovernmental organizations, 46
 - international organizations, 33
 - international regulatory competition, 92–93
 - literature, 33
 - arguments, 42
 - motivation, 33
 - national space, 319
 - policy emulation, 197
 - policy making, 29
 - policy transfer, 28
 - political actors, 41
 - political systems, 37
 - potential capital, 34
 - pressures, 96
 - proponent arguments, 38
 - reality, 41
 - redefining, 297
 - resistance, 116
 - restrictions, 40–42
 - studies, 30, 46
 - survival, 37
 - territoriality, 16
 - trade liberalization, 213
 - undesirable effects, 26
 - urban regimes, 16
 - Globalization equation, 28
 - Globalization pressure, 298
 - Globalization process, 262, 3299
 - cities, 16
 - Globalization proponents, 2
 - Globalization states, 289–292
 - Global policies, 29
 - Global political system, 37
 - Global society paradigms, 53

- Governance
 - financial sphere, 69
 - regulatory authorities, 162
- Governing structures
 - traditional assumptions, 47
- Government action
 - competition, 70
- Government measures
 - tobacco control, 201
- Government systems
 - lessons, 36–37
- GRECO, 331
- Green Paper, 363–364
- Green Paper, 1997, 109
- Greenpeace, 436–437
- Growth coalition, 263
- Growth Coalition*, 255

- Hard facts-soft values, 385
- Häusermann, Silja, 11
- Healthcare
 - actors involved, 288
 - command and control, 269
 - corporatist entanglements, 269
 - Euregions cooperation, 273–278
 - frontier workers, 274
 - globalization, 16
 - improvement programs, 276
 - professionals, 276
- Healthcare state
 - command and control, 268
- Healthcare systems, 269
 - citizen familiarity, 285
 - government action, 291
 - improvements, 288
 - insurance, 287
 - interest groups, 291
 - mobility, 280
 - national government cooperation, 291
 - patient mobility, 282
 - political boundaries, 285
 - waiting lists, 287
- Health Insurance Board, 275, 276, 279

- Health insurers
 - cooperation, 276
- Health provisions, 16
- Health World Conference, 191
- Heckscher-Ohlin theorem*, 70
- Hong Kong, 338
- Hong Kong's Independent Commission Against Corruption, 330
- Horizontal Europeanization, 147
- Horizontal regulatory models, 109
- Human Development Report, 50
- Human genome survey, 382
- Humanity
 - global experience, 224
- Human resource management system, 299
- Hypercomplexity, 380
- Hyperrationality, 380

- Implementation cycle, 338
- Independent Regulatory Group, 100, 102
- Independent Television Commission, 105
 - European ownership, 107
- Individual Education Plan, 237
 - federal implementation, 237
- Individual rights, 358
- Information
 - right to, 373, 374
- Information technology, 250
- Information transfer mechanisms, 207
- Informed consent, 373
- Infringement cases, 356
- Institutional consultancy activities
 - interference's, 304–305
- Institutional dynamics, 431
- Institutional isomorphism, 329
 - modernizing approach, 300
- Institutional learning
 - dynamics, 319
- Institutional perspectives, 329
- Institutional systems
 - convergence, 81
- Institution-led perspective, 328

- Integrated services digital network, 97
- Integration policy, 243
- Interests, 327
- Interim Act, 132
 - OPT Act, 135
- International agencies, 303
- International business strategy
 - Austria, 137
- International cooperation
 - banking state regulation, 72
- International Criminal Court, 60
 - constitutional competition, 60–61
 - national competition, 60–61
- International developments
 - banking regulation systems, 86
- International disability organization
 - results, 222
- International governing body, 26
 - European Union, 26
- International governmental organizations, 9
- International integration
 - growing, 71
- International Labor Organizations, 272
- International law, 58
 - soft law, 62
- International Monetary Fund, 19, 326
- International Monetary System, 197
- International nongovernmental organizations, 45–66, 50, 51, 54, 57
 - advocate strategies, 53
 - analysis, 48
 - capacity-building, 56
 - employment strategies, 54
 - enforcement, 55–56
 - focus, 48
 - globalization, 61
 - growth, 48
 - growth context, 49–51
 - impact, 51–61
 - impact factors, 63
 - impact specific theories, 63
 - implementation, 55–56
- [International nongovernmental organizations]
 - influences, 61
 - input strategies, 52
 - law and agreements, 53
 - material services, 63
 - monitoring, 55
 - national policy, 61
 - output forums, 58
 - policy implementation, 56
 - policy learning, 49
 - political accountability, 62
 - pursuits, 53–55
 - roles, 46
 - service provisions, 56
 - soft law, 58
 - soft law techniques, 59
 - strategies, 52
 - understanding, 63
- International Olympic Committee, 60
- International organizations
 - policies, 47
- International policy diffusion, 326–330
- International regulatory competition
 - broadcasting, 113
 - globalization, 92–93
- International trade agreements
 - international expansion, 213
- International transfer
 - learning, 310
- International transfer policy, 1–24
- Internet, 341
- Interregional Project on Healthcare, 274
- Intonation government organizations, 35
- Investigative journalism training, 343
- Israelis
 - centralized planning, 401–403
 - institutionalized participatory planning, 404–405
 - planning
 - case studies, 405–415
 - translating public participation into planning policy, 395–419

- Jordana, Jacint, 12
- Judicial cooperation
civil matters, 356
- Justice
access, 356
- Kazakhstan, 332
- Kelemen, R. Daniel, 20
- Keynes, J.M., 370
- Knowledge
right to, 373, 374
- Knowledge accumulation, 338
- Knowledge deficit, 375
- Knowledge diffusion
networks, 337–339
value chains, 337–339
- Knowledge management, 342
anticorruption policy globalization,
325–345
anticorruption practitioner, 338
- Knowledge society
public participation, 369–391
- Kohl Cases, 278–281
- Lander*, 105, 111
- Latin America, 331, 338, 340
abstract governance practice, 179
administration
isomorphism, 316
administrative systems, 315
Caribbean, 306
central banking, 163
civil service systems, 315
weak institutional base, 318
democracies, 159
democratic regimes
economic crisis, 159
diffusion patterns, 161–166
effective and efficient civil service
models, 312
electricity regulation, 164
expansion study, 178
first-generation reforms, 301
institutional design, 164
institutional development, 18
- [Latin America]
institutional expansion, 161
political systems, 315
public administration, 298
public employment, 306
regulatory agencies, 156
diffusion, 155–188
regulatory authorities, 161
regulatory institutions, 165
regulatory reforms, 157–161, 159
restructuring process, 176
sectional diffusion, 162
state restructuring, 155, 157–161
- Learning, herding, and uniformed
transfer, 26–27
- Legally enforceable individual rights,
355
- Legal style
American, 351
Europe, 352
- Legislative Action to Combat the World*,
202
- Levi-Faur, David, 12
- L'exception cultural, 104
- Liberalization
domestic impulses, 137–138
domestic support, 150
- Licensing committee, 102
- Linkage agreements, 260
- Local polarization
changing circumstances, 254
- Logic, 378
- London Docklands Development
Corporation, 260
- Macedonia, 331
- Mach, Andre, 11
- Management innovation diffusion,
1–24
- Management of policy knowledge,
330
- Management space
political influence, 3098
- Market citizenship, 426–428, 438
- Markets, 431–438

- Marshall, T.H., 370
- Mass communication, 341
- Master settlement agreement, 203
- Media ownership regulation, 106–108
 - German companies, 105
- Mexican government
 - economic crisis, 168
 - regulatory agencies, 168
- Mexican society
 - traditional attitude, 238
- Mexico
 - children's disability policy, 238–247
 - disability policy, 242
 - disability policy development, 239
 - educational structure, 242
 - education system, 241
 - financial resources, 242
 - public education, 239
 - special education, 239
 - international trends, 240
 - policies, 241
 - transformation process, 240
 - telephone publications, 228
- Michael, Bryane, 19
- Mill, John Stuart, 370
- Ministers Council and European Parliament, 113
- Misgav Regional Council, 407–411
- Modern initiatives
 - focus, 302
- Modernization
 - analysis process, 297
 - programs, 314
 - reform process
 - Latin American public administration, 300
- Modern societies
 - globalization, 1
- Monetary management, 163
- Mongolia, 331
- Moral regulatory regime, 214
- Morocco, 332
- Multilevel governance, 93
- Multiple Attention Centers, 241
- Municipalities infrastructure, 256
- NAFTA, 245, 438
- National banking system
 - regulation, 84
- National filters, 82
 - banking systems, 83
 - regulatory systems, 83
- National healthcare systems, 284
- National health headquarters, 284
- National institutions
 - globalization, 87
- National legal institutions, 353
- National patterns approach, 13, 156
- National policy making
 - democratic legitimacy, 87
- National policy styles, 71
- National reform
 - administrative actors, 145
- National socioeconomic paradigms, 25
- Nation-states
 - erosion, 67
 - external impositions, 82
 - growing insignificance, 68
 - political science, 67
- Negotiation democracies, 149
- Negotiation theory, 398
- Neighborhood rehabilitation, 259
- Neo-Liberalism, 370
- Netherlands
 - administrative actors
 - economic actors, 139
 - economic pressures, 146
 - European Union's regulatory framework, 124
 - healthcare
 - mobility, 282
 - policy transfer mechanisms, 146
 - telecommunication liberalization, 123
 - telecommunication system strategies, 123
- Networks
 - knowledge diffusion, 337–339
- New Deal regulations, 80
- New production of knowledge, 329
- New public management (NPM), 423, 424

- New public policy, 2
- Nicaragua, 330, 333
- Nigeria, 332
- Nongovernmental organizations
 - influence, 49
 - international activities, 49
 - potential impact, 51
- Noninstitutional perspective, 298
- Normal accidents, 379, 382
- North America
 - policy responses, 243
- North American Free Trade Association (NAFTA), 245, 438
- NPM, 423, 424

- Objective reforms, 302
- Objectives
 - policy diffusion, 342
- Obligation, 376
- OECD, 19, 327. *see also* Organization for Economic Cooperation and Development (OECD)
- Open coordination method, 96
- Open model, 311
- Openness, 355, 396
- Open Network Provision Framework Directive, 99
- Organizational perspectives, 329
- Organization for Economic Cooperation and Development (OECD), 19, 327
 - ADB Anti-Corruption Action Plan for the Asian Pacific, 331
 - Anti-Corruption Network for Transition Economies, 337–339, 343
 - Convention on the Bribery of Foreign Officials in International Business Transactions, 327
- Orientation reforms, 302

- Pacesetter
 - reform patterns, 176
- Package labeling directives, 210
- Papadopoulos, Yannis, 11

- Parliament
 - international market, 274
- Parliamentarian training, 343
- Parliamentary Network of the World Bank, 337–339
- Participation
 - consultation, 436–437
 - eliciting, 396
 - right to, 373
- Participation trends
 - European, 397–401
 - United States, 397–401
- Partner institutions, 332
- Path dependence, 71
 - framework, 316
- Patient mobility, 17
- Penalty payment judgments, 358
- Performance assessment programs, 308
- Philosophical supra federalism, 244
- Physical infrastructure, 256
- PIG, 430
- Platt, Pnina O., 21
- Pluralism, 102
- Point-of-sale-restrictions, 192
- Policy
 - administration
 - policy instruments, 191
 - analysis, 6
 - emulation, 7
- Policy area
 - banking state regulation, 72
- Policy arenas, 243
- Policy development
 - interrelationships, 43
- Policy diffusion
 - intrinsic value, 330
 - objectives, 342
- Policy emulation, 196–198
 - processes, 206–208
- Policy formation, 262
- Policy instruments
 - policies comparison, 190
 - tobacco control, 214

- Policy learning, 2, 7, 17, 45
 - European Union member states, 17
 - implementations, 62
 - institution, 212
 - literature, 46
 - studies, 46
- Policy learning patterns, 208
- Policy learning processes, 206–208
- Policy lesson, 100–101
- Policy makers, 243
 - adaptive costs, 36
 - problems, 25
- Policy making
 - globalization, 29
 - process, 3
 - substance, 3
- Policy sector approach, 13, 156
- Policy transfer
 - component, 31
 - constraining factors, 144
 - domestic actor constellations, 148–150
 - domestic structures, 149
 - emulation, 5
 - European Union, 94–96
 - facilitated, 95
 - facilitating factors, 144
 - globalization, 28
 - hearing instinct, 27
 - learning, 149
 - lessons, 37
 - literature, 6, 30
 - mechanisms
 - differences, 149
 - public and management, 3–8
 - questions asked, 29
 - specific mechanisms, 144
 - strategy, 40
- Policy transfers, 1, 4
 - actor motivation, 34
 - adaptive costs, 36
 - concepts, 96
 - conclusion, 42–43
 - convergence theories, 7
 - cross-cultural, 3
 - cross-national, 3
- [Policy transfers]
 - engagements, 35
 - knowledge globalization, 1–2
 - literature
 - arguments, 42
 - motivations, 32, 33
 - path dependencies, 41
 - perceptual imperatives, 33
 - political systems, 36
 - pressures, 39
 - restrictions, 40–42
 - Telecom and Broadcasting Sectors, 91–120
- Political actors
 - national reform, 145
- Political authorities
 - liberalization, 150
- Political authority fragmentation, 354
- Political convergence, 69–70
- Political correctness, 371
- Political domestic actors
 - telecommunication sector, 128
- Political fragmentation, 352
- Political participation, 372, 431–438
 - model, 371–378
- Political realities, 319
- Political systems
 - interrelationships, 43
 - Latin America, 315
 - learning processes, 38
 - political processes, 38
- Politics, 327
- Postal advice committee, 134
- Postal service
 - partial liberalization, 143
- Precautionary principle, 377
 - orientation, 377
- Printing press, 382
- Private parties, 356
- Privatization, 245
- Privatized services, 257
- Product Liability Directive of 1985, 363
- Products liability law, 364
- Progress, 369–371
- Progressive education
 - international expansion, 246

- Project cycle, 338
- Project renewal, 405
- Promotional activities restrictions, 192
- Propagation mechanism, 331
- Provisional knowledge, 387
- Public administration
 - environment, 305
 - human resources, 311
 - Latin America, 298
 - human resource management, 297–324
 - policy instruments, 191
- Public benefits system
 - European challenges, 290
 - global challenges, 290
- Public education
 - Mexico, 239
- Public employment, 299
 - Latin America, 306
 - management models, 311
- Public good, 330, 372
- Public health international treaty, 214
- Public interest advocacy groups, 208
- Public interest groups (PIG), 430
- Public management
 - globalization, 317, 319
 - globalization conclusions, 317
 - internationalization, 8–18
- Public participation
 - modes, 402
 - translating into planning policy, 395–419
- Public policy
 - internationalization, 8–18
 - participation, 20
 - shaping, 399
- Public service broadcasting
 - EP resolution, 112
 - unfair benefits, 112
- Public skepticism, 386

- Racial Equity Directive, 2000, 362
- Ramió, Carles, 18
- Rapid integration
 - globalization, 75

- Reform
 - adaptation pressure, 142
- Reform sectors, 173
- Regulation
 - Austria, 352
 - Britain, 352
 - European capacity, 114
 - expansion, 160
 - national capacity, 114
- Regulatory agencies
 - characteristics, 167
 - cross-national variations m, 171
 - database, 179–180
 - design, 166
 - diffusion, 173, 176
 - establish, 155
 - institutionalization, 166
 - international examples, 170
 - laggard sector diffusion, 176
 - Latin America, 156
 - reform, 155
- Regulatory authorities
 - autonomy, 181
 - central banking, 174
 - creation, 181
 - database
 - construction, 181
 - main source, 181
 - delegating process, 177
 - food safety, 176
 - government participants, 170
 - Latin America, 161
 - pharmaceutical products, 176
 - transfer, 354
- Regulatory bank agencies
 - multiplicity, 75
- Regulatory capitalism, 157, 160
 - cross-national diffusion, 166–171
 - cross-sectoral diffusion, 171–177
- Regulatory competition
 - elements, 98
 - pressures, 115
 - Telecom and Broadcasting Sectors, 91–120
- Regulatory framework
 - convergence, 111

- Regulatory institutions, 180
 - Latin America, 165
 - life cycle, 180
- Regulatory policy
 - literature, 351
- Regulatory reforms
 - Latin America, 157–161, 159
- Regulatory state, 429–430
 - autonomy, 175
 - expansion development
 - characteristics, 160
 - general dynamics, 166
- Regulatory styles
 - American, 351, 364
 - European vs. American, 352
- Representation deficit, 375
- Republicanism, 372
- Residual regulatory authority, 193
- Responsibility, 376, 377
 - centrality, 376
- Rhetoric, 378
- Risk, 369–371
- Royal College Physicians Report, 207
- Royal Commission
 - education, 231
- Rule-makers, 8
- Rule-takers, 8
- Russia, 332

- Salvador, Miguel, 18
- Savings loan system, 80
- Scandinavia
 - policy instruments, 209
- School Act*, 231
- Science
 - expertise, 385–387
 - public, 385–387
- Science and technology, 369–371
 - centrality, 381–384
 - governance, 378–381
- Scientific community, 371
- Scientific policy
 - facts and values, 387
- Secondary legislation, 355
- Second Banking Directive, 86

- Sectional diffusion, 164
- Sector specific media ownership, 105
- Securities regulation, 359–362
 - case study, 359–361
- Serbia, 331
- Sexes
 - equal treatment, 361
- Shared decision making, 399
- Shmueli, Deborah F., 21
- Sickness Fund Act, 280
- Single interest deficit, 375
- Smoking health hazards, 215
- Social democratic corporatism, 145
 - Austria, 124
- Social Democrats, 78
- Social movement emergence, 374–375
- Social policy, 246
- Social regulation, 174
- Social segregation, 254–255
- Soft facts-hard values, 385
- Soft law, 59
 - major implication, 59
- South Africa, 333
- South Korea, 331
- Special education, 223
 - facing exclusion, 233
 - inclusive growing pairs, 230
 - innovative policies, 230
 - Mexico, 239
 - international trends, 240
 - policies, 241
 - transformation process, 240
 - policy, 232, 233
- Specific policy instruments, 205
- Sponsorship restrictions, 192
- State capacity
 - banking state regulation, 70
 - financial sphere, 69
- State restructuring process, 158
- Statute of International Court of
 - Justice, 58
- Studlar, Donley, 13
- Super agencies, 170
- Supranational regulations
 - Telecommunication systems, 127

- Sweden
 - regulation, 352
- Swedish Regulatory Authority, 102
- Switzerland
 - banking state regulations, 77–78
 - international strategy
 - telecommunications, 141
 - telecommunication law, 140
 - telecommunication liberalization, 140
 - telecommunication system strategies, 123
- Tacit global knowledge, 342
- Tacit knowledge, 340
 - international transfer, 341
- Tacit local knowledge, 342
- Tanzania, 331, 333
- Target populations, 196
- Technological citizenship, 372
- Telecommunication liberalization
 - domestic economic actors, 147
 - European Union, 129
 - legislative reform, 140
- Telecommunication market
 - privatization, 132
- Telecommunication market reform
 - Netherlands
 - convergent mechanisms, 130–136
 - learning process, 133–136
- Telecommunication policy
 - European Union, 121, 124
 - globalization comparison, 122
 - reform
 - multilevel process, 130
- Telecommunication policy transfer
 - reforms, 131
- Telecommunication reform
 - Economic context, 141–142
 - explaining policy transfer mechanisms, 121
 - literature, 122
 - Europeanization, 122
 - OFCOM, 142
 - policy transfer, 125–130
 - political context, 141–142
- Telecommunications
 - European competitiveness, 113
 - international regulatory competition, 113
 - liberalization, 97–103
 - sensitivity, 92
 - United States, 115
- Telecommunications Act, 136, 138
- Telecommunications advice committee, 134
- Telecommunications and broadcasting
 - convergence, 108–112
- Telecommunication sector
 - liberalization, 121
 - partial privatization, 121
 - policy transfer mechanisms, 128
- Telecommunication sector reforms
 - domestic adaptation, 129
 - multilevel process, 129–130
- Telecommunication service
 - national economy, 132
- Telecommunication systems
 - Europe's restructuring, 122
 - reform processes, 124–125
- Telecommunication system strategies
 - Austria, 123
- Telekom Control Commission, 136
- Telephone publications
 - Mexico, 228
- Television Without Frontier
 - UK interpretation, 105
- Television Without Frontier Directive, 105
- Third World international
 - nongovernmental organizations, 52
- Tied identity deficit, 375
- Tobacco
 - consumption, 206
 - outcomes, 204
 - products, 205, 211
 - regulatory action, 190
 - promotion, 211

- Tobacco control
 - complexity, 198
 - convergence expansion, 205
 - federal systems, 195
 - framework convention, 214
 - globalization, 213
 - government investment, 202
 - government legislation, 189
 - growing popularity, 193
 - impact, 203
 - industrial democracies, 190
 - international political agenda, 189
 - leaders, 201
 - litigation, 194
 - measures, 199–201
 - media advocacy, 203
 - media campaigns, 195
 - policies, 189, 198
 - instruments, 189–220
 - public, 190, 215
 - restrictions, 215
 - principles, 212
 - process, 216
 - public administration, 190
 - restrictions, 213
 - smaller countries, 207
 - taxation, 193
 - U. S. national policy, 215
 - various measures, 203
 - warning labels, 195
- Tobacco Control*, 208
- Tobacco World Conference, 191
- Transfer mechanism
 - coercion, 125–129
 - coercive nature, 139
 - domestic politics, 125–129
 - learning, 125–129
- Transitional political participation
 - effectiveness, 22
- Transparency, 355, 396
- Transport and Public Works
 - administrative and political
 - authority, 134
- Treaty of Amsterdam, 271
- Triple contingency public opinion, 371
- Uganda, 331, 333
- UK. *see* United Kingdom (UK)
- Ukraine, 331
- UN. *see* United Nations (UN)
- United Kingdom (UK)
 - adverbial banking systems, 80
 - banking state regulations, 77
 - independent television, 107
 - tobacco control, 198
- United Nations (UN), 439
 - Aarhus Convention, 358
 - Conventions against Corruption, 331
 - Economic and Social Council, 48
 - International Code of Conduct for
 - Public Officials, 331
 - Research Institute
 - social development, 68
 - Salamanca Statement, 222
 - disabled children, 15
- United States
 - banking regulation systems
 - institutional reform, 81
 - banking state regulations, 75–77
 - banking system, 76
 - broadcasting, 115
 - children's disability policy, 234–238
 - litigation, 207
 - politicization, 83
 - tobacco supporters, 194
- Universal Services Directive, 110
- Unsafe products, 363
- Urban agglomeration, 261
- Urban Global Eras, 254
- Urban policy
 - global era, 249–265
- Urban regeneration
 - issues, 259–261
- Urban regime
 - global, 251
 - global era, 263
- Urban renewal, 259
- Urban renewal
 - approach, 260
- Urban sprawl, 257–259
- Utilities, 257

- [Utilities]
 - regulation
 - social citizenship, 430
- Value chains, 338
 - knowledge diffusion, 337–339
- Vertical Europeanization, 147
- Victorian regulatory states, 162
- Voluntary policy transfer, 138
- Voluntary reform, 138

- Westphalian Peace Treaty, 47
- Westphalian society, 52
- Westphalia paradigm, 9

- World Bank, 327
 - reports, 14
- World Conference
 - Health, 14
 - Tobacco, 14
- World Health Organization, 223, 272
 - Tobacco control, 14
- World Trade Organization (WTO),
19, 197, 212, 261, 327, 439
- WTO. *see* World Trade Organization (WTO)

- Zimbabwe, 332
- Zorg op Maat* projects, 276

about the book . . .

This reference explores new patterns and advances in the global integration of policies that result from an ever-increasing pace of shared knowledge, regulations, and norms in countries around the globe.

Helps administrators create improved strategic management policies and political arrangements in modern, rapidly changing communities and environments.

An impressive study of economic, state, social, and international restructuring, this guide analyzes the experiences of various nations undergoing policy dilemmas in areas including telecommunications, healthcare, commerce, and urban affairs...contains up-to-date theories and practices for both scholars and practitioners interested in policy development and implementation...maps globalization trends from the viewpoint of the policy maker, policy implementer, and public manager...demonstrates that political and administrative power is one of the most influential factors to promote or prevent reforms and organizational change in modern societies...and considers the impact of globalized knowledge on society and its effects on societal norms, values, and quality of life.

about the editors . . .

DAVID LEVI-FAUR is Senior Research Fellow, Research School of the Social Science, Australian National University, Canberra (on leave of absence from the Department of Political Science at the University of Haifa, Israel). He has held research and visiting positions at the London School of Economics, the University of Amsterdam, the University of Utrecht, the University of California–Berkeley, the University of Oxford, and the University of Manchester. He has published in the *Journal of Public Policy*, the *Journal of European Public Policy*, the *Review of International Relations*, the *Review of International Political Economy Studies in Comparative International Development*, the *European Journal of Political Research*, and *Comparative Political Studies and Comparative Politics*. His professional interests include comparative politics, comparative political economy, and comparative public policy. He is currently studying the rise of the regulatory capitalism and the regulatory state.

ERAN VIGODA-GADOT is Senior Lecturer of Public Administration and Organizational Behavior, Division of Public Administration and Policy, School of Political Sciences, and Research Fellow, Center for the Study of Organizations and Human Resource Management, University of Haifa, Israel. The author or coauthor of 4 books, including *Public Administration* (Marcel Dekker), and many other articles and book chapters he is a member of the American Society of Public Administration and the Academy of Management, among other organizations. He received the B.A. (1993), M.A. (1995), and Ph.D. (1998) degrees in political science from the University of Haifa, Israel.

Printed in the United States of America

DK1333

ISBN 0-8247-5338-0



MARCEL DEKKER
NEW YORK