EUI WORKING PAPERS IN POLITICAL AND SOCIAL SCIENCES

EUI Working Paper SPS No. 90/6

Cross-National Sources of Regulatory Policy-Making in Europe and the United States

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EUI-BIB
30001 000938110

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DEPARTMENT OF POLITICAL AND SOCIAL SCIENCES

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© Giandomenico Majone
Printed in Italy in December 1990
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Badia Fiesolana
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Cross-National Sources of Regulatory Policy-Making in Europe and the United States

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1. Introduction

The ability of policy makers to innovate often depends more on their skill in utilizing existing models than on inventing novel solutions. In order to understand this apparent paradox it is helpful to think of policy innovation as the outcome of a dual process of conceptual variation and subsequent selection by political actors from the pool of policy variants. The locus of conceptual innovation is the community of academic, governmental and other experts who share an active interest in a certain policy area; the locus of selection is the political arena (Majone, 1989b; 161-166).

The two processes of variation and selection are separated by a time lag which may be of several years or even decades. Because events occur too fast and ideas mature too slowly for responses to be devised anew for each pressing problem, policy makers must usually select their ideas from the stock that happens to be available at a given time, and these are usually the results of intellectual efforts and practical experiences of preceding years (Derthick and Quirk, 1985, 57). Thus, the existing pool of variants shapes the policy makers' responses to events by

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defining the range of conceptual alternatives from among which they can choose.

Which policy ideas or variants are likely to be selected? Several criteria are relevant to the choice, but the crucial one is the criterion of feasibility. The idea must be shown to be implementable, and given the difficulties of social experimentation the most persuasive proof is successful implementation in some country or jurisdiction not too different from that of the policy maker. This need to find reassurance as well as inspiration in concrete historical experience rather than in abstract theories explains why the number of essentially distinct variants in a given policy field is a good deal more limited than one could a priori expect.

In looking for models to imitate rather than seeking originality, political actors behave like economic actors who in their pursuit of profit often follow the pricing or marketing leadership of successful enterprises. Imitation affords relief from the necessity of searching for optimal decisions and conscious innovations which, if wrong, expose the decision maker to severe criticism. According to evolutionary economics, the strategy of adopting patterns of action observable in past successes instead of searching for novel solutions, may be quite rational in a complex and uncertain environment. Even innovation can be accounted for by imitation; in their imperfect attempt to imitate others, economic actors sometimes unconsciously innovate by unintentionally making moves which under the prevailing

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circumstances prove partly responsible for the success (Alchian, 1977, 28-30).

Of course, imitating is not the same as copying. The critical question in intelligent imitation, as in any other kind of lesson-drawing, is whether a programme or policy that is successful in one setting can be transferred to another (Rose, 1990). However, there may be good reasons why policy makers often seem to be only mildly preoccupied with the problem of transferability. They know that any policy idea, whether original or derived, is bound to be modified by the concrete political and institutional conditions in which it is carried out. What the policy makers want, therefore, is less a detailed blueprint, which is indeed likely to be inapplicable to the specific conditions in which they operate, than general guidance and _prima facie_ evidence that the proposed policy is feasible.

In this paper I shall examine several cases of policy innovation where the influence of foreign models is quite clear. The area chosen is that of economic and social regulation. The reasons for this choice have been nicely expressed by Hancher and Moran (1989, 285):

> The most casual acquaintance with any important substantial area of regulation soon reveals that institutions and rules are widely imitated ... Since regulation is typically begun under pressure of time, or in conditions of crisis, the incentive to imitate is great. The result is that "early" regulators often provide a model for countries following later along the regulatory road ... [I]t is apparent that models emanating from

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> countries exercising great economic and political power are most likely to be the objects of emulation.

The last observation explains the American influence on regulatory policy making in Europe since the end of the war. By the same token, the growing economic and political power of the European Community (EC) should lead to greater influence of EC regulation not only on the member states, but also on other countries such as the United States and Japan. In the last part of this paper I shall argue that this is precisely what is happening.

The cases examined in the following pages -- the development of competition policy in Europe in the 1950s, the growth of EC regulation in the 1960s and 1970s, the deregulation movement of the 1980s, the likely impact of "Europe 1992" on American banking regulation -- should not be seen in isolation, but as different stages of a single process: the rise of the regulatory state in Europe.

2. The Growth of Regulation in Europe

In the following pages we shall examine two major sources of influence on the regulatory policies of EC countries. American regulatory philosophy and practice has been particularly influential in three distinct periods: during the formative years of the Community; in the 1970s, the period of development of social regulation; and in early 1980s, the era of "deregulation".

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The influence of Community regulation has been constantly growing since the early 1960s. Today the impact of EC regulations and directives on practically every aspect of the social and economic life of the member states is acknowledged even by the most ardent advocates of national sovereignty.

To appreciate the significance of both influences, one must keep in mind the far-reaching changes in the relation between the state and the market that have taken place in Western Europe since the end of World War II, but especially during the last fifteen years. What is happening in Eastern Europe today represents in certain respects a recapitulation, in much more dramatic form, of developments that have also taken place, through gradual democratic processes, in the western half of the continent. If this is true, the trends identified below will eventually assert themselves also in the countries of Eastern Europe.

Economic and social policies in the decades immediately following the end of World War II were legitimized by the widespread belief that government could control the economy by manipulating key macroeconomic variables and, at the same time, ensure social justice and greater equality in the distribution of wealth. But full employment and the welfare state could be maintained only as long as the economy was expanding. The stagflation of the 1970s showed that growth could not be taken for granted. Keynes was proclaimed dead: monetarism and supply-side economics became the new orthodoxy. Increasingly, the fiscal

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crisis of the welfare state came to be seen as part of the general crisis of socialism. The rejection of demand management and "fine tuning" implied the rejection of more direct forms of intervention in the economy: nationalizations, municipalizations, national and regional planning. Important sectors of public opinion, not only at the right end of the political spectrum, tended to view the state less as the solution than as one of the obstacles that impeded the adjustment of the European economies to far-reaching changes in technology and in the world economy.

However, scepticism in the ability of the state to act as planner, entrepreneur, employer of last resort, and provider of services which the market or nonprofit organizations could produce more efficiently, did not lead to demands for a return to laissez-faire, as the more radical advocates of privatization and deregulation seemed to expect. Rather, what was demanded were better focused and more flexible forms of public intervention, and more attention to those areas of social regulation (environment, consumer protection, civil rights) which had been largely neglected by the welfare policies of the past.

Thus, paradoxically, the debate on privatization and deregulation contributed to directing the attention of European public opinion to regulation as a distinct mode of policy-making aimed at correcting specific types of market failure (monopoly power, negative externalities, inadequate or asymmetrically distributed information) but also at protecting non-commodity values. For example, it was soon realized that in many cases

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privatization would only mean the replacement of public by private monopolies unless the privatized companies were subjected to public regulation of profits, prices and entry conditions.

Of course, the interventionist policies of the past had attempted to solve many of the same regulatory problems; but the traditional solutions tended to be much less precise than those suggested by a regulatory approach. For example, nationalization or municipalization has been in most countries of Europe the functional equivalent of American-style regulation in such key areas as transportation, telecommunications, and public utilities. However, the purpose of public ownership was not simply to control rates or conditions of entry but also to achieve a variety of other goals such as economic and technical development, income redistribution or national security. Consumer protection -- the most important objective of public regulation, at least in theory -- was usually sacrificed to other objectives.

Even when some of the same techniques of American-style regulation have been used -- for example, entry and price regulation, standard setting or licensing -- there has been a general reluctance to rely on specialized, single-purpose (or single-industry) regulatory commissions or agencies. Instead, regulatory functions have been assigned to traditional ministries or inter-ministerial committees. Important regulatory decisions are often taken at cabinet level and thus effectively protected from any kind of judicial review or scholarly analysis.

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The mixing of regulatory and broader policy objectives, the absence of specialized agencies, the prevalence of informal procedures -- compared, for example, with the procedural requirements laid down by the U.S. Federal Administrative Procedure Act for formal adjudication by regulatory bodies --, the delegation of important regulatory functions to private or semi-private bodies like the German Berufsgenossenschaften and various national institutes for technical standardization: these are some of the factors which explain the low visibility of regulatory policy-making in Europe.

The political and institutional implications of the change from a broadly interventionist to a regulatory mode of policy making can be seen most clearly in the privatization policies of the Thatcher government (see also section 6 below). Paralleling the sale process of industries such as British Telecommunications and British Gas has been the development of a whole new regulatory structure. (Veljanovski, 1987, 165-170). This structure rests on a body of economic law involving a large number of specific obligations and license conditions placed on the privatized industries, and on a new breed of regulatory agency -- the regulatory offices or ROs.

The ROs combine a number of functions: they administer price regulation; they ensure that the privatized firms comply with the terms of their licences; they act as a channel for consumer complaints and as promoters of competition in the industry they regulate. Detected instances of monopoly abuse are referred to

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the Office of Fair Trading and to the Monopolies and Mergers Commission (MMC).

Thus, privatization has led to a considerable widening of the scope of the competition agencies. Now the MMC has a direct role in the regulation of the utilities, while prior to privatization it did not have the possibility to examine the potentially anti-competitive practices of the nationalized industries. Regulation of the competitive behaviour of the privatized industries is further strengthened by the availability of EC competition law which offers considerably more powerful remedies than are available under British laws (ib., 173).

In short, privatization has not meant a return to laissez-faire. Instead, it has changed the role of the state from being a producer of goods and services to that of a regulator whose main function is to ensure that economic actors play by the agreed rules of the game. The American influence is evident in the new institutional arrangements, despite some complaints that the American model of regulation has not been considered in sufficient detail. For example, many important regulatory powers have been given to the central government rather than to bodies operating at "arm's length". Where independent regulatory agencies have been established, as in telecommunications and gas, the Secretary of State retains important powers and the operation of the regulatory body is dependent on prior decisions of the minister concerning the principles to be applied. It has also been pointed out that the procedures of the American

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agencies are far more open and participatory than anything considered in the United Kingdom (Prosser, 1989, 138-142).

These criticisms may be theoretically justified, but as was noted above, and as we shall see in several other cases, foreign models are never literally copied; they provide inspiration, reassurance and perhaps justification, rather than detailed blueprints. Given the long tradition of secrecy and centralized decision making of the British as of most other European governments, one is inclined to accept the view of scholars like Veljakovski who argue that the changes brought about by the Thatcher government in the regulatory field have been considerably more dramatic than could have been expected and than many have conceded (Veljakovski, 1987, 186).

The British regulation of public utilities is only one example among many of the influence of American regulatory theory and practice on European policy makers since the war. In the following sections we shall discuss other significant examples. Before doing so, however, let us try to specify more closely the basic characteristics of American regulation. This may be useful for European readers, since many European scholars understand regulation in a very broad sense which sometimes covers the whole realm of legislation, governance, and social control.

Within the framework of American public policy and administration, regulation has acquired a more specific meaning. It refers, to use Philip Selznick's formulation, to sustained and focused control exercised by a public agency over activities that

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are socially valued (Selznick, 1985, 363-64). The reference to sustained and focused control by a public agency suggests that regulation is not achieved simply by passing a law, but requires detailed knowledge of, and intimate involvement with, the regulated activity. This requirement will necessitate, sooner or later, the creation of a specialized agency entrusted with fact-finding, rule-making, and enforcement.

The emphasis, in Selznick's definition, on socially valued activities excludes, for example, most of what goes on in the criminal justice system: the detection and punishment of illegal behavior is not regulation in the sense in which the term is used here. On the other hand, market activities can be "regulated" only in societies that consider such activities worthwhile in themselves and hence in need of protection as well as control. In fact, the main difference between the American and the European approach to regulation in the past has been ideological rather than institutional. The American rejection of nationalization as a politically or economically viable option expressed a widely held belief that the market works well under normal circumstances and should be interfered with only in clearly defined cases of market failure. In this view, regulation is primarily a tool to increase economic efficiency; distributive aims should be pursued by other means.

As many recent studies have shown, the market-failure rationale is insufficient to explain the actual development of public regulation in the United States. In fact, how can one

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explain in efficiency terms price and entry regulation of basically competitive industries like airlines, trucking, banking, and telephone services? Still, the success of the deregulation movement in many of these industries shows how important the ideological acceptance of the superior efficiency of the market economy has been, and still is, as a normative basis of public regulation in America. In Europe, on the other hand, popular acceptance of the market ideology is a more recent phenomenon. Peter Jenkins exaggerates only slightly when he writes that only now, for the first time in this century, the governing classes of Europe no longer assume that socialism in some form is what history has in store (Jenkins, 1988).

3. The Beginnings of Anti-Trust Legislation in the European Community

Actually, the reconstruction of the ideology and institutions of liberal capitalism started at the same time as the physical reconstruction of the continent after the war. As Charles Maier (1978, 23-48) has argued in his study of American international economy policy since 1945, Washington's successful effort in Europe , as in Japan, was to ensure the primacy of economics over politics, to de-ideologize issues of political economy into questions of output and efficiency.

Not surprisingly, the Paris Treaty establishing the European Coal and Steel Community (ECSC) in 1951 rejected the option of nationalization or internationalization of the ownership of the

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means of production in coal, iron and steel in favor of a common market in these products achieved by removing custom duties, quotas, and other obstacles to free trade.

It is well known that the anti-cartel clauses of the ECSC treaty -- which Jean Monnet considered to be "the first European anti-trust law" -- were significantly influenced by the American model represented by the Sherman Antitrust Act, the Clayton Act and the Federal Trade Commission Act.

Washington, represented by J.McCloy and his cartel expert Robert Bowie of Harvard, insisted more than once on a particular wording of individual articles (Berghahn, 1986, 144). Monnet was familiar with American antitrust legislation and there are, in fact, striking similarities between his original draft of the treaty, which envisaged a general ban on cartels without exceptions, and the principles of American competition policy.

It is interesting to note that despite these influences and pressures, the anti-cartel clauses of the ECSC treaty were not an exact copy of the American model. Elements of the European cartel tradition survive in the treaty, even if in covert form. Thus, Article 65 bans agreements and practices which restrict or distort competition in the common market for coal and steel. Similarly, Article 66 follows the American example in prohibiting the formation of monopolies, but not concentrations short of monopoly. However, the High Authority could, in certain circumstances, permit horizontal agreements in order to improve productivity or the distribution of individual products.

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Moreover, Articles 59 and 61 endow the High Authority with interventionist powers in crisis situations. We may conclude with Volker Berghahn (1986, 144-45) that the governments of Western Europe were not prepared to rely completely on the mechanisms of competition.

Competition rules occupy an important position also in the 1957 Treaty of Rome establishing the European Economic Community (EEC). Article 3 (f) of the treaty calls for "the institution of a system ensuring that competition in the Common Market is not distorted". Articles 85-94 provide the foundation for the competition or antitrust policy of the Community. The competition rules are directed both against private companies and against national governments. Not surprisingly, the EC Commission has had greater success with respect to the former than the latter.

Policy towards private companies is controlled by Articles 85 and 86. Article 85 prohibits vertical or horizontal agreements between enterprises that by their restrictive nature are liable "to affect trade between member states and have as their object or effect the distortion of competition within the Common Market". Article 86 refers to the prevention of abuses by enterprises which have a dominant position within the market.

Both articles have been significantly influenced by the American antitrust experience. Legal scholars have pointed out the remarkable similarity existing between Articles 1 and 2 of the Sherman Act and Articles 85 and 86 of the Treaty of Rome. However, American influence on this treaty is not quite as strong

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as in the case of the Paris treaty creating the ECSC. For example, the power to control mergers is explicit in the ECSC treaty (along the lines of the anti-merger section of the Clayton Act), but not in the Treaty of Rome. Article 86 of this treaty is a poor instrument to control mergers since it requires a firm to be in a dominant position before it can be invoked. An explicit merger control regulation has been approved by the EC Council only at the end of 1989, becoming effective as of September 1990. After that date all mergers and acquisitions having a "Community dimension" will have to give notification to the EC Commission for clearance.

One important reason for the disparity between the two treaties was the changing motivation for a competition policy. Initially, under pressure from the United States, the major objective was to ensure that in the new coal and steel market the potential of large German firms would continue to be controlled along the lines of the allied policy of deconcentration. Strict competition rules reflected the political objective of preventing a revival of trusts and cartels in German heavy industry. By the mid-1950s fears of a resurgent Germany had diminished. The new climate of opinion combined with a lack of enthusiasm for strong supranational powers to produce the rather weaker competition rules of the EEC Treaty (Allen, 1983, 212).

4. The German Kartellgesetz of 1957

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American influence was particularly strong and direct in an occupied country like Germany. Even before the war was over, a broad consensus had emerged in Washington that German cartels had to be abolished and that monopolistic or quasi-monopolistic market positions like that held by IG Farben, were to be broken up. The German cartel system was blamed for having contributed to the development of the Nazi closed-space economy. Such an economy directly contradicted the American vision of an international liberal order based on free trade and competition.

After the war, at the insistence of the Americans, all German cartel agreements were declared null and void, and a strict ban was promulgated which imposed heavy penalties on future violations of the cartel prohibition. The problem, however, was how the Germans would organize their economy at the end of the regime of military occupation. Understandably, the Americans were reluctant to leave the drafting of a future anti-cartel law to the Germans who were known to be keen to rebuild horizontal agreements. Therefore, the task of the decartelization branch of the Bipartite Control Office (BICO) was not merely to supervise the ban on cartels, but also to convince West German industrialists of the benefits of the American model and to persuade them to adopt it. For this reason the decartelization branch was not to be dissolved after the foundation of the Federal Republic but would continue to function in an advisory capacity (Berghahn, 1986, 103-4).

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Discussion on a German anti-cartel law began in the autumn of 1949. By early 1950 rumors were circulating in Bonn to the effect that the allies, under pressure from the U.S. High Commissioner, would promulgate their own anti-cartel law if the Germans did not produce a satisfactory bill pretty soon. The American staff in the decartelization branch of the High Commission was headed by a former member of the Boston office of the Antitrust Division of the US Department of Justice; his deputy had been moved to Germany from the Securities and Exchange Commission. Thus, the German government was constantly faced with the real possibility of American intervention based on occupation law.

Ludwig Erhard, who as minister of the economy had the responsibility for drafting the law, did not have first-hand knowledge of American anti-trust theory and practice. However, early visits to the United States had convinced him of the superior productivity and dynamism of the American economic system. These visits strengthened his determination to introduce a similar legal framework in the Federal Republic. In December 1949 it was decided to send a delegation of experts to America in order to study the application of anti-trust legislation and its effect on the economy. The group was accompanied in the United States by two former members of the Antitrust Division of the Department of Justice and met with representatives of the Federal Trade Commission, the Antitrust Division and the Securities and Exchange Commission, as well as with industrialists, labor leaders and academics.

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Upon their return to Europe, the group produced a sixty-page report which gave a detailed description of the American system. This and similar visits by high civil servants, academics and industry representatives produced a body of expertise on American antitrust regulation on which Erhard and his advisors could draw in preparing successive versions of the German bill. The various drafts were discussed with members of the legal department of the U.S.High Commission, but these were not particularly impressed by the progress Erhard and his experts were able to make against the strong opposition of important sectors of German industry. At one point, an American expert voiced his "impression of a bill to facilitate cartels rather than one to ban them" (Berghahn, 1986, 171).

At the end of November 1952, the experts of the High Commission sent to the German government a draft which was based on the German submission but contained a number of more radical clauses inspired by U.S. antitrust laws. Erhard had the difficult task of mediating between the American insistence on a strict ban on cartels and the opposition of industry which was hoping to return to the old legal framework.

A compromise solution was eventually found, but the debate lasted until 1957. Erhard had reason to be thankful for the American insistence on a strict cartel ban, which he himself favored. It is quite possible that without the American pressure this principle would have been rejected from the start (Berghahn, 1986, 173). The law finally approved by the Bundestag in 1957 has

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been compared to a Swiss cheese, prohibiting cartel agreements in principle but granting so many exceptions that the ban often slipped through the numerous holes (Hardach, 1980, 149). The fact remains that the Kartellgesetz went considerably beyond the old cartel decree of 1923. An important institutional innovation was the creation of a specialized regulatory agency, the federal cartel office (Bundeskartellamt) with powers of investigation and enforcement.

The treaties of Paris and Rome and the German cartel law are rather unique examples of politically motivated external pressures leading to major policy innovations. As we have seen, American influence, even when backed by the means of persuasion available to an occupying power, was not strong enough to completely overcome the traditional European tolerance of anti-competitive behavior. Nonetheless, competition policy in the European Community today owes much to those early influences.

5. From Economic to Social Regulation

With the waning of America's "consensual hegemony" in Europe, the kind of direct influence evident in the cases just discussed became increasingly impossible. However, American models remained important for European regulators in the 1960s and 1970s, especially in new policy fields like the environment, nuclear safety and consumer protection, that is, in social regulation. The reasons for the influence of the United States in this area

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of policy making are less obvious than may appear at first sight and call for a few comments.

The leading role of America in economic regulation is not difficult to explain, given the ideological reluctance to nationalize, on the one hand, and, on the other, the early development of mass production and the concentration of economic power already well advanced there in the 1880s. Leadership in social regulation cannot be explained in the same way. It is certainly not the case that in the 1960s the environment was more polluted or the consumer less protected in America than in Europe.

A suggestive hypothesis is that because America was a "welfare laggard" with respect to Europe, it could devote to social regulation the financial and political resources which in Europe were absorbed by the growing needs of the welfare state. Such an explanation has the advantage of calling attention to the inherent tension between social regulation and traditional welfare policies based on the universal provision of social services and large-scale transfer payments. Budgetary limitations are one obvious cause of tension: current estimates of the costs of various environmental programmes show that these represent a significant and growing percentage of GNP in all industrialized countries. Sooner or later, therefore, voters have to face the choice between expanding or even continuing welfare programmes, and devoting sufficient resources to environmental protection and other types of social regulation.

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However, the roots of the latent conflict between traditional social policy and social regulation go deeper than budgetary limitations. While the programmes of the welfare state are largely concerned with the provision of "merit goods" (housing, medical care, education, retirement income, and so on), the aim of social regulation is to provide "public goods" like environmental protection, product safety or consumer information.

Public provision of merit goods raises delicate issues about government paternalism and consumer sovereignty. Moreover, most merit goods can also be supplied, often more efficiently, by the market. On the other hand, there is general agreement that public goods cannot be produced in sufficient quantities by the market. Indeed, inadequate supply of public goods is precisely one of the types of market failure which social regulation is meant to correct. Hence social regulation is politically less controversial than social policy in a country like the United States where the ideology of free markets and consumer sovereignty has always received widespread support.

Be that as it may, American methods and instruments of social regulation have been widely imitated in Europe. Examples range from the adoption of U.S. emission standards for automobiles and of the methodology of environmental impact assessments -- first defined by the U.S. National Environmental Policy Act of 1969 and introduced into European legislation about a decade later -- to the advocacy of environmental cost-benefit analysis and of

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tradable permits to control acid rain by the recent environment white paper of the British government.

In his contribution to this issue of The Journal of Public Policy, George Hoberg emphasizes the importance of American environmental research for Canadian regulators. European regulators, too, have often been "free riders" on the results of American regulatory science. Similarly, "activist-driven emulation", to use Hoberg's terminology, has played a significant role in the development of environmentalist movements in Europe.

Such influences are bound to become less important in the future, as environmental policy in Europe, both at the national and at the EC level, approaches maturity. Other aspects of the American experience, however, will remain significant, indeed, may grow in significance. Thus, as the EC moves more squarely into the environmental arena, American regulatory federalism -- which finds expression, for example, in the balance between localized implementation and a strong federal enforcement presence -- may present an increasingly relevant model (Mott, 1990). But before discussing the development of Community regulation we must complete our review of American influence on regulation in Europe by considering the impact of the deregulation movement.

6. The Deregulation of Telecommunications

American regulatory philosophy and practice have continued to inspire policy development abroad during the phase of

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deregulation in the 1980s. In this period, traditional structures of regulation and control felt the pressure of powerful ideological, economic and technological forces, and were dismantled or radically transformed. This has been often called deregulation, but that is a misleading term because often new and more explicit regulatory structures are erected in place of the old ones (Kay and Vickers, 1990).

Neither in the United States nor in Europe has deregulation meant an end to all regulation. In America, airlines have not been deregulated with respect to safety, and newly deregulated industries have lost their pre-existing statutory immunity from the anti-trust laws. In Great Britain, privatization of nationalized industries has been followed by monopoly and price regulation, see section 2. In short, what is observed in practice is never total deregulation, but a combination of deregulation and reregulation. Regulatory reform would be a better term for this combination, but we shall follow common usage and continue to speak of deregulation.

In order to understand the phenomenon of deregulation in Europe, two factors should be kept in mind. First, in the European context deregulation often means privatization since, as we saw, nationalizations were in many cases the functional equivalent of American-style regulation. This explains why opposition to deregulation has been generally stronger in Europe than in the United States. Second, in most countries except Britain, deregulation has been less an ideological movement than

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a response to far-reaching changes in the technology and economics of particular industries. Hence the progress of deregulation has varied with the relative importance of those industries in the various countries. As a consequence, the impact of American deregulation or regulatory reform has been quite uneven across countries and industries. The case of telecommunications is a good illustration of this complex pattern of policy diffusion.

Telecommunications was once a rather simple industry, characterized by significant economies of scale and scope and by positive externalities generated by larger numbers of interconnected users. It was universally accepted that a single firm could best exploit the natural monopoly created by telephone technology in its early stages. In Europe, national governments granted authority over communications to a single monopolist, usually the Ministry of Post, Telegraph and Telephone (PTT). In the United States, the old AT&T system operated as a private regulated monopoly.

For decades, a powerful coalition of interests between PTTs (or AT&T) and national suppliers of exchanges and terminal equipment prevented any significant changes of the system. However, in the 1950s a series of significant technological innovations began to transform the industry. Developments in microwave communications created for the first time the possibility of competition in long-distance services. AT&T could no longer convincingly argue that it was a natural monopoly, and

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in 1969 the Federal Communications Commission let competitors into the long-distance market and eventually also into terminal equipment.

In the 1970s, technological breakthroughs in digital and fiber-optic technologies led to the emergence of high-capacity transmission systems, which allow a very significant fall in the marginal cost of transmission and create a convergence of switching and information processing techniques. Thus, the simplicity of the old system was transformed by the appearance of two different functions: the information transportation function and the processing of this information within the network or by computers located at subscribers.

The convergence of these two functions raised troubling regulatory questions. Who should produce and sell the services made possible by the new technology? The telephone company or the firms using the telephone company's facilities? Whose equipment should deliver the services? Not surprisingly, the regulatory problems and choices posed by technological innovation emerged first in the United States, the country where most of the new technologies had been developed, and the home of some of the world's most advanced financial and service industries and of the biggest and most diversified computer industry (Cowhey, 1990, 161). A sequence of policy decisions culminating in the partitioning of AT&T into a long-distance company and seven regional companies established the principle that competition, rather than regulated monopoly, was the better way to organize

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the telecommunications market. Today only local networks and some parts of intrastate long-distance communications are subject to regulation.

These developments were followed with great interest in Europe, where an emergent coalition of computer and service industries saw the possibility of challenging the traditional postal-industrial complex. The strength of the service sector in the United Kingdom -- banking, insurance, trading, publishing and media -- may explain why this country was the first one to follow the American example. The 1984 Telecommunications Act introduced five key principles of public policy in this area:

1. A formal separation of telecommunications from the Post Office and establishment of British Telecom (BT) as an independent but regulated entity.
2. Establishment of competition in services by permitting rival carriers and value-added network services.
3. Privatization of the public network by selling a majority of stocks of BT.
4. Liberalization of the market for peripheral equipment.
5. Creation of the regulatory agency OFTEL.

The influence of the American experience is evident, not least in the creation of a specialized regulatory agency following privatization. As was already indicated in section 2, single-industry regulatory bodies like OFTEL are a new institutional development in Europe, perhaps the most significant feature of the emerging regulatory structure (Veljanovski, 1987, 165).

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Policy development in the Netherlands followed rather similar lines. The Steenbergen Commission, established in 1984, recommended the transformation of the PTT into a limited liability holding company. Separate subsidiary companies were to be set up for postal services and for telecommunications. The recommendations of the Steenbergen Commission were adopted almost without changes by the government and became the basis of the new Dutch telecommunications policy. The privatization of the telecommunication services became official on January 1, 1989. In this case, too, the demonstration effect of the American (and British) experience was skillfully and successfully invoked by a winning coalition of large users of telecommunications services like multinationals, banks, insurance companies, publishers and airlines (Hulsink, 1990).

In the rest of the continent the progress of deregulation has been much more limited. The German telecommunications law of 1989 deregulated value-added network services (VANS), terminal equipment, mobile radio and low speed satellite communications. Telephone services and the core of the physical network, however, remain under the monopoly of the Deutsche Bundespost. Similarly in France, deregulation covers basically VAN services, terminal equipment and mobile communications in the field of private and public radiotelephony. The socialist government elected on May 8, 1988 dropped the idea of transforming the French PTT into a holding company. Nonetheless, the law of 30 September 1986 represents a turning point in the history of regulation in

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France, being the first attempt to separate operational and regulatory responsibilities (Koebel, 1990, 110-23). The law transferred part of the regulatory power held by the Ministry of Post and Telecommunications to an independent regulatory commission.

The separation of regulatory and operational responsibilities has also been urged by the 1987 Green Book on Telecommunications of the EC Commission. Hence it may be expected that this important principle of regulatory policy will be gradually accepted by all the countries of the Community. For the rest, the Green Book strikes an uneasy compromise between the position of countries like Britain and the Netherlands, on one side, and the rather conservative attitude of the majority of member states, on the other. It proposes that the provision of terminal equipment as well as VAN services should be liberalized within and between member countries. Basic services (mainly the telephone service) could still be provided as monopoly by the national PTTs; however, the arguments about the public interest being served by such monopolies should be reviewed periodically.

A detailed analysis of the reasons for the different national attitudes toward deregulation would require a separate paper (Blankart and Knieps, 1989; Lehmbruch, 1989; Knieps, 1990). A full explanation would have to consider the relative strength of the "services-information" coalition in different countries, the more or less powerful position of the PTT in the cabinet (quite strong in Germany, rather weak in Britain), the attitudes of

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trade unions and ministerial bureaucracies, and a host of other political and institutional factors. For the general argument of this paper, however, it suffices to call attention to the variety of factors that can accelerate or retard the diffusion of a policy innovation.

7. The EC Commission as Regulator

As we have just seen, policy development in Europe in the field of telecommunications has been influenced, up to now, more by the American model than by EC regulation. But it would be quite wrong to generalize from this particular case. What is true, rather, is that it is becoming increasingly impossible to understand the domestic policies of member states without taking Community legislation into consideration. This is particularly true for economic and social regulation. I do not mean to suggest that EC regulators attempt to replace or even closely supervise national regulators. Such a goal would be politically infeasible at present, and would in any case require a large increase of specialist staffs in Brussels and the creation of European regulatory agencies and inspectorates.

Comparing national and Community rule making in a number of policy fields one can see instead two different regulatory systems, with the second designed to coordinate and complement rather than replace or challenge the first. At the same time, one must keep in mind that Community regulation, when agreed by the Council, has primacy over national legislation. Hence, regardless

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of the intentions of the Commission, national regulators tend to lose power in an increasing number of areas (Vipod, 1989).

Political scientists have paid insufficient attention to these developments. The vast literature on European integration and on policy-making in the European Community contains very few studies of the political economy of regulation at the Community level. So far, the most significant contributions to the study of EC regulation have come from legal scholars who are naturally more concerned with procedural questions than with substantive policy evaluations or general theoretical explanations. Given the importance of Community regulation in so many areas of economic and social life, from banking and technical standardization to environmental and consumer protection, this scarcity of regulatory policy analyses is surprising and can only be explained by the absence of a suitable theoretical framework.

Aside from competition policy and measures necessary for the integration of national markets, few regulatory policies or programmes are specifically mentioned in the Treaty of Rome. The transport and energy policies which could have given rise to significant regulatory activities, have remained largely undeveloped. On the other hand, the agricultural, regional and social policies which, together with development aid, absorb about 80 per cent of the Community budget, are essentially redistributive rather than regulatory in nature.

How, then, can one explain the continuous growth of Community regulation, even in the absence of explicit legal mandates? Take

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the case of environmental protection, an area not even mentioned by the Treaty of Rome. In the two decades from 1967 to 1987, when the Single European Act finally recognized the authority of the Community to legislate in this area, almost 200 directives, regulations, and decisions were introduced by the Commission. Moreover, the rate of growth of environmental regulation appears to have been largely unaffected by the political vicissitudes, budgetary crises, and recurrent waves of Europessimism of the 1970s and early 1980s. From the single directive on preventing risks by testing of 1969 (L68/19.3.69) we pass to 10 directives/decisions in 1975, 13 in 1980, 20 in 1982, 23 in 1984, 24 in 1985 and 17 in the six months immediately preceding passage of the Single European Act.

The case of environmental regulation is particularly striking, partly because of the political salience of environmental issues, but it is by no means unique. The volume and depth of Community regulation in the areas of consumer product safety, medical drug testing, banking and financial services and, of course, competition law is hardly less impressive. In fact, the hundreds of regulatory measures proposed by the Commission's White Paper on the completion of the internal market only represent the acceleration of a trend set in motion decades ago. The continuous growth of supranational regulation is not easily explained by traditional theories of Community policy-making. At most, such theories suggest that the serious implementation gap that exists in the European Community may make

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it easier for the member states, and their representatives in the Council, to accept Commission proposals which they have no serious intention of applying. The main limitation of this argument is that it fails to differentiate between areas where policy development has been slow and uncertain (for example, transport, energy or research) and areas where significant policy development has taken place even in the absence of a clear legal basis.

Moreover, existing theories of Community policy-making do not usually draw any clear distinction between regulatory and other types of policies. Now, an important characteristic of regulatory policy making is the limited influence of budgetary limitations on the activities of regulators. The size of non-regulatory, direct-expenditure programmes is constrained by budgetary appropriations and, ultimately, by the size of government tax revenues. In contrast, the real costs of most regulatory programmes are borne directly by the firms and individuals who have to comply with them. Compared with these costs, the resources needed to produce the regulations are trivial.

It is difficult to overstate the significance of this structural difference between regulatory policies and policies involving the direct expenditure of public funds. The distinction is particularly important for the analysis of Community policy-making, since not only the economic, but also the political and administrative costs of enforcing EC regulations are borne by the member states.

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As already noted, the financial resources of the Community go, for the most part, to the Common Agricultural Policy and to a handful of redistributive programmes. The remaining resources are insufficient to support large scale initiatives in areas like industrial policy, energy, research, or technological innovation. Given this constraint, the only way for the Commission to increase its role is to expand the scope of its regulatory activities.

Thus any satisfactory explanation of the remarkable growth of Community regulation must take into account both the desire of the Commission to increase its influence -- a fairly safe behavioral assumption -- and the possibility of escaping budgetary constraints by resorting to regulatory policy-making. But this is only part of the explanation. Another important element is the interest of multi-national, export-oriented industries in avoiding inconsistent and progressively more stringent regulations in various EC and non-EC countries. Community regulation can eliminate or at least reduce this risk.

A similar phenomenon has been observed in the United States, where certain industries, faced with the danger of a significant loss of markets through state and local legislation, have strongly supported federal regulation ("preemptive federalism"). For example, the American automobile industry had good reasons to prefer federal regulation of air pollution because of the threat posed by different and inconsistent air pollution standards and also because it feared "a kind of political domino effect, in

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which one state legislature after another would set more and more stringent emission standards without regard to the costs and technical difficulties involved ... Federal legislation was preferable to state legislation -- particularly if federal standards were set based on technical presentations to an administrative agency rather than through symbolic appeals to cost-externalizing politicians" (Elliott et al., 1985, 331).

Thus the car industry, which during the early 1960s had successfully opposed federal emission standards for motor vehicles, abruptly reversed its position in mid-1965: provided that the federal standards would be set by a regulatory agency, and provided that they would preempt any state standards more stringent than California's, the industry would support federal legislation.

Analogous reasons explain the preference for Community solutions of some powerful and well-organized European industries. Consider, for example, the "Sixth Amendment" of directive 67/548 on the classification, packaging, and labelling of dangerous substances. This amending Directive 79/831 does not prevent member states from including more substances within the scope of national regulations than are required by the Directive itself. In fact, the British Health and Safety Commission proposed to go further than the Directive by bringing intermediate products within the scope of national regulation. This, however, was opposed by the chemical industry, represented by the Chemical Industries Association (CIA) which argued that

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national regulation should not impose greater burdens on British industry than the Directive placed on its competitors. The CIA view prevailed thus ensuring that in this as in many other cases, Community regulation would in fact set the maximum as well as the minimum standard for national regulation (Haigh, 1984).

Similarly, German negotiators pressed for a European-wide scheme that would also provide the framework for an acceptable regulatory programme at home. German firms, concerned about overzealous enforcement by national inspectors and afraid of an environmentally conscious public opinion at home, wanted a full and explicit statement of their obligations to be defined at the EC level. Moreover, with more than 50 per cent of Germany's chemical trade going to other EC countries, German businessmen and government officials wished to avoid the commercial obstacles that would arise from divergent national regulations (Brickman, Jasanoff and Ilsen, 1985).

The European chemical industry had another reason for supporting Community regulation. In 1976 the United States, without consulting their commercial partners, enacted the Toxic Substances Control Act (TSCA). The new regulation represented a serious threat for European exports to the lucrative American market. A European response to TSCA was clearly needed, and the Community was the logical forum for fashioning such a response. An EC-wide system of testing new chemical substances could serve as a model for negotiating standardized requirements covering the major chemical markets. In fact, the 1979 Directive has enabled

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the Community to speak with one voice in discussions with the United States and other OECD countries, and has strengthened the position of the European chemical industry in ensuring that the new American regulation does not create obstacles to its exports. There is little doubt that the ability of the Commission to enter into discussions with the USA has been greatly enhanced by the Directive, and it is unlikely that each European country on its own could do so effectively (Brickman, Jasanoff and Ilsen, 1985, 277).

At the beginning of this section we stated that it is becoming increasingly difficult to understand the domestic policies of member states without taking Community policies into consideration. The most obvious impact of Community regulations on national policies is a transfer of legislative competence to the Community since the principle of supremacy of Community law bars member states from passing laws inconsistent with the relevant EC directive. There are less obvious but no less important ways in which Community regulations can influence national policies. Thus "[t]he confrontation of national policy makers with the new regulatory initiatives at the Community level may also have the effect of reorienting the national thinking on environmental priorities and regulating strategies and influencing national policies in areas not covered by those initiatives. On the other hand, the Community can provide a "back door" method for adopting measures that would not be adopted by national governments" (Rehbinder and Stewart, 1985, 331-332).

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Just as policy making in the member states can no longer be explained exclusively in national terms, so it is impossible to understand the development of Community regulatory policy making as if the only important political actors were the national governments represented in the Council. Models of this type have led, for example, to the incorrect prediction that environmental process regulation would not occur in a system requiring unanimous consent of the member states, because states with relatively low standards would find it against their interest to agree to higher standards (Rehbinder and Stewart, 1985). As the example of the 1979 directive on toxic substances shows, such state-centered models overlook many important factors such as the variety of industrial interests within one country; the advantages of "preemptive federalism" for multinational or export-oriented firms, both for avoiding inconsistent national regulations, and for shifting regulatory decision-making to a less political, more technocratic arena; the role of public opinion which makes the adoption of "lowest common denominator" standards increasingly difficult; the importance of speaking with one voice in negotiating international regulatory issues; and last but not least the ability of the Commission to regulate even without adequate legal and budgetary resources.

8. Regulatory Convergence through Mutual Recognition?

Despite the impressive growth of Community regulation in the 1960s and 1970s, by 1985 the Commission had to acknowledge that

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the amount of work that remained to be done was such that the goal of completing the internal market by 1993 could not be achieved by relying exclusively on the traditional harmonization approach. In the words of the Commission (1985, 18) "experience has shown that the alternative of relying on a strategy based totally on harmonization would be over-regulatory, would take a long time to implement, would be inflexible and could stifle innovation".

Harmonization, rather than unification, of national regulations had been the main objective of the Community in its first 25 years. Harmonization is the adjustment of national rules to the requirements of a common market. Its characteristic instrument is the directive because this instrument only specifies the regulatory objectives to be achieved, leaving the choice of methods to the member states.

To overcome the limitations of the traditional approach, the White Paper on the completion of the internal market introduced a new strategy with the following key elements: mutual recognition of national regulations and standards; legislative harmonization to be restricted by laying down essential health and safety requirements which will be obligatory on all Member States; gradual replacement of national product specifications by European standards issued by the Comité Européen de la Normalisation (CEN) or by sectoral European organizations such as CENELEC in the electrical sector and CEPT in the telecommunications sector.

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In essence, the White Paper proposes a conceptual distinction between matters where harmonization is essential and those where it is sufficient that there be mutual recognition of the equivalence of the various basic requirements laid down under national law. This line of reasoning was first introduced by the European Court of Justice in the famous Cassis de Dijon judgment of 1979. The Court had stated that a member state may not in principle prohibit the sale in its territory of a product lawfully produced and marketed in another member state even if this product is produced according to technical or quality requirements which differ from those imposed on its domestic products -- except when the prohibition is justified by the need to ensure effective fiscal supervision, to protect public health or the environment, or to ensure the fairness of financial transactions.

Given the cumbersome nature of the Community decision-making process, the new approach has considerable advantages. Unlike harmonization, mutual recognition does not involve the transfer of powers to the Community but, at most, restricts the freedom of action of member states. Moreover, the emphasis on mutual recognition avoids all the difficulties linked to the necessity of drafting directives so as to suit the substantive concerns of twelve different actors or the particular requirements of their legal system.

In fact, the idea of mutual recognition is so attractive that the Commission had hoped to render it compulsory at the

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expiration of the 1992 deadline in the absence of harmonization provisions in a given sector. Because of the unanimous opposition of the member states, a milder version of this proposal was adopted. Article 100B of the Single Act provides for mutual recognition to be speeded up in the last year of the transition period to fulfil the commitment to complete the internal market by the end of 1992: on the basis of an inventory drawn up by the Commission, the Council will decide on the equivalence between specific national provisions (Dehousse, 1988, 326).

It remains to be seen whether the principle of mutual recognition will suffice to meet the many regulatory challenges posed by an integrated European market (Majone, 1989a). For example, this approach cannot handle negative externalities that transcend national boundaries, nor can it solve problems that have proved too difficult even for the traditional approach through harmonization, as in the case of pre-market testing of new medical drugs (Kaufer, 1990). One could also argue that mutual recognition is incompatible with the logic of an integrated market since this logic cannot allow the achievement of the single market to be brought into question by unilateral measures of member states.

At any rate, mutual recognition is not an end in itself. The assumption is that this approach will lead at first to a competition among national rules but eventually to regulatory convergence. At least in some areas, such as regulation aimed at establishing quality standards for goods and services,

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competition is an efficient way of assessing the costs and benefits of different methods of regulation. By providing opportunities for experimentation and social learning, competition among regulators raises the standard of all regulation and drives out rules which offer protection that consumers do not, in fact, require (Kay and Vickers, 1990, 244). Thus it is likely that in the near future the principle of mutual recognition and the resulting competition among rules will provide a new and important source of policy innovation and emulation, not only within the EC but also internationally.

To illustrate the possible international implications of mutual recognition, I shall briefly compare the regulation of banking and financial services in the United States and in the European Community (after January 1, 1993). Two basic elements of banking regulation in America are the McFadden Act of 1927 and the Glass-Steagall Act of 1933. Both statutes have been amended on several occasions since they were passed.

The McFadden Act prohibits a national bank from branching outside of its home state, and permits it to branch within its home state only to the extent that banks chartered by that state may branch. Thus, interstate branching is expressely prohibited for all national banks and is virtually impossible for state-chartered banks because no state permits its chartered banks to branch beyond state boundaries, or permits banks located in other states to open branch offices in the host state.

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The Glass-Steagall Act attempts to separate commercial banking from investment banking by prohibiting, with a few exceptions, any institution from conducting at the same time a deposit-taking business and an investment banking business. In addition, the act prohibits member banks of the Federal Reserve System from affiliating with securities firms, again with some exceptions.

As a result of these restrictions, the financial system in the United States has evolved into a structure characterized by a very large number of commercial banks, most of which are quite small; by a strict separation of commercial banking and securities firms, with different federal authorities to regulate them; and by the virtual absence of interstate branching by commercial banks but almost unrestricted branching by securities firms (Golembe and Holland, 1990, 91-92).

Consider now the situation in the European Community after January 1, 1993. The regulatory framework which will apply to European banks at that time is provided by the Second Directive on Credit Institutions (often referred to, not quite correctly, as Second Banking Directive) and by three more narrow directives concerned with the definition of a bank's capital, with the solvency ratios banks should adopt, and with procedures for winding up credit institutions. These three technical directives aim to harmonize standards in key areas, not provide mutual recognition. They are, nonetheless, quite important for they establish a firm basis on which mutual recognition can take

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place. As such they show that harmonization and mutual recognition are not simply alternatives but are, in important respects, complementary (Vipod, 1989, 14-15).

The cornerstone of EC banking regulation is the Second Directive. The essential elements of this directive are the concept of a single banking licence and the list of permissible banking activities. The list is very broad and includes activities, such as dealing in and underwriting securities, which American banks are prevented from entering into by Glass-Steagall. Not only is the list of permissible banking activities broad, but it can be updated by the Commission to reflect the emergence of new banking services.

Within the regulatory framework provided by the Second Directive and by the other directives mentioned above, a European bank will need a single license from its home country to be allowed to establish branches or directly market financial services in any other EC country without further authorizations or controls. With very few exceptions, the host country in which the bank provides its services has no power to seek further authorization or exercise supervision. This is, of course, a direct consequence of the principle of mutual recognition which inspires the entire directive.

Even this brief description of the two systems of regulation is sufficient to convey an idea of the radically different approaches followed by American and European regulators. The question is whether such differences are compatible with the

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increasing internationalization of financial markets and with the important role of the United States and the European Community in such markets.

The mutual recognition approach, applied to international banking, would require the United States to permit European banks to carry on the same scope of business in the US as their home country permits them to carry on in Europe. This would place American banks at a considerable disadvantage, unless the restrictions imposed by the Glass-Steagall and the McFadden Acts were greatly liberalized.

The European Community has repeatedly argued in favor of greater liberalization and international harmonization of banking regulation. Some progress has already been made, for example the adoption by the U.S. and Japan as well as the EC, of the risk-based capital requirements set by the Basle Committee on Banking Regulations and Supervisory Practices. Even stronger forms of regulatory convergence may emerge in the near future. According to some American experts, if the savings and loans crisis had not erupted to dominate all other financial market issues, the push coming out of reciprocity demands from the EC might have been the deciding factor in amending the Glass-Steagall Act in 1988 or 1989. It is also suggested that in the long run European banking regulation will induce a complete restructuring of the US financial system, meaning the disappearance of the limitations imposed by present American regulations (Golembe and Holland, 1990, 93). How, in fact, could the U.S. Congress continue to

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defend, say, the prohibition of branching between American states when the EC permits virtually unrestricted branching between countries?

Even the balance of power among federal regulatory and supervisory agencies may be affected by policy developments in the EC. If a European system of central banks (Eurofed) will be established with responsibility for the coordination of banking supervision policies, the Federal Reserve Board would seem to be the obvious candidate for the same job in the United States. In this way the Reserve Board would move into a dominant position within the federal structure, with the other federal regulatory bodies -- the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation -- playing subsidiary roles or even becoming part of the Federal Reserve itself.

9. Conclusion

In his discussion of lesson-drawing, Richard Rose identifies two opposite schools of thought. According to theories of perfect fungibility, different governments faced with the same problem respond with the same or similar policies; while theories of total blockage maintain that every polity presents a unique configuration of cultural values, institutions and resources, so that it is impossible to transfer policy solutions from one country to another, one city to another, or from the past to the present. Moreover, the fungibility hypothesis implies that

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policies and policy instruments can be transferred virtually intact from one context to another (Rose, 1990).

The cases examined in this paper contradict the simplicity of the ideal types of total fungibility or blockage. As we have seen, utilization of pre-existing models, far from being impossible or even unusual, is a common feature of policy innovation. Indeed, the very concept of policy innovation should be used with the same care and qualifications with which the historians introduce their periodisations and modes of dating. Even the Sherman Antitrust Act, a significant innovation by any standard, was fashioned of materials borrowed from the common law, to the point that some scholars have argued that the Act does nothing more than to declare principles of policy and law that have been observed continuously during many centuries of Anglo-American legal tradition. As William Letwin (1965, 15) has written, the common law was very unwieldly material from which to construct a law to control large modern corporations, but nothing better was available. The common law on monopolies provided some guiding principles as well as precedents in which the framers of the Sherman Act could find a certain amount of hope.

On the other hand, historical precedents or foreign models are seldom, if ever, literally translated into current policy. More or less extensive adaptations to a particular political, institutional and economic context are normally required. We have seen that American anti-trust policy was an important source of inspiration for both Jean Monnet and Ludwig Erhard. There are,

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for example, striking similarities between certain articles of the Sherman Act and the articles on competition policy of the Paris and Rome treaties. However, the drafters of these treaties and of the German Kartellgesetz had to modify the American model to take into account the traditional European tolerance of anti-competitive behaviour, see section 4 above.

The relevant question, therefore, is not whether policy imitation is possible or desirable -- reliance on pre-existing models is a practical necessity given the resource and time constraints under which policy makers operate -- but why a particular model becomes influential at a given time. At the beginning of this paper it was suggested that models emanating from economically and politically powerful countries are most likely to be the objects of emulation. We can now refine this statement by noting that the force exerted by a foreign model on domestic policy can be of two type: push and pull.

American influence on the development of competition policy in Europe at the end of the second world war exemplifies the first type. Some of the examples of American influence on Canadian environmental regulation discussed in Hoberg's paper in this issue, follow into the same category. On the other hand, American deregulation has attracted the attention of European and other policy-makers without direct pressures, except those transmitted through the markets. The probable impact of EC banking regulation on the American regulatory structure would be of the same type.

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Naturally, these are analytical distinctions. In practice, policy development is often the resultant of both push and pull forces. Thus, the German cartel law reflects the American pressures on the German government but also the attraction exerted by American anti-trust policy on Erhard and other economic liberals. The recent history of Eastern Europe demonstrates that foreign models transmitted only by push cannot be viable in the long run.

The interaction of push and pull forces in the transfer of policy models also helps to understand how the principle of mutual recognition, discussed in section 8, can operate in practice. This principle introduces new possibilities of policy learning through competition among national rules. However, in the absence of generally accepted standards, darwinian competition may fail to drive out bad models and produce instead convergence toward weak forms of regulation. In practice, the common standards have to be imposed on all competitors by some supranational body such as the European Community. This is why we said that harmonization and mutual recognition are not so much alternative as complementary approaches. In this, as in many other cases, push and pull have to be combined in order to produce optimal policy outcomes.

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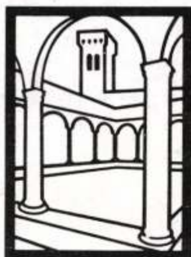

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