BUILDING MARKETS? NEOLIBERALISM, COMPETITIVE FEDERALISM, AND THE ENDURING FRAGMENTATION OF THE AMERICAN MARKET

by

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DISSERTATION ABSTRACT

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Why do interstate barriers persist and proliferate in the US and go unnoticed by neoliberal policy-makers, while in other places, like the EU, they get systematically addressed? I challenge the common assumption that the EU is trying but failing to emulate the single market created in the US a long time ago. I show that in many ways, the EU has adopted more liberal rules for the exchange of goods and services across its members states than the US has in effect across its state borders.

Focused on the US, I assemble a wide-ranging set of evidence for this assertion ranging from federal policies pursued by conservative administrations since the 1980s and conservative think tank scholarship to an in-depth study of mobility and market barriers in the construction industry. To explain this, I develop two arguments. Firstly, I argue that American and European free-marketeers fundamentally conceptualize markets differently, with American conservatives seeing them as the natural product of government-non-intervention, and European officials seeing them has a deliberate creation of central authority. This leads to different market building strategies with differential effectiveness. At the same time, I argue that the fragmentation and decentralization of the party and interest representation system in the US incentivizes state by state and sector by sector thinking and dis-incentivizes political action—leaving the bigger picture, i.e. interstate

barriers, unchanged. Especially interest groups struggle to articulate preferences for inter-state or cross-sectoral cooperation due to organizational incentives.

Applying a Bayesian process-tracing logic to mostly within-case and some cross-case evidence, I test conventional structural and institutional theories against my account. Tracing the lack of mobilization of conservative policy-makers and agenda-setters around federal market authority since the 1980s, and interviews with firms, regulators, and legislators about interstate barriers in the construction industry, clearly demonstrate how their imagination of markets prevents a single market building agenda top-down while institutional structures prevent it bottom-up.

This is a novel argument, speaking to broader debates about the socially-constructed nature of markets. Studying the US, shows that interstate barriers and local protectionism flourish when no central authority deliberately creates ‘free markets’.

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Springer, Benedikt. 2014. "Divergence in Higher Education Systems-The Political Economy of Learning; Germany, Sweden, and United States of America." Paper

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Springer, Benedikt. 2014. “Divergence in Higher Education Systems - The Political Economy of Learning; Germany, Sweden, and United States of America.” Paper presented at: Graduate Student Research Forum of the University of Oregon, March 7, 2014.

Springer, Benedikt, Dittes, Sophia, and Carla Schweigert. 2011. “Die Protestbewegung gegen Stuttgart 21: Eine qualitative Analyse der Mobilisierungsmechanismen und Framingstrukturen” [Case Study of a Protest Movement - A Qualitative Evaluation of Successful Mobilization]. University of Tübingen, http://hdl.handle.net/10900/47876.

Schmid, Josef, and Benedikt Springer. 2010. “Das Ganze ist mehr als die Summe seiner Lichtgestalten” [Social Scientific Analysis of the Soccer World Cup in 2010]. WIP Working Paper 46, University of Tübingen, https://tinyurl.com/ydbrpd6o.

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CHAPTER I

INTRODUCTION AND RESEARCH QUESTION

Market governance in Australia, Canada, the European Union (EU), and the United States (US) has undergone a striking but little remarked divergence since the 1970s, leading to somewhat puzzling outcomes. During this neoliberal period of pro-market politics, Europe has pursued a vast single market project, promising that the reduction of barriers to interstate exchange and mobility would bring economic dynamism. EU institutions have sought systematically to replace state regulations with unified rules, and to restrict anti-competitive practices of member states. There are numerous examples of this: due to the Service Directive, Spanish lawyers practice easily in Germany curbing the protectionist impulses of state regulators (M. Egan 2015). The European Commission used many different tools to open up national monopolies, for instance forcing Sweden to allow their citizens to buy wine outside their national alcohol monopoly (Huyghe 2014). Similarly, countries cannot act discriminatorily against other European countries or firms. EU states must tender public contracts equally to any EU firm and cannot subsidize businesses without approval by the European Commission (Eisinger 1988; Hoffmann 2011). To increase efficiency and mobility of its construction industry, Europe established universal building codes and mutual recognition of building professionals' qualifications (EcoBuilding 2012). Non-discrimination has also been expanded to the individual level. European students of higher education can freely choose between universities and can expect to be treated the same as any citizen (Your Europe 2017). The European single market is an unfinished, ongoing project; the European Commission constantly monitors progress and proposes new measures to reduce interstate market barriers. Underlying the EU approach is what I will call an ordoliberal theory of markets; the assumption is that neoliberal goals, like expanding competitive markets, require strong central authority and rules. In their imagination of market-relationships, EU officials tend see government as generative for, not in opposition to markets.

In the late 1980s, Australia embarked on a similar pro-market trajectory, creating institutional structures that allow representatives of states and territories to make binding

regulatory harmonization decisions and creating a powerful agency to monitor single market progress (Walsh 2012). These steps dismantled many interstate barriers. For instance, the 1986 National Preference Agreement (NPA) prohibits state and local governments to tender public contracts preferentially to regional firms (Grier 2006). Similarly, through inter-governmental cooperation sub-national jurisdictions have established automatic mutual recognition of all occupational qualifications with the goal of increasing inter-provincial mobility (Walsh 2012). Similar to the EU, the Council of Australian Governments, makes qualified majority decisions that are binding for territories and provinces; the Productivity Commission, founded in 1998, investigates whether regulatory heterogeneity creates internal barriers to trade (D. Brown 2002, Chapter 7).

Pro-market advocates in Canada have similarly pursued a single market building project, culminating in the Agreement on Internal Trade in 1995 (D. Brown 2002, Chapter 6). Since then Quebecois attorneys, for instance, practice easily in British Colombia (Hinarejos 2012). However, despite some progress, the internal market has stayed on the political agenda, with recent governments pursuing a renewal of the Agreement on Internal Trade "to end all provincial trade barriers, which cost Canadian economy $50 billion annually" (Ivison 2014). A Senate report from 2016, entitled *Tear Down these Walls, Dismantling Canada's Internal Trade Barriers*, calls for renewed efforts to establish mutual recognition and regulatory harmonization between Canadian territories and provinces (Tkachuk and Day 2016). Among other things, the report laments that a "Comprehensive Economic and Trade Agreement between Canada and the European Union would make it easier for European businesses to trade with Canada than it currently is for Canadian businesses in one province/territory to trade with other provinces/territories" (Tkachuk and Day 2016, 4). While there are many obvious institutional and contextual differences between Australia and Canada on one hand, and the EU on the other hand, all three polities share the idea that more central rules, established through federal government or binding sub-national cooperation, are necessary to maintain and enhance their single market.

All of this might not seem very surprising. After all, globalization is generally acknowledged to force more and more countries to liberalize trade and investment flows;

negotiations at the WTO focus more and more on technical barriers to trade and regional trade agreements are on the rise (Cerny 1995; Andrews 1994; Keohane 1996; Rodrik 2002; T. Friedman 2006; WTO 2012). Most observers assume that this movement is spearheaded and inspired by the US (among others Blyth 2002; Harvey 2005; Prasad 2006). Alternatively, one might assume that single market building efforts have simply been more prominent in Australia, Canada, and the EU, because they needed to 'catch up'. This is in fact a common refrain among European policy-makers, often expressed along the lines of "We [the European Commission] could learn a lot from America about how to utilize and develop a single market" (Vivian Reding cited in Egan 2015, 1).

However, this common notion is far from the truth, as I will demonstrate—in many cases, the EU, and to a smaller degree Australia, and Canada, have dismantled interstate barriers that persist in the US: Ohioans who visit or move to Indiana must acquire new licenses in order to practice for a variety of professions from lawyer to hairdresser to plumber (Egan 2015). Mississippians cannot order wine from other states and are forced to buy it from the state monopoly (NCSL 2016). US states and cities often legally favor local providers in public procurement as much as they want and provide subsidies to attract firms across state-borders without scrutiny by the federal government (Eisinger 1988; Hoffmann 2011). Construction firms in the US wrestle with state or city-specific licensing rules and 20,000+ building codes (EcoBuilding 2012). States give their residents preferential treatment in a variety of circumstances, that would be considered discriminatory and protectionist in the EU. For instance, US universities routinely triple the fees charged to out-of-state students, thereby basically undermining a free national market for higher education. More abstractly, no institution in the US reports on or monitors the internal market in a fashion similar to the European Commission. Conceptually, policy-makers and federal institutions often assume that non-tariff barriers are only an issue for external trade; regulatory heterogeneity among states and local jurisdictions in not considered a potential market barrier. Due to that, information on interstate trade barriers is rare, leading scholars to assume that no single market has gone

as far as that of the US.[1] This dissertation will demonstrate that in many ways the opposite is true.

Given the contrast of Australia, Canada, and the EU, the US regulatory trajectory appears as an anomaly. This is particularly puzzling because in the US, increasing interstate barriers have coincided with a strong rhetoric about the virtues of free markets. However unlike in Europe, American champions of markets since Reagan have focused on weakening federal authority and bolstering states' rights—using quite different language than EU officials, who emphasize the importance of central rules for free markets. Promising that the reduction of 'out-of-touch' federal regulation and distortionary spending will bring economic dynamism, American Conservatives have sought to loosen federal rules and argued that the states "should be encouraged to take the lead," as Paul Ryan puts it (House Republicans 2016d, 6). As these few examples have demonstrated, this market-building strategy is not only unique in international comparison, it is also not successful in curbing interstate protectionism.

One might assume that because interstate exchange nonetheless remains far higher in the US than in the EU, because the US has smaller inflation-, and price-differentials than the EU, because the US has a higher labor mobility than the EU, and because big nationally-operating firms account for more of the US economy, the political and regulatory trajectory is somehow unimportant (Parsley and Wei 2002; Dao, Furceri, and Loungani 2013; Pacchioli 2011; Economist 2016a). However, the more liberal rules are itself in need of explanation and, in the long run, should lead to more economic exchange and mobility.

One might object that any EU-US comparison is misplaced, because they are ontologically different categories. I will argue that in terms of the outcome of interest, they are very similar entities, whose divergence is in need of explanation: The EU and US have similar authority and responsibility over an economic area, dealing with similar issues of central economic regulation (from anti-trust law to environmental regulation), policing sub-national units (from explicitly protectionist measures to regulatory heterogeneity), and external trade policy. Both have complex federalized decision-

[1] With a few notable exceptions: Anderson (2012), Hoffmann (2011), and Egan (2015).

making structures with a strong horizontal and vertical diffusion of power (McKay 2001). Both share intergovernmental/interstate and supranational/federal features (*Compound Democracies*), leading to similar debates over the merits of local vs. central regulation and a perceived democratic deficit of bureaucratic decision-making in far-away Washington or Brussels (Fabbrini 2010). Even if one were to conceptualize the EU and US as fundamentally different entities, on a theoretical level the variation in outcomes is still surprising and poses major challenges to existing theoretical accounts of political and economic integration on either side of the Atlantic. If Americans transact and move across states more than Europeans, should they not perceive greater incentives to reduce barriers and fragmentation? Most conventional approaches have in common an expectation that the US should have more liberal rules for economic exchange. This is true for materialist arguments that explain central market authority as a reaction to incentives from gains from free exchange (Moravcsik 1998; Chandler 1993; Beer 1973), for institutionalist accounts that see expansions as path-dependent on initial delegations of central authority (Sandholtz, Fligstein, and Stone Sweet 2001; Skowronek 1982), or ideational accounts that emphasize the prevalence market ideas and identity formation (Dobbin 1994; Fligstein 2008). Similarly, scholars of federalism have often treated the existence of a common market within the US as an (unexamined) assumption rather than a variable (Weingast 1995; Kelemen 2009) or have exclusively focused on fiscal relationships (Walker 1995; Conlan 1998). Ideational studies of neoliberalism often describe the US as the spearhead of the movement, ignoring all the described ways in which actual policy has fallen short of neoliberal expectations of constant transformation toward more market (Blyth 2002; Prasad 2006; Harvey 2005).

These three aspects—unlike in Australia, Canada, and the EU, the neoliberal era has not led to a buildup of central authority in the US to create markets and police anti-competitive behavior of the states; the US has left many interstate barriers intact making it in some important ways a less liberal or integrated market than the EU; and at first sight, these empirical observations seem to run counter the expectation of conventional theories of economic integration—justify a renewed empirical and theoretical inquiry into the basis of when and how federations create single markets. In particular, it makes the US' regulatory trajectory stand out as a puzzle in need of explanation. Many specific

questions might be asked based on the reported observations: What is the general level of market integration in Australia, Canada, the EU, and the US? What creates demands for single market-building? What role do economic benefits play? What different institutional arrangements exist and which ones are more likely to overcome specific barriers to exchange? What is the empirical and theoretical connection between neoliberalism and single market building? Beyond neoliberal agendas, what type of policies actually lead to market integration and what policies undermine the market?

Each of these questions raises several sub-questions and implies numerous dependent variables. For example, the scope of comparison is hard to define: is the proper universe of cases the US and the EU, should one add other Western democratic federations like Australia and Canada, or would a proper assessment of single market building need to entail countries like Brazil and India? Is it sufficient to focus on regulations, or does a proper analysis require explaining regulations, economic flows, and prices? Is it 'fair' to focus on market building in the latter half of the 20th century when major economic integration in the US happened in the 19th century? It is easy to see how asking how federations create single markets will easily snowball into an insurmountable research project.

For the purpose of this dissertation, it is therefore prudent to ask a question that narrows in on the most salient features of the puzzle, which I think is the persistence of interstate barriers in the US and the degree to which this has gone unnoticed by free-marketeers and scholars alike. Given the single market projects of Australia, Canada, and the EU, I am therefore asking: Why has the so-called neoliberal era, in the world's foremost liberal market economy—the US—not led to a buildup of federal market authority[2]? This question addresses the puzzle outlined in this introduction directly. In addition, answers will offer some direction for research on the bigger questions about federations in general. These implications can be generated because the study treats the EU as a 'shadow-case' to which comparisons are drawn whenever resources allow, and

[2] I will use federal market authority and central market authority as interchangeable, emphasizing the similarities between the US and EU, and increasing readability. However, acknowledging that the EU does not have an entity properly described as federal government, when referencing the EU specifically, I use central market authority.

theories employed here have been developed in references to the EU. In this sense, any result from this case study will suggest tentative conclusions about the EU and new avenues of research for similar cases.

Asking the question this way, restricts the time scope of the investigation to the 1970s to today, but leaves open what specific dependent and independent variables to explore (economic flows, federal regulation, state laws, public opinion, and policy-maker attitudes). The specific dependent variable, or more broadly the *explanandum* I focus on, is federal market authority and its flipside, the existence of state and local regulations that undermine federal market authority. I understand federal market authority not merely as the existence of central authority to curb anti-competitive behavior of market actors and governments, but more positively, as the existence of mandates for federal agencies, agendas of federal policy-makers, commitments of the judiciary, and interstate cooperation to create harmonized regulations, standards, and rules that guarantee interstate competition. In this understanding, federal market authority does not only mean federal resources, but also the use thereof and the mobilization of political actors around those rules. Less federal market authority implies state and local policymakers as well as executive agents use their authority to regulate as they see fit, thereby creating barriers between their jurisdictions. This means in addition to federal agendas, the existence of explicit legal barriers on the local level is part of what is being explained. Because this still implies a rather broad scope of investigation, this dissertation combines a focus on federal policy and national political agendas with a concrete empirical application to the construction sector of the economy. This does not only create a clearer picture of the non-use of federal market authority and the actual effects of interstate barriers, but also allows me to develop and test a new theoretical account of market-building.

In accordance with this line of inquiry, Chapter II theorizes single market building. In particular, I show that Europe's regulatory departure from the US model has gone largely unnoticed in the literature. Subsequently, I discuss existing theoretical accounts of European integration, US market building, as well federalism and how they contribute to our understanding of how and why multi-level polities create single markets. The result of this literature review is that conventional explanations, while ostensibly successful in the EU case, cannot account for the inaction of the US on

interstate barriers. However, existing theories are helpful in developing a novel explanation. In turn, I develop and present my own hypotheses that focus on combing specific types of institutional inertia with prevailing ideas about free markets and federal authority. A methods section, starting with some meta-theoretical considerations, lays out the rational for the empirical research strategy followed in this dissertation.

The empirical part of this dissertation, organized over four chapters, explores the research question in two concrete case studies. In both cases, I first present evidence to establish the outcome; i.e., I show stagnating or declining federal market authority, whenever possible drawing comparisons to the EU. After this confirms my puzzle, I use different types of process-tracing evidence to test conventional explanations against the here-developed theory. The first case study, starting in Chapter III, shows that under conservative rule in the 1980s, 1990s, and today, self-described neo-liberals have not mobilized around single-market rules or taken actions that would curb interstate barriers. Instead they have focused on tax-cuts, federal deregulation, and state's rights. Conventional structural, institutional, and ideational theories cannot account for this, particularly because, as elaborated, they would expect more federal market authority in the US than in the EU. In turn, I present evidence that increases confidence in my ideational explanation, which focuses on ambiguities in neoliberal thought. Specifically, I show that US policy-makers combine market ideas with antipathy toward central authority in contingent ways that lead to a conception of markets, I call competitive federalism, which tends to undermine any interest in deliberate single market building. Instead, they imagine markets to flow naturally from their deregulatory efforts. Evidence from analyzing primary documents like memoirs of policy-makers and elite-interviews shows that this particular conception of markets accounts for the agenda of 'Reagan Republicans' in the 1980s, 'Gingrich Republicans' in the 1990s, and 'Ryan Republicans' today.

Chapter IV enriches this account by tracing the ideational history of competitive federalism and showing how strongly it still captivates the imagination of conservative policy-entrepreneurs and agenda-setters. By looking at the reception of neoliberal ideas in the US mid-20th century, I demonstrate that the competitive federalism conception of markets as a specific interpretation of Hayek's neoliberalism was very influential in

economics and political science research in the 1950s and 1960s. From there it diffused into conservative think tanks asymmetrically, losing its character as field of inquiry, and becoming a set of axiomatic principles. As such, it defines how conservative think tank scholars do—or more accurately do not—think about interstate market barriers. My analysis demonstrates this based on interviews with scholars at the American Enterprise Institute (AEI), the Heritage Foundation (Heritage), and the CATO Institute (CATO).

The second case study focuses on the construction sector of the economy and establishes that significant legal obstacles to the national flow of construction services exist. Based on interview research, Chapter V documents how much mobility is undermined by a lack of federal-market authority and the tendency of local jurisdictions to proliferate and follow licensing laws, building codes, and public procurement practices that disadvantage out-of-state firms. Chapter VI traces the mobilization of diverse political and economic actors for and against those rules, again based on interviews with construction firms, regulators, politicians, and interest groups. Considering specific causal mechanisms, I contrast the explanatory power of the conventional theories laid-out in Chapter II, with the ideational and institutional elements of my theoretical account of market-building. The overall picture that evolves is that fragmentation, decentralization, and separation of powers prevents interest groups and state policy-makers from mobilizing for federal market authority to curb interstate barriers. At the same time, in many instances it becomes clear that given a different ideational context, many actors could be mobilized for federal market authority. There is somewhat of a divide: national actors, particularly self-described pro-market groups, tend to take the competitive federalism conception of markets for granted, leading them to pursue policies that undermine federal market authority. The potential interests of firms and state regulators in reducing interstate barriers is much more thwarted by the institutional configuration of American federalism, which dis-incentivizes transfers of powers to the federal level, binding cooperation between states, and dealing with policy-problems from a broad, cross-sectoral perspective.

Overall, as the conclusion in Chapter VII discusses, my explanation contrasts with the failure of conventional theories of European integration. Interstate barriers persist despite the mobilization of powerful economic interests against it and despite significant

federal resources as well as an orientation of elites toward the center, which all had been thought to induce a self-reinforcing dynamic towards more federal market authority. Despite limitations, this dissertation challenges us to take ideas about markets more seriously and consider the subtle differences of institutions of federalism. Taken together, this suggests a broader research agenda expanding my findings to other federations and other policy areas. The concluding section focuses specifically on how the mostly qualitative approach of this dissertation can be complemented by a quantitative approach in the future.

CHAPTER II

THEORY AND METHODS

This theory and methods chapter is structured into four sections. First, I discuss how scholarship on the political economy of the EU and the US has mostly stayed separate. Subsequently, I review existing explanations of federal market authority, looking at structural, institutional and ideational approaches. Following suit, I present my own theoretical account of market-building, based on different ways to conceptualize the role of federal authority in markets, and some salient features of US federalism. Lastly, I justify and describe the methods used in this dissertation to answer the question why there has been no mobilization around federal market authority to curb interstate barriers in the US during the neoliberal era.

II.a. The EU-US Contrast in the Literature

If we accept the examples of deeper liberalization and stronger federal market authority in the EU than in the US as true and illustrative, pending empirical verification in the following chapters, political scientists and political observers from both sides of the Atlantic would be surprised: Can it really be true that few have noticed Europe's regulatory departure from the US model? As is shown in the following paragraphs, it is. The literature on European integration, comparative federalism, US federalism, comparative law, and regulatory competition all contain some parts of the empirical pieces, but nobody has put them together. Due to scholarly separation between subfields and disciplines, the major and counterintuitive development of the US has gone largely unremarked[3].

Nobody has remarked the puzzling regulatory trajectory of the US. US-EU comparisons are fairly new. Experts on both polities have mostly stayed in their 'camp'. The literature that directly tries to explain European integration treated the EU as being in a distinct category: one an international organization, the other a state. Work on the EU first regarded it as the most powerful among regional trade association and then as a

[3] Except in a few handful of pioneering works (see Footnote 1).

system *sui generis*. This was particularly true for early approaches coming from the field of International Relations either focusing on functional incentives (Haas 1958; Haas and Schmitter 1964; Lindberg and Scheingold 1970), security imperatives (Rosato 2011) or inter-governmental bargains (Moravcsik 1998), describing the EU as 'would-be polity', 'balancing solution of European nations' or 'tightly constraint international organization'.

However, with the progress of the single market in the 1990s scholars started noticing certain similarities between European multi-level governance and power-sharing arrangements in other federations (Burgess and Gagnon 1993; Knop et al. 1994; Sbragia 1992; Marks et al. 1996). They started using the language of federalism, all while maintaining that that "The particular kind of federalism […] is distinct from the federalism associated with state government and politics," but no real comparisons between those the polities were made (Burgess 2006, 7).

In the 2000s, EU scholarship joined with the literature on comparative federalism and started debating how closely the EU's economic and "core state powers" compared to that of other federations like the US or Switzerland (Genschel and Jachtenfuchs 2014; Fabbrini 2005). This literature mostly asks what "Europe can learn from America's history" and to which degree the EU is reproducing the US model of federalism (Nicolaidis and Howse 2002, 7). Scholars increasingly realized that the EU and the US "are two different species of the same political genus: *the compound democracy*" (Fabbrini 2005, 3). This realization led to a growing literature on comparing specific powers, institutions, and theoretical discussions of the meaning of federalism (Jabko and Parsons 2005; Menon and Schain 2006). As I do in this dissertation, scholars increasingly come to the conclusion that "while federal governments in the US and Switzerland control key capacities that the EU conspicuously lacks—a federal military, federal taxes, a sizeable federal administration—the EU's capacity to regulate sub-central (national) core state powers is at a level and potentially even superior to theirs" (Genschel and Jachtenfuchs 2014, 255). However, these edited volumes and other recent monographs never compare or explain levels of market integration (Schakel, Hooghe, and Marks 2015; Fabbrini 2015).

A few books deserve special mention, because they seemingly address the issue, but not quite: Daniel Kelemen shows that because the EU and the US faced similar

functional challenges, they developed similar patterns of governances, using regulatory agencies and relying on court enforcement through "adversial legalism" (Kelemen 2011). In his careful study of environmental regulation and food safety, he finds that as differences in implementation become widely recognized, "The federal government comes under increased public pressure to take on a larger role in implementation […] in order to remove distortions to the common market created by differences in implementation" (Kelemen 2009, 14). Therefore, his theory explains the opposite of the phenomenon addressed here; it cannot explain why in some cases distortion to the common market do not trigger federal action for harmonization.

Michelle Egan maybe comes closest to addressing why the US has not mobilized around a single market-building project (M. Egan 2015). She compares EU market-building to US integration in the 19th century focusing on capital, goods, labor, and services. Egan highlights four explanations but never arbitrates: "the role of law, interest group mobilization and business influence, distributive politics, and the centralization of regulatory activity" (M. Egan 2015, 21). It remains unclear which factor is more important and why, is it "pressures emanating from courts and business" (22), the "developmental role of the state" (75), or the "legal doctrine" (76) even though we never learn why judges pursue this action, or is it "disparate ideas about how to stabilize and regulate markets" (20) which is different from "widespread demand for social and political reform" (76).[4] Her final assessment is that, "both grapple with the some of the same issues of legitimacy, coordination, and authority" (52). "The instruments used to promote market integration, though sometimes differing in name or political usage, are in fact similar in terms of their rational and objective" (22). However, the comparison is never really systematic or detailed enough to answer the question, "What accounts for the political success or failure in creating integrated markets in their respective territories" (3).

The real pioneer is Leif Hoffman and his mostly unpublished work. In a careful empirical study of hairdresser licensing, elevator safety regulations, and public procurement laws, he first noted how much further federal market authority has gone in

[4] These are all statements that describe the 'main causes' of market integration.

the EU compared to the US (Hoffmann 2011). I am building on his work by developing a more sophisticated theory and expanding the empirical scope.

The EU-US divergence in federal market authority is explicitly addressed by exactly one recent edited volume, that tries to compare levels of market integration across Australia, Canada, the EU, and the US (G. Anderson 2012). However, the volume is fundamentally not comparative (considering one country at a time) and does not develop or test a theory: instead it simply offers "some lessons": Accordingly sustained attention to market integration is always precipitated by an event like "an economic crisis, an international trade negotiation, or a high-profile report demonstrating the need for political change," as well as the perception of a serious problem (G. Anderson 2012, 198). Successful integrating reforms are likely if there are "strong central legislative powers," "political leadership committed to a well-conceived reform agenda with significant private sector support," an institutional actors tasked "with conceptualizing and promoting an internal market agenda," cooperative inter-governmental relations, absence of a strong tradition of state autonomy, invention of creative decision-making processes, and the enshrining of reforms in law (G. Anderson 2012, 211ff.).

In sum, the increasingly comparative literature coming from EU scholars has fundamentally not addressed the question of this dissertation. One might therefore turn toward the US subfield of political science. The relative powers of the US federal and state governments are presumably one of the most studied subjects in all of political science (a discipline invented and still dominated by American academics), and yet major holes in federal authority to create markets, do not draw much attention. Prominent accounts of US market integration invoke the same theoretical logic as their EU counterparts, but work even less comparatively, therefore overlooking ways in which EU market authority has gone farther than in the US (Beer 1993; Chandler 1993; Bensel 2000; Skowronek 1982; Dobbin 1994). The same might be said for the US federalism literature that is mostly concerned with the US itself. Scholars here often treat the existence of a common market within the country as an assumption rather than a variable (Weingast 1995) or exclusively focus on fiscal relationships (Walker 1995; Conlan 1998). The editor of *Publius*, the subject matter journal for US federalism scholars, remarks, "U.S. federalism scholars seem to be mired down in the traditional questions

and tied to their own federal system" (Weissert 2011, 966). Comparative questions, like "why are intergovernmental interests in Washington so weak," have remained "unanswered" (Weissert 2011, 966).

Instead, one might turn to legal scholars, who have noticed the general similarities between "Article 10 of the EC treaty and the dormant commerce clause" (Haibach 1999, 155). While they seem well aware of differences in US and EU, they have not systematically studied or explained the outcomes. Instead, they usually focus on examining the legal reasoning or making normative claims about alternative legal norms that might lead to better outcomes. For example, Halberstam notices the curiosity that in the US constitutional system with its 'powerful' federal government, 'commandeering' has been deemed unconstitutional, while the European Union can legally force states to act (Halberstam 2001). In another example, Donald Regan, a law professor at the University of Michigan remarks that the ECJ decisions in Dassonville and Cassis are a 'fetishization' of market principles that goes far beyond what US courts have embraced (D. Regan 1988). Another US legal experts notes that the absolute value put on the freedom of contract by the US Supreme Court in its laissez-faire era compares to the ECJ's view of freedom of movement (Caruso 2005). Comparing the ECJ, Prof. Catherine Barnard argues, "The approach of the US Supreme Court […] allows a much greater degree of deference to state actors and to state regulation" (Barnard 2009, 577). Despite these insights, a descriptive and explanatory inquiry into market authority in both polities is missing from the comparative law literature.

Economists have analyzed different aspects of the puzzle. The vast literature on jurisdictional competition in in the US has explored to which degree it forces regulatory conformity, either via a race to the bottom or a race to the top (Rhode and Strumpf 2003; Banzhaf and Walsh 2008; Tiebout 1956). But a recent literature review concluded, "Although the four empirical literatures we surveyed cover a wide range of regulatory situations, we have found few unequivocal instances of regulatory competition. This result is perhaps not surprising because, even in its most stylized form, a regulatory race depends upon a complex causal connection" (Carruthers and Lamoreaux 2016, 90). Similarly, a recent review of the vast literature on fiscal and tax competition among US states concluded that there is little evidence of it (Chirinko and Wilson 2011). What they

all have in common is, that while noting heterogeneity among states, they all are firm-focused and do not ask why single-market building is or is not taking place. The same can be said for the huge literature on occupational licensing. There are plenty of illustrations of barriers among states but scholars only ask about wage and price effects, leaving the question of why there is no federal government action toward market integration completely unanswered (Kleiner and Krueger 2013).

Lastly, there is a vast empirical literature trying to measure the benefits of market integration. Since the *Common Market White Paper* in the 1980s, the European Commission regularly issues progress reports and funds new research on the benefits of the single market (Cecchini 1988; Ilzkovitz et al. 2007; Pataki 2014). As a result, there is plenty of empirical information on the current state of integration as well as the costs and benefits of new single markets initiatives (Pacchioli 2011; Campos, Coricelli, and Moretti 2014; Bekaert et al. 2017; Pelkmans 1988; Stráský 2016; Erixon and Georgieva 2016). Similar documents exist for other federal polities. The so-called MacDonald Report lists in detail the obstacles to free trade within Canada and estimates the benefits of single market reforms, as does a 2016 Senate inquiry (D. Brown 2002; Tkachuk and Day 2016). The Productivity Commission of Australia regularly publishes reports on remaining barriers among Australian states and territories (Walsh 2012). However, no such literature exists in the US. In fact, "the most comprehensive critic of US state barriers has been the EU" with several publications that assess the amount of mostly external but also some internal barriers to trade with the US (Weiler 2012, 12; Pelkmans 1988; Business Europe 2015; Berden et al. 2009). As a result, the look at the empirical literature on internal market barriers just emphasizes the puzzle: Why have internal market barriers in the US been mostly ignored by the theoretical and empirical literature as well as by US policy-makers?

II.b. Explanations of Federal Market Authority

How have theories in political science and related fields thought about single-market building? Scholarship addressing why authority is centralized and used to create/maintain a single market can be most broadly categorized as structural, institutional, and ideational. Versions of prominent theories addressing this question

struggle to explain the trajectory of federal market authority in the US. However, they offer important clues on how to solve the puzzle. Note that this literature review broadly considers theories on European integration because it is in light of the EU that the US case is in need of explanation.

II.b.1.Structural Explanations

One broad theoretical school suggests that choices are a direct reflection of material incentives. Since these objective material facts are highly general, if not universal, structural theories often expect similar trends if not long-term convergence of cases. Two ways of constructing such a theory are to focus on military technology and the need for survival (realism) or on production technology and opportunities for economic gains (liberalism).

There are only few realist approaches to explain federal market authority, so they will only be covered briefly. Most generally, accounts of state formation emphasize how war and the preparation for war incentivized the building of state institutions (Tilly 1990). According to Tilly, the centralization of political authority across previously independent jurisdictions is mostly a function of challenges to survival (by other entities) and available military technology. Over the long run, only the most efficient organizational form (given a certain technology) survives. The most efficient organizational form did not only include certain extractive and representative institutions (i.e. the nation state in Europe), but also a certain organization of the economy. According to Spruyt, nation states gained military advantages because they integrated their economies, standardized factors important for economic transactions, and provided a stable system of property rights (1994). These arguments do not directly address how centralized a state has to be and how integrated the economy has to be to survive; instead they leave open a broad variety of regimes above a minimum threshold of efficiency that guarantees military survival (like Soviet communism). Nonetheless, this type of thinking can be applied to more recent developments in centralization and market-building.

The application of realism to the EU has generally been regarded skeptically because it challenges axioms of the theory like states defending their sovereignty with all means possible (Grieco 1995). Nonetheless, Rosato argues that the integration of the

European market can be explained by geo-political balancing considerations (2011). Accordingly, the European institutions were created to facilitate a European military alliance against the Soviet Union. This argument has been widely dismissed for many reasons (many methodological), one important reason being the observation made earlier, that it is unclear how much market integration is really necessary to maintain defensive capabilities (Parsons 2013; Moravcsik 2013). In fact, the evidence suggests that economic integration progresses mostly in peaceful times. This implies that a focus on structural factors of economic nature, which might be overshadowed by survival considerations in more uncertain times, is more promising.

Realism has also been used to analyze the creation of a federal structures in the US. According to Riker, federalism is "a bargain between prospective national leaders and officials of constituent governments for the purpose of aggregating territory, the better to lay taxes and raise armies" (1964, 11). Accordingly, the degree of centralization varies with the degree of military challenges in the environment or the desire for expansion. To explain the non-reversion of centralization in peaceful times, Riker stresses the structure of the party system and dual citizen's loyalties, which he describes himself as "tautological" (1964, 111ff.). This argument, while well suited to shed light on the original foundation of several federations, is difficult to apply to economic integration. In fact, market integration has often happened when direct military challenges were less present, like in Western Europe after 1950 or the US in the 1880s, and 1930s. We can therefore leave realism behind and instead turn to theories rooted in liberal political-economic theory.

According to liberal approaches, the creation of centralizing institutions and subsequent market integration can be explained by individuals (aggregated) rational responses to economic opportunities and current production technologies given certain preferences (maximize material wealth etc.). On the one hand, the institutional outcome might reflect the optimal technique to take advantage of the current state of production technologies (functionalism). On the other hand, it might reflect the power of distributional coalitions that would lose from the most efficient outcome or certain collective dilemmas (strategic constellations) that have not been overcome yet. Variation then is explained by the differently-situated presence of uncompetitive 'losers' and

'concentrated captures', who hold political power in sub-units *or* differences in mobility-facilitating technology and bridgeable geography. However, the assumption of liberal thinkers is that open markets are beneficial to consumers and most producers. The most competitive actors will push for more open markets, and the polity will design mechanisms (compensation, marginalization) to get the 'losers' on board. So, in the long run these obstacles will be overcome in favor of the more efficient outcome.

The distinction to a more institutional argument is often blurred. North, for example, argues that "the on-going tension between the gains from specialization and the costs arising from specialization not only is the basic source of structure and change in economic history but is at the heart of the modern problems of political and economic performance" (North 1981, 209). While these costs are a reflection of technology, geography, and population (i.e. structural), North argues at the same time that inefficient institutions may persist indefinitely due to security competition and institutional lock-in effects.

Liberal arguments have been successfully developed with regard to the EU and the US. Their weakness is in explaining the comparative difference because they use the same objective conditions to account for rather different outcomes. Nonetheless, after a brief review of the more common arguments, I will address how this theory might still be helpful in explaining variation in federal-market authority.

The liberal argument has been developed most comprehensively in the context of European integration. Arguments of interdependence and externalities are found in neo-functionalism (Haas 1958), inter-governmentalism (Moravcsik 1998), and transaction-based theory (Sandholtz and Sweet 1998). According to Moravcsik, economic interdependence creates policy externalities and incentives for cooperation, leading to reciprocal market-liberalization and policy harmonization. The outcome is explained as a "series of rational choices made by national leaders who consistently pursued economic interests—primarily the commercial interests of powerful economic producers and secondarily the macroeconomic preferences of ruling governmental coalitions" in response to increasing economic interdependence (Moravcsik 1998, 3). Similarly, Genschel and Jachtenfuchs argue that the development of state-like qualities of the EU is directly related to policy externalities and economies of scale (2014). According to these

arguments the impetus for European integration came largely from producer groups that were to gain from market opening due to high amounts of intra-industry trade and globalization in form of external competitive pressures. The pressures of competitive industry groups have been limited by less competitive players and states' defenses of their sovereign power but could eventually been overcome through payoffs in form of agricultural subsidies, regional development funds, and control over new 'federal' institutions. Those bargaining outcomes however, reflect asymmetric interdependence, meaning that negotiations are dominated by the big countries because small countries cannot "go-it-alone"(Gruber 2001). Centralization can be thought of as elaborate inter-governmental cooperation that creates a few central institutions to solve credible commitment problems.

While neo-functionalism has been described as proto-institutionalism or proto-constructivism, it is equally based on economic incentives that drive economic elites (not states) to pursue the centralization of economic policy-making (Niemann and Schmitter 2009; Haas 1958). The functional logic of economic spill over—the efficient regulation of one economic issue requires centralizing other issues—explains the sustained dynamic of shifting authority to the center. Even though they add some institutional elements later, Sandholtz and Sweet argue that the density of trans-border interaction broadly explains sectorial variation in European integration (1998). All these scholars agree on economic benefits determining the level of government where regulation happens; they disagree on whether the main mechanism of change is through national interest groups and governments (Moravcsik 1998), or trans-national actors like multi-national corporation and trans-national interest groups (Cowles 1995). Accordingly, European integration can be thought of as sequence of inter-governmental bargains through which economic actors have realized efficiency gains through harmonization. The process is highly controlled by nation states.

Other authors have explained the salience of the economic incentives in light of globalization. According to Sandholtz and Zysman, the 1992 single market program is the direct result of Japanese competition that threatens US financial and economic hegemony: "Europe was not first, it was second, and a series of individual bargains by governments and companies could suffice. However, it would be quite another matter to

be third" (1989, 106). Similarly in his comparison of economic union reform in Canada and Australia, Brown argues that "increasing international economic integration and market liberalization forces economic adjustment on nations states" in particular of their economic union (2002, 9). However, he goes on to make an institutional argument about the shape of the reforms. Globalization pressures or the perception thereof might be important in explaining when the issue of internal market barriers come onto the agenda. At the same time, it is not clear that there is a necessary connection between globalization and domestic liberalization, deregulation, or market integration. The creation of the single European market can be said to have been created by globalization (cause), but at the same time it is responsible for a big part of what economic globalization is measured as (effect). While globalization might be important, it will always be filtered through national perceptions and institutions; otherwise we would observe a global convergence.

The same economic logic has been applied to many other cases. For example, it can be argued that the impetus for unifying territories like the German, the Italian, or American stems mostly from economic gains (with some geo-political ambition). Ziblatt compiled data showing that the supporters of German and Italian unification in the 19th century were economically advanced states whose producers were to gain from bigger internal markets (2006). Similarly, an important factor in the US constitutional convention was the fear of state protectionism under confederal rule. However, as Ziblatt goes on to argue, potential economic gains do not predict the institutional structure of the unification (see institutional approaches).

Despite the obvious differences in outcome, economic arguments are commonly applied to explain 19th century US market-building. Beer argues that the secular trend toward centralization can be explained by modernization that gives rise to ever growing networks of interdependence (1973, 54). Under these conditions local government leads to externalities that are internalized by more and more transfer of power to a central level. According to Beer, modernization is driven by technological and scientific developments leading to an increasing differentiation of economic roles and an increasing scale of markets (1973). This produces a self-reinforcing dynamic of growing interdependence that necessitates the development of centralized organizational capacity and general market rules to reap gains from trade. The crucial causal mechanism for the translation of

economic pressure into policy is that business elites are powerful. Responding to incentives, they will steer a federation through a sequence of different modes of policy making—pork-barrel politics (distributive), spill-over coalitions (regulatory), class politics (redistributive), technocratic coalitions (instrumental)—culminating in centralization of all tasks necessary for maintaining an integrated market (Beer 1973, 57). A similar argument can be found in Bensel's treatment of national market building in the second half of the 19th century. His argument is that the Republican Party basically designed a system of policies and institutions that could either pay off or politically marginalize losers of market-building and integration (Bensel 2000). This argument is complemented by Chandlers account of the rise of managerial capitalism (1993). The same processes described by Beer, lead to the transformation of small local enterprises to the national corporation, implying a mirroring of this process in the market regulation by governments. In fact, McCurdy makes exactly this connection arguing that the central regulation of the market is a direct result of the "revolution in business organization" (1978, 631).

Given uniform tendencies of modernization and technology, why is economic integration and political centralization restricted to specific areas instead of encompassing the whole globe? Alesina and Spolaore create a simple economic model conceptualizing the "size of nations" as trade-off between satisfying heterogeneous preferences (increasingly difficult with size) and the benefits of large markets as well efficient public good provision (2003). Then they present several comparative statics that show that democracy leads to smaller and more decentralized states, as does global economic integration, while the threat of war and dictatorship reduces the number of states. They conclude that the optimal size of a nation cannot be reached because democracies fail to design redistributive schemes that satisfy heterogeneous preferences. Unfortunately, the book does not endogenize internal or external economic integration. In fact, they assume that markets are internally integrated and that in a world of free trade, political borders would not matter. However, countries' internal markets are not similarly integrated. Here as well, the general liberal approach leaves us with a puzzle.

Liberal theory uses similar causal configurations to account for very different outcomes (US, EU, 19th century Europe) which is logically inconsistent. They offer three

arguments to rescue their theory, but as I show, those are unconvincing. One way is to argue that the degree of interdependence and production technology is generally lower in the US; unfortunately, it is not. Technology is fairly globalized across the Western world. There are higher interstate flows and more big corporations in the US, but they do not mobilize against interstate barriers as the theory suggests. US states are also more interdependent than EU states due to the geographic division of labor in the US (Krugman 1991). Hence, we can dismiss this argument.

A second way is to characterize the outcomes as broadly similar. However, this directly contradicts the evidence presented in this dissertation. For instance, in their inquiry into the size of nations Alesina and Spolaore simply assume that countries have created internal single markets, but as we have seen there actually is significant variation (2003). The same can be observed in Kelemen's study of regulatory politics in the US, the EU, Germany, Australia, and Canada (2009). His "central claim is that the vertical division of power common to all systems of regulatory federalism leads to a similar division of regulatory competences between federal governments and state governments" (9). The main actors are not rational individuals but governments and courts. If a new issue becomes salient (assumingly this happens across all cases), the strategic interaction between state and federal governments, as well as courts will lead to federal regulation. The difference between lax and strict states (externalities) leads to a near consensus of transferring power to the federal level which is supported by federal courts because it expands their scope of power. In the beginning the federal government delegates implementation to the states. However, "as differences in implementation become widely recognized, "the federal government comes under increased public pressure to take on a larger role in implementation […] in order to remove distortions to the common market created by differences in implementation (Kelemen 2009, 14).

For Kelemen, variation mainly persists in regulatory style. If there is fragmented power in the federal system (EU, US), policymakers adopt two strategies to halt bureaucratic and political drift. They draft statutes in great detail and judicialize the implementation process, leaving little discretion to bureaucrats and state governments (Kelemen 2009, see also 2011). In countries with Westminster political systems (Australia, Canada) effective protection against drift is impossible (parliamentary

supremacy, weak judicial review) leading to the enactment of vague laws that give state governments more discretion in implementation. This implies (but Kelemen does not say that) that despite a similar distribution of competencies, concentrated federal power will lead to more remaining internal trade barriers due to state discretion.

Kelemen interprets the evidence from environmental regulation largely consistent with the evidence. However, the evidence contradicts the thesis that the politics of competencies are roughly the same across all cases. Due to public awareness, the US has preempted much environmental regulation but many standards remain private or determined on the state level. The federal government is not able 'commandeer' states into taking action on pollution issues, as the EU can. In the EU's competencies 'spilled over' to environmental regulation leading to the harmonization of many standards and 'federal' policing of member state behavior. Furthermore, the outcomes in terms of federal market authority are even more different and against Kelemen's claims, the structures of federalism are very different between the US (dual federalism) and the EU (executive federalism). Overall, it is unconvincing to characterize the polities as roughly the same.

The last way would be to assume that US firms are somehow nationally and internationally less competitive and therefore form local distributional coalitions against market integration. However, this is not the case. US firms dominate globally, and big firms that would benefit from lower transaction costs across state borders dominate the national market (Economist 2017). Clearly stated, there are more 'import-competing' small local businesses in Europe that would theoretically oppose market integration (Weissmann 2012). Another way to think about this would be to assume US companies can navigate jurisdictional differences between states more easily than their foreign competition. In this case, outcomes might reflect differences in firm strategy. EU firms pursue the economies of scales of unified markets and lobby on the 'federal' level for protection, while US firms proliferate state-level barriers to deter foreign competitors. Rational Choice scholars have long argued that in situations of multiple-equilibria, strategies might reflect traditions and taken-for-granted assumptions (J. Goldstein 1993). However, this explanation does not fit any of the cases examined in this dissertation. For instance, the EU does not only have a more open market for public procurement

internally, but also externally (Álvarez-Fernández and Brandstrup 2013). European and American construction firms are similarly competitive, and foreign competition does not play a big role in either market (U.S. Congress 1987; Jiang Weiyan et al. 2016).

Overall, liberal theories do not help me to explain the US case. But they do raise the questions that lead into institutional or ideational territory: are there specific reasons why the winners of market integration cannot compensate/marginalize losers (institutional) or are there cultural reasons making demands for market integration politically not viable in the US (ideational). Nonetheless, I can now formulate what kind of evidence and what kind of outcomes would be supportive of a liberal theory explaining federal market authority:

H1: The transfer of authority to the center and the creation of single market rules are the direct result of its economic benefits (bigger markets, economies of scale, lower prices for consumers) that reflect current production technologies. The central actors here are interest groups. Therefore, I pay specific attention to them in my empirical case studies. Particularly, I investigate whether there are some overlooked material reasons for big national firms or consumer groups to support interstate barriers, i.e. they somehow benefit from them. However, what I find is that they generally would benefit from federal market authority, but due to institutional and ideational reasons they do not mobilize as liberal theory had assumed.

In sum, liberal theorists have addressed many aspects of market integration, in particular its economic benefits, but have paid less attention to specific structures that allow the realization of these gains. These theories are very good in pointing out incentives for creating unified rules but very weak in explaining why there is still so much divergence in actual outcomes. The main variables to look out for according to the reviewed theories (economic interdependence, externalities, density of economic transactions, efficient distribution of power, globalization pressures, and rent seeking behavior of distributional coalitions) do not seem to vary according to the outcomes. However, they do instruct us to pay careful attention to the real-world preferences and strategies of interest groups. Therefore, I investigate alternative sources of strategies (i.e. institutional incentives federalism) and alternative sources of preferences (i.e. conceptions of markets).

II.b.2. Institutional Explanations

Institutional approaches do not dismiss the influence of broad economic incentives for centralization but argue that their effect is contingent on an existing institutional landscape. The important mechanisms[5] that explain divergence are path-dependency due to positive feedback effects of previous decisions and unintended consequences of (bounded) rational decisions (Pierson 2004). Accordingly, one would expect that polities develop rather different levels of federal market authority based on channeling of societal interests through previously established institutional arrangements. Historical decisions to give power to federal agencies and courts might create a feedback loop for further centralization, while states' vested interests might work against economic incentives. Mobilization around single-markets might also differ because representative institutions differently aggregate functional and territorial interests. Institutionalist arguments are quite common in the literature on US state building and European integration but are seldom applied comparatively. They are generally amenable to explaining the outcome of interest, the crux being to identify the institutional configuration of causal significance.

According to early EU scholarship, the original design of the European institutions had, in addition to economic spill-overs, the unintended consequence of shifting political loyalties of elites and interest groups toward the center—a political spill over (Haas 1958). Based on the economic incentives, European actors, like the commission, were able to cultivate business/country coalitions that would support increasing central power.

This argument has been updated by historical institutionalist scholars. Pierson identifies the tension between national executives as EU decision-makers and actual EU/federal officials as tilting the EU toward successfully pursuing market integration (1996; also Sandholtz and Sweet 1998): National executives have short time horizons while Commission officials can wait for the window of opportunity for their proposal. The Commission is always interested in increasing its power. Unintended consequences

[5] For more mechanisms see: Karen and Orren (2004); Steinmo, Thelen, and Longstreth (1992); Streeck and Thelen (2005).

(in the form of state-opposed federal policy) multiply with high issue density because national executives are not able to completely comprehend their decisions and micro-manage the formulation of policy. Spill-overs into unanticipated areas of policy making become more common. Because shifts in government preferences are quite frequent (election), existing arrangements will diverge from original designers' preferences and be out of synch with current office holders' preferences. In some instances, national executives participating in EU/federal decision-making may incentivize transferring power to the higher level of government because it increases their power and discretion. While ministers are held accountable by parliament in national decision making, they can decide more freely on the European level, in particular because parliaments have been relatively unsuccessful in prescribing how governments should vote in the Council of Ministers. Finally, interest groups develop co-specific assets, like influence in EU policy networks, that make them invested in maintaining or increasing central power. Other scholars have called this logic towards more centralization "institutionalization" and have focused on activism of supra-national institutions like the ECJ or the Commission that partly arises from principal agent problems (Sandholtz and Sweet 1998; Sandholtz, Fligstein, and Stone Sweet 2001).

Other scholars stress the role of law and judicial activism. Egan argues that "in dealing with the discriminatory effects of regulatory barriers to trade, the European Court of Justice has played an active role in negative integration, by invalidating discriminatory national rules" and that "the Court has provided the window of opportunity for the Community to foster positive integration through the creation of a new regulatory regime" (2001, 108). In effect, the delegation of power to the ECJ led to the creation and mobilization of pro-integration interests on the sub-national level (Burley and Mattli 1993). The strongest parallel between US and EU market integration is probably how much it relied on supreme court decisions that restricted states' rights under the acquiescence of litigating businesses (M. Shapiro 2005; M. Egan 2015).

In general then, institutionalist scholars hold that while economic benefits create integration demands, only an examination of European institutions can explain why there has been a sustained dynamic towards deeper integration (Sandholtz and Sweet 1998). So comparatively, the task would be to identify the characteristic that blocks the integrative

dynamic in the US. In fact, it is rather surprising how self-evident or logical the dynamic process of integration starting with the Treaties of Rome is described in the literature, given that 'trans-national' elites in the US or Canada do not automatically support more centralization despite higher amounts of 'trans-national interaction.' The EU literature has not identified which comparative conditions lead to integrative feedback effects and which do not. This becomes increasingly clear when I turn to institutionalist literature from other areas that cite the exact same logic for different outcomes.

Ziblatt's analysis of conditions that lead to the emergence of federations or unitary states is stresses similar conditions to the EU scholarship (2006). While the realist or liberal approach would have predicted Prussia to create a unitary state in Germany, and Italy to unite as decentralized federation, it happened the other way around because institutions are often converted and reshaped but seldom created from scratch. In both cases, the unifiers followed the path of least resistance: German states were already strongly institutionalized (high infrastructural power) so Prussia could negotiate with strong executives and use pre-existing state institutions for taxation and policy-implementation purposes once the federation was created. For Piedmont, despite its relative military weakness, unification by conquest was the only feasible option because regional patrimonial rulers were no reliable negotiation partners there were no local administrative apparatuses in place (low infrastructural power) to which authority could have been devolved. In his analysis, Ziblatt demonstrates that elite ideological commitments (strong federalism discourse) and ethnic cleavages were roughly similar across both cases making it plausible to relate the outcome to the supply of institutional possibilities (2006).

For the US case, Skowronek relies on the same macro variables as Beer or Chandler but sees their effect on political centralization as highly contingent on institutional legacies and political alignments (1982). According to him, the early American state was held together by parties and courts, implying a limited set of market unification possibilities (negative integration). Industrialization provided general centralization demands that were transformed into policies by administrational activism within the constraints of existing institutions. The result was a state that is better suited to integrate a market but not the most "efficient" version of it. Instead existing institutions

are repurposed by institutional entrepreneurs (professional elites in this case) creating a federal government with more authority, but one that lacks decisive power due to horizontal fragmentation, politicization of the bureaucracy, and reliance on decentralized/autonomous implementation mechanisms. In short, limited US federal power can be explained by low federal resources and vested state interests going back to the time of the constitution.

Other scholarship in American Political Development mirrors these arguments, showing on the one hand how constraint the development of federal power was, and on the other hand how economic and social pressures led to creative regulatory integration (Daniel Carpenter 2001; Lewis 2003; Skocpol 1992). As in the EU, conflicts get resolved by the delegation of authority, with unintended consequences toward more federal power.

In his analysis of the FDA, Carpenter makes an argument that in many ways mirrors arguments over the European Commission and the ECJ (Daniel Carpenter 2010). "The United States is not under-regulated, he argues: the FDA has led the world in stringency of drug regulation, establishing processes emulated by agencies abroad" (Rasmussen 2011, 162). Carpenter describes how the activism of 'supra-national elites' led to America's most powerful regulatory agency. He stresses that is was not the whim of legislators or industry that made it so. Instead, the initial delegation of power a created feedback effects, and most notably an elite that behind the façade of apolitical regulation centralized power.

However, this literature only makes sense if we compare "a meager concentration of governmental controls at the national level" in the US to the unitary nation state in Europe (Skowronek 1982, 8). If we think that federal market-authority is undermined by initially low federal resources and sub-national vested interests, we should expect less interstate barriers in the US than in the EU. While the US federal government might have been weak initially, it had more legitimacy and resources than the initial European institutions and confronted less established and powerful sub-national units than the EU. If we focus on how non-state actors shift their loyalty to the new center when there is high transaction density, we must still conclude that this seems more likely in the US (Sandholtz and Sweet 1998).

One might object, saying that it was never the sole goal of the US constitution to create a single market while different EU treaties always explicitly formulated the single market as a goal[6]. In other words, does the initial legal framework explain the difference? I am not aware of anybody making this kind of argument, and as we will see, it does not really carry. While the US constitution 'only' specifies that "Congress shall have the power to regulate foreign trade, and among the several states, and with the Indian Tribes" it has been widely acknowledged that "commerce was what had led to rejection of the Articles of Confederation after a dozen years, because the confederation tolerated barriers to trade that interfered with creation of a common national market" (Lowi 2006, 96)

Most legal scholars have interpreted the Commerce clause as intended to limit interstate barriers. Even 'originalists' like Robert Bork argue that "This analysis shows that the Clause was crafted, among other reasons, to vest the federal government with the ability to protect commerce between the States from the discriminatory interference of self-interested States (Bork and Troy 2001a, 850; Barnett 2001). Furthermore, "Though [the dormant commerce clause] has undergone significant doctrinal evolution over the years, the central premise—that the centralization of commercial regulatory authority in Congress implied judicially enforceable restraints on the states' regulation of interstate commerce—has remained constant" (Denning 2008, 421). One of the few studies of federal constitutions concludes:

> The American Constitution […] with a clear supremacy clause […] nevertheless engendered a union where state governmental units repeatedly challenged federal supremacy over a wide range of issues. In Europe, by contrast, the Treaty of Rome said nothing about its own authority to negate future, conflicting laws adopted by signatories to the treaty, but the European Court of Justice successfully interpreted the treaty as carrying this implication and provoked relatively little state resistance to the move. (L. F. Goldstein 2001, 147f.)

[6] Article 3 of the EEC treaty specified that "[…] the activities of the Community shall include… the elimination, as between Member States, of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect; […] the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital [and] the approximation of the laws of Member States to the extent required for the proper functioning of the common market."

So legally, both polities have broad federal market authority and could use it to create single markets. The US Supreme Court and the ECJ have similar potentials to strike down discriminatory behavior of sub-national units. If they do not use it, I must specify either specific institutional or ideational causes. For instance, there is no legal reason why US Supreme Court has exempted states from acting non-discriminatorily in their public procurement, while the ECJ has not (Manheim 1990). Under judicial review, judges look for the 'substance', i.e. the idea behind laws, bringing in their ideological commitments or attitudes (Atiyah and Summers 1987; Segal and Spaeth 2002). When we observe different trends in interpretation, we have to look for a political interpretation. Either judges face completely different incentives, or we have to turn to more ideational explanations.

I therefore dispose of the initial institutionalist hypothesis. The following cannot explain my puzzle: The opportunities to take advantage of economic benefits are extremely constraint by how institutions have structured the relations between federal and state governments, as well as business. Policymakers choose the path of least resistance to achieve unification of rules (Pierson 1996). Initial centralization leads to a dynamic of increasing centralization of authority and more harmonization (Sandholtz and Sweet 1998).

However, this type of argument implies several questions that might help to modify the theory: What is the potential for Commission activism toward market integration? In particular, why do federal regulators in some countries put forward a broad agenda to reduce internal trade barriers but not in others (Hoffmann 2011; D. Brown 2002)? What is the potential for cooperative inter-governmental relations; how do current decision-making mechanisms influence the relations between different levels of government (D. Brown 2002; G. Anderson 2012)? Are legislators or judges situated to gain or lose from market unification? How do existing institutions affect popular mobilization for market integration?

Based on these questions, I hypothesize specific conditions directly from the literature under which we might see the creation of federal market authority. Obstacles to market-building are overcome when power is delegated to very specific types of institutions (like the European Commission or the ECJ) and when interest representation

is organized in certain ways that transform state-vested and industry interests (like in the EU). This suggest that we have to look at how the structure of institutions dealing with single market issues in the US systematically differs from the EU. The institutional literature provides many ideas about what kind of processes might be at work in producing the outcomes but it does not provide a clear hypothesis about which particular institutional relationship is of most causal importance. However, two general institutional factors can be identified. Legacies like high fragmentation of power, the party system, competitive inter-governmental relationships (etc.) supply some kind of institutional opportunity structure that defines what kind of institutional conversions are possible for addressing internal market barriers. At the same time, institutional factors seem to influence whether demands for addressing market fragmentation are formed due to the different situation of policy-makers and bureaucrats. This argument will be further developed in the theory building section.

In sum, institutional theorists have addressed how the economic incentives toward federal market authority are mediated by path-dependencies and unintended consequences of institutional decisions. Their main idea is H2: we will see increasing federal market authority with more federal resources, less state vested interests, high interaction density leading to re-orientation of loyalty and institutional autonomy of market-builders. While these main variables and dynamics provide good explanations for single cases, they cannot really account for the difference. However, by paying careful attention to the institutional obstacles potential winners from singe market building face, we might discover specific institutional conditions that enable federal market authority. While this is part of the story (see theory building section), we need ideas to understand why certain institutions are created. This is what we turn to next.

II.b.3.Ideational Explanations

Ideational approaches look at how ideas, identities, norms, practices, or political discourses shape the construction of federal market authority (Powell and DiMaggio 1991). While pressures like globalization or institutional obstacles do exists, what actors make of it (their ‘rational’ self-interest) depends crucially on what these pressures “mean” and what actors define as appropriate responses. Scholarship on the political

economy of markets has long inquired into the 'social purpose' of market arrangements (Ruggie 1982). Polanyi is one of the first scholars to take this position in his account of 19th century liberalism. He argued that "the road to the free market was opened and kept open by an enormous increase in continuous, centrally organized and controlled interventionism" or in short "laisser-faire was planned" (Polanyi 1944, 140f.). This directs us to inquire into the different ideological agendas and ideas underlying market construction. Thus, Americans may interpret the problems and appropriate solutions of market authority differently from Europeans.

The 1990s and 2000s have seen an explosion of ideational scholarship addressing the political development of the EU and the US. Here, one might differentiate arguments that stress the ideas of elites and arguments that stress the general political culture or mass attitudes. However, as the review will show, this literature has similar difficulties in accounting for differences in federal market authority as the other approaches do. Nonetheless, ideational explanations lead us on the right track to construct a new theory.

Since Max Weber, scholarship on political culture has suggested that open and competitive markets are more likely in the US than in Europe (Weber 1976). American political culture is seen as exceptional in accepting market ideas as the only legitimate ideology (Hartz 1991; Lipset 1979; Schuck and Wilson 2008). On the level of broader political culture the most famous work is Frank Dobbin's analysis of industrial policy in the US, England, and France (1994). He argues that despite objectively similar problems, these countries pursued differing policies due to different social constructions of economic efficiency. In the US, the federal government was seen as "enforcing price competition as a way of guarding Americans' economic liberties against the demon of concentrated economic power" (Dobbin 1994, 24). "In the United States, restraints of trade were associated with political tyranny, and policies adopted to guard liberty by precluding restraints of trade were soon cast as positive measures to promote growth" (Dobbin 1994, 225). Similarly, many leading economists, like Benjamin Friedman at Harvard University, describe the US as exceptional because "more so than any other large nation, America has maintained a flexibility and fluidity in its economic arrangements that has facilitated the continual reallocation of both labor and capital

resources and has fostered economic initiative, entrepreneurship, and creativity" (B. Friedman 2009, 88f.).

Other approaches, focusing more on the contingency of the development of federal market authority based on elite competition and autonomy, come to similar conclusions (Bensel 2000; Berk 1994). Berk suggests that "industrialization and state-building in the United States were much more contested and open-ended than" broad cultural arguments imply (Berk 1994, x). Elites within the Republican Party worked tirelessly to overcome the Southern and local barriers to national market construction, in particularly by relying on the Supreme Court to strike down all possible obstacles to trade. It was the party elites that "choose to make construction of a national market economy one of the highest policy priorities the party would pursue" (Bensel 2000, 518). Recent scholarship focusses on neoliberal ideas and how they 'persuaded' countries to pursue broadly similar economic policy in the late 20th century (Hall 1989; Blyth 2002; Prasad 2006; Roy, Denzau, and Willett 2007; Harvey 2005). Prasad for example tries to ascertain why neoliberal transformation has gone so much farther in the United States and Britain than anywhere else (2006); scholars of political-economic ideas generally seem to agree that compared to Europe, "there is no question that the US economy is much closer to 'free market capitalism'" (Art, Denzau and Willet 2007).

All those descriptions clash with the outcome if we bring the EU into the picture. The cultural arguments suggest that the EU should be less successful in constructing a single market. Why would social-democratic Europeans aggressively act against internal market barriers while neoliberal Americans tolerate them? This question is particularly salient for the literature on neoliberal ideas: Blyth and Prasad both focus on fiscal and tax policy, not noticing that in many ways neoliberal goals are not achieved because little attention is paid to creating competitive markets (Blyth 2002; Prasad 2006).

Ideas have also been stressed in explaining the creation of the EU. Neo-functionalism includes several ideas that have some resemblance with constructivism. Theorists stress how interaction of politicians and bureaucrats on the European level leads to shift from national to supra-national loyalties or the creation of a European identity (Egeberg 1999). Elite ideas explain the centralization of power and harmonization of policies in Europe. According to Fligstein, the core dynamic of

European integration is the transformation of elite identities (2008). The increased interaction of policy-makers, bureaucrats, managers, and professionals has transformed their identities toward feeling European. In turn they prefer more regulation on the European level. What holds the EU back from becoming a federal state in this theory is the fact that the average person's outlook remains national due to limited European interaction. However, this theory fares oddly when compared to the presumably stronger national identity of politicians in the US.

More recent approaches have traced how discrete ideas about markets and the EU became powerful in new and contingent ways, key 'variables' being elite autonomy, cross-cutting ideas, and strategic use of language. For example, Parsons stresses that key national executives held ideas of creating a European community that did not become politicized because they cross-cut cleavages. Due to low domestic salience and powerful allies that pursued different but compatible (liberalization) agendas, elites were able to strike deals in absence of domestic political support (2003). Others have stressed the power of economic ideas like monetarism (McNamara 1998) in creating the EMU and 'the market' (Jabko 2012) in creating the legitimacy for transfers of competencies and supra-national policy making. Jabko describes how the European Commission was able to use "the market" as powerful but flexible metaphor to sway even opposing groups to reimagine their interest and support increasing federal power (2012).

Unfortunately, none of this work addresses the EU and the US comparatively. Nonetheless, these scholars pave the way theoretically and methodologically by suggesting new ways for how to think about market ideas: Duina analyzes the EU, Mercosur, and NAFTA, arguing that "In any market, sustainable buying and selling requires that participants share some basic understandings of the world," in particular about "what is exchanged," "what is desirable," and "what is safe"(Duina 2006, 4). Different regional trade areas have adopted different "cognitive guidebooks" depending on law tradition (that presumably exemplify how people think). Economic integration in common law traditions does not lead to complex guidebooks of reality. Instead they adopt a reactive and minimalist approach to regulation in which conflicts are settled by courts as they occur (NAFTA). In contrast, policy-makers in civil law traditions try to regulate and harmonize the economy before conflicts arise (EU). This suggests, that

being market-friendly might have different implications in different areas shaped by different ideological traditions.

This might be supported with a re-reading of Hartz: "Since Americans never were obligated to use state power to liberate themselves from feudalism, they were 'born equal' and could afford to look upon the state as an unmitigated threat to natural liberty. The government that governs best governs least. Let the Europeans say otherwise" (Ackerman 1993, 26). In her analysis of 19th century US states, Goldstein argues, "Resisting distant central authority must have felt, to some degree, like a reaffirmation of values central to the American political tradition […]. And consequently is likely to crop up more often" than in European countries where this does not resonate" (L. F. Goldstein 2001, 52f.). This suggests because of their antipathy to federal authority, Americans tend to think differently about how markets are created. Focusing on the specific American content of market ideas is also supported by a growing literature on nation-building and race. Here the argument is that an order based on racism, empowered states-rights views that ultimately trumped liberalism in the shape of the US single market (D. S. King and Smith 2005). Conflicts over the racial ordering of society have legitimated a foundational discourse over states' rights that is in the way of central market authority. Under these conditions a different conceptualization of markets that relies more on competition than authority might evolve. At the same time, German and French ideas about political order were much more amenable to strong federal market authority (Marcussen et al. 1999; Jachtenfuchs, Diez, and Jung 1998)

The literature on neoliberalism suggests a similar entry-way to understanding market ideas. Blyth shows how policy-entrepreneurs in think-tanks, Congress, and business creatively combined supply-side ideas with monetarism to create American neoliberalism (Blyth 2002). This implies, in different contexts these ideas might be differently combined. As we will see later, the openness of interpretation of neoliberal ideas, can be traced back all the way to Friedrich Hayek.

In sum, the ideational literature suggests that policy-making elites understand economic challenges and appropriate responses in many different ways. The solutions, they adopt, do not only reflect those different understandings, but also turn on how political movements connect ideas about authority and markets. Similarly, the position of

interest-groups cannot simply be understood as a reflection of structural and institutional position, but as playing out of the former within the context of market ideas. Unfortunately, the specific applications discussed do not seem to shed light on the EU-US comparison. In particular, we would have expected the more heterogeneous, less pro-market Europeans to resist European integration more than their American counterparts. The ideational approach, does not give us an easy, testable hypothesis. Instead, it invites us to develop an explanation by taking into account the discussed concepts.

II.c. A New Theoretical Account of Market-Building

Political science is as much about testing competing theories as it is about telling a compelling story to explain an outcome that can subsequently be tested, modified, or refused by other scholars. Here I develop the story to be told in this dissertation. There are two parts to this: in the US, federal market authority is not used, and institutions not transformed, because a competitive federalism conception of markets has become dominant among neoliberal policy-makers, or more broadly among federal officials. The ordoliberal conception of markets, held by EU policy-makers and member state executives on the other hand, prescribes institutional reforms to create and use federal market authority, leading to an ever-expanding single market project. The sub-national and firm-level is also influenced by those dominant ideas. In addition, equally important are specific institutions that lead to the aggregation of pro-single market interests and the transformation of vested-state interests. In the EU and the US, the structural conditions—increasing economic interdependence, increasing density of economic transactions, dampened by rent seeking behavior of distributional coalitions (also increased homogeneity of identities)—push firms and governments toward more federal market authority. However, the US context puts those interest into a double bind: first, competitive federalism ideas diffuse down and are prevalent among some firms and state governments. Secondly, the US system of territorial interest representation and traditions of private rule-making fragment any pro-federal market authority interests and diffuse the benefits of central and uniform rules. As a result, I argue, the EU has moved much more toward federal market authority and has established more liberal rules for its internal market than the US. In the following case studies, I do not explain the European case but

use it as a mirror two show that conventional theorizing cannot account for the US's peculiar trajectory in terms of federal market authority. Taken together, the two explanatory elements laid out in this section can account for the loosening of federal market authority and the limited number of market-unification initiatives by private actors in the US—thereby answering the question posed in this dissertation.

II.c.1. Two Selective Conceptions of Market Authority

The first part of my theoretical account is that institutional obstacles are overcome, or existing federal market authority is used to create single markets under specific ideational conditions. To understand the influence of these conditions—on social movements or elite strategies—we have to start with an idea that is open to interpretation. The specific idea here is the idea of the free market, pursued by the neoliberal movement, and the degree to which they imagine those markets to rely on strong central authority. As I show, beyond the 'superiority of markets' there has always been an ambiguity in neoliberal thought, specifically on the question of how the beneficial effects of markets can be realized. This leaves policy-makers open to adopting free-market strategies that fit their context. While one groups sees federal government as crucial in preventing anti-competitive forces from undermining competition ('ordoliberals'), another group sees competition between sub-national governments as crucial ('competitive federalists'). As I will demonstrate, the latter interpretation became hegemonic within US scholarship and later in government. There are strong indications that the former conception was adopted by EU policy-makers, but this dissertation will only provide systematic evidence for the US case, only pointing at some illustrations of the EU context. The reason for the divergence in market conceptions can be found in differing cultural and political contexts.

Neoliberalism has been defined in so many different ways (reaching from a theory of human nature to a pejorative term for everything bad or unjust associated with globalization) that one might abandon it as a concept altogether (Harvey 2005; D. S. Jones 2012; Centeno and Cohen 2012; Swarts 2013; Prasad 2006; Saad-Filho and Johnston 2005; Steger and Roy 2010; Pepinsky 2013). However, there is a common denominator to all neoliberals and the power of neoliberal ideas is recognizable even

when the borders are fuzzy. I take neoliberalism as an ideology, meaning it tells us what is bad about existing society, what a good society looks like, and how we get there. As ideology, the tenets of neoliberalism do not have to be empirically true, but we can observe whether its prescriptions are followed and whether they have the intended result.

The first tenet of neoliberalism is individual freedom and the opportunity to be prosperous. Its main analytical claim is that markets have certain good effects, in particular that they are the most efficient mechanism to organize production, distribution, and consumption; that they are the only way to disseminate information efficiently; and that they are perfectly "in tune with human nature" (D. S. Jones 2012, 106f.; Coase 1976, 544f.). The second tenet of neoliberalism is limiting government. This is closely connected to the definition of freedom (government is coercive) and a general skepticism of the possibility of governments to deliver any desirable results—at a minimum it is by definition seen an inefficient mechanism of allocation (Coase 1976, 544).

Despite this general critique, neoliberals have to differing degree recognized the need of government to uphold the market (M. Friedman 1951, 91). The list of necessary tasks has always included the provision of a legal framework, most importantly property rights, an arbitration service, especially for enforcing contracts, as well as national defense and a monetary system. Some have added state activities that help maintaining a competitive order, like anti-trust legislation and enforcement, regulation of natural monopolies, and dealing with external effects that remain excluded from private calculation. And some neoliberals, like German ordoliberals, have even added limited redistribution to guarantee social peace and stability which they see as threatened by the constant innovation in a capitalist society (D. S. Jones 2012, 121ff.).

From these two tenets follows a normative push to establish markets. However, neoliberals disagree over how to set up a government that will allow or bring about markets—especially in the context of multi-level governments like the EU or the US. If governments in general can be expected to incline towards impairing markets, does that mean that a well-constructed overarching (federal) government should preempt the powers of lower-level units to be protectionist? Or does shifting any power to a higher (federal) level, even in the name of neoliberal principles, simply worsen the fundamental problem of government interventionism?

The argument can be traced back to Hayek and the founding of the Mont Pelerin Society in 1947 as a neoliberal thought collective—since then the exact role of government has been the central disagreement within neoliberalism (Mirowski and Plehwe 2009). Neoliberalism here is not clear on how much, which level of government should do (Hayek 2001; Popper 1952; Mises 1969). Despite the opposition to government intervention and fear of totalitarianism, the authors saw a clear role for the state to ensure the working of the market:

> It is important not to confuse opposition against this kind of planning with a dogmatic laissez-faire attitude. The liberal argument is in favor of making the best possible use of the forces of competition as a means of coordinating human efforts, not an argument for leaving things just as they are. It is based on the conviction that *where effective competition can be created*, it is a better way of guiding individual efforts than any other. It does not deny, but even emphasizes, that, in order that competition should work beneficially, a carefully thought-out legal framework is required […]. The functioning of competition not only requires adequate organization of certain institutions like money, markets, and channels of information-some of which can never be adequately provided by private enterprise-but it depends above all on the existence of an appropriate legal system, a legal system designed both to preserve competition and to make it operate as beneficially as possible. (Hayek 2001, 38f.)

But just how "effective competition can be created" has been controversial among neoliberals, in particular whether any deliberate 'creation' is necessary at all. To frame it differently, how should we organize political power to guarantee the proper framework for competition? Many neoliberals, including Hayek, focused on the ability of multi-level government to deliver economic liberty and innovation. Hayek discussed the beneficial effects of state competition under federalism: "The absence of tariff walls and the free movements of men and capital between the states of the federation has certain important consequences which are frequently overlooked. They limit to a great extent the scope of the economic policy of the individual states" (Hayek 1939, 140). According to Hayek, the great thing about federalism is, that it restricts government intervention in general because states are thwarted due to competitive disadvantages, and the federal government thwarted because it is too hard for everybody to agree: "The main point is that, in many cases in which it will prove impossible to reach such agreement, we shall have to resign ourselves rather to have no legislation" (Hayek 1939, 140).

However, guaranteeing the absence of quotas and tariffs is not enough, because states will find other ways to protect their industry: “The experience in these federations makes it appear that, to prevent such trends, it is scarcely sufficient to prohibit tariffs and similar obvious impediments to interstate commerce” (Hayek 1939, 141). As a result, the central government has to actively intervene: “In view of the inventiveness shown by state legislators in this respect, it seems clear that no specific prohibitions in the constitution of the federation would suffice to prevent such developments; the federal government would probably have to be given general restraining powers to this end” (Hayek 1939, 142).

As will be demonstrated, in the American context, this kind of thinking built the literature on competitive federalism. Scholars here focused solely on the first competition aspect and downplayed the strong central government aspects. Instead they assumed, the use of federal government will lead to more market distortions than competition among states. This seems to be located in a radicalization of the anti-government sentiment and an emphasis on the ‘naturalness’ of markets. “By the 1970s, neither Milton Friedman’s intelligent loquaciousness nor Ronald Reagan’s warm sentiments could disguise a philosophy that was built on a cold and abstract individualism […]. And yet the vision was still very much a utopian one, centered on a fantasy of the perfect free market” (D. S. Jones 2012, 87).

Friedman elevated limiting the role of central (federal) government to the main principle. He argued that while there might be need for government intervention due to market failure, in most cases this is a bad idea because politics in most cases leads to even worse results (Jones 2012, 109). For example, in the case of natural monopolies he writes, “I reluctantly conclude that, if tolerable, private monopoly may be the least of the evils” (M. Friedman 1962, 31). The implication of federal market authority is clear: “If government is to exercise power, better in the county than in the state, better in the state than in Washington” (M. Friedman 1962, 3). Beyond central rules against explicit state discrimination, subunits should be sufficiently disciplined by interstate regulatory competition, not central mandates. This is related to his view of markets as ‘natural’ order—competitive markets will exist automatically when government intervention ceases (M. Friedman 1962).

Chapter IV demonstrates how this interpretation became dominant in much of American academia—or at least among law and economics, as well as conservative think tank scholars—mostly because neoliberal thought fused with the push to apply the parsimonious models of neoclassical economics to politics, law, and regulation (D. S. Jones 2012, 88). George Stiegler from the Chicago School basically argued that regulatory agencies will eventually be captured by powerful industry interest (Stigler 1971). Positions like this undermined any faith one might have had in the federal government's ability to police subnational units. While William Riker, founder of the rational choice school in political science, lamented inefficient outcomes from sub-national competition, the mainstream federalism perspective soon agreed on its beneficial effects (Riker 1964; P. E. Peterson 2012).

The Virginia School of Economics developed similar arguments by applying public choice theory to federalism. The result of these 'fiscal federalism' models is that only jurisdictional competition can protect citizen from government exploitation and provide optimal bundles of public goods (Oates 2005; Tullock 1969): ''Total government intrusion into the economy should be smaller, ceteris paribus, the greater the extent to which taxes and expenditures are decentralized'' (Brennan and Buchanan 2006). The main mechanism behind this result are exit options—federalism gives citizens choices that discipline subnational government. Accordingly, welfare increases as mobile individuals choose among local offerings of public goods (Tiebout 1956). While these arguments where developed in respect to fiscal policy and have lots of limitations, conservative scholars have applied them axiomatically and uncritically.

The best know articulation of these results is Barry Weingast's model of *Market-Preserving Federalism*. He argues that markets do well if "Subnational authorities have primary authority over regulating the economy […]. As long as capital and labor are mobile, market-preserving federalism constrains the lower units in their attempts to place political limits on economic activity, because resources will move to other jurisdictions" (Weingast 1995, 5). This implies that markets appear naturally—little deliberate action in the center or in the states is necessary—fitting with the broader Hayekian image of the market as a naturalistic, default set of relationships.

Empirically then, this is one answer to the question of whether central government can be used to bring about markets or whether markets will arise naturally when central government is limited. This view—let's call it competitive federalism—makes two central claims: (1) if government cannot be eliminated altogether, lower levels of government that will be kept in check by market competition are preferred. Guaranteeing markets in multi-jurisdictional spaces is all about limiting federal authority. (2) There is no positive role for regulation because regulatory capture cannot be avoided. Policymakers should always seek to deregulate. It follows: the first task for neoliberals is to decentralize and deregulate.

However, as the Hayek quote showed, early neoliberal ideas can be interpreted in a different way as well: "the federal government would probably have to be given general restraining powers to this end" (Hayek 1939, 142). The ambiguity can be resolved into trusting a central government over many sub-national ones. After all, if government tends to distort the market, maybe one is better than many?

Polanyi, not a neoliberal, is one of the first scholars to take this position in his analysis of 19th century liberalism. He argued that empirically "the road to the free market was opened and kept open by an enormous increase in continuous, centrally organized and controlled interventionism" or in short "laisser-faire was planned" (Polanyi 1944, 140f.). In particular the "self-regulating market" needs the state to manage the "fictitious commodities" labor, land, and money to make them actual commodities that follow the laws of supply and demand. At the same time, these commodities, especially people, will resist their complete commodification so the state will have to protect them from the market because otherwise the whole economic order will be destroyed. In other words, individual and groups do not like being commodified. Losers and winners—be it businesses or sub-national political authorities—oppose competition to either secure their privileged position or overturn their losing position. In either case, it has to be up to a strong central state to force all participants into market-behavior. Because of this, some scholars have equated neoliberalism not with a program to dismantle the state, but to empower it and make it more authoritarian (Harvey 2005; W. Brown 2000).

Independently of the normative assessment of markets, institutional and sociological scholarship has recognized, as Hayek did, that an equally plausible theory is

that markets need strong federal market authority to guarantee it (for example: Fligstein 2001; North 1991; Gamble 1988; Abdelal, Blyth, and Parsons 2010). In ideological terms, this is nicely expressed by German neoliberals (Walter Eucken, Franz Böhm, Wilhelm Röpke, Alexander Rüstow and Alfred Müller-Armack), i.e. ordoliberals. In the 1930's they argued that, left to its own devices, competitive tendencies can be destructive to the market order, necessitating a competitive order based on social intervention and political regulation (Young 2013, 39). Eucken criticized laissez-faire: "Without any mechanism to hinder and check monopolies, laissez-faire contributed to the replacement of competition through achievement (*Leistungswettbewerb*), in which entrepreneurs are rewarded and punished by the selection process of the market, by competition to prevent competition (*Behinderungswettbewerb*), namely the use of predatory measures such as boycotts, price discrimination and cartels to drive out and close the gates to competition" (cit. in Sally 1996, 237). Ordoliberals see the danger of both firms and subnational units accumulating powers that undermine the market. Therefore, a strong state is required—it is not a state that intervenes to redistribute but a state that intervenes to maintain or create competitiveness: "Ordering does not mean central planning. Central planning of all economic processes is impossible […]. The complicated workings of the economic apparatus have to be left on a liberal basis. Ordering means ordering liberty" (Miksch 1937, 11).

The conservative roots can easily be seen in ordoliberals' obsession with order overcoming human imperfection. The common worker has to be continuously made into an entrepreneur by state intervention: „There is no freedom without surveillance to ensure that the orderly conduct of self-interested entrepreneurs does not give way to proletarianisation" (Bonefeld 2012, 13). The beneficial effects of markets are not the natural state of the world—their existence must be constructed and will not evolve spontaneously like US neoliberals imagined (Renner 2000).

However, as American neoliberals do, they see the danger of the state being instrumentalized by "greedy self-seekers" who see it "as a suitable prey" (Rüstow 1932, 255). But instead of hoping that jurisdictional competition will prevent that, they imagine that a strong central state, "above the economy and above the interest groups" can solve the problem (Rüstow 1932, 258). "The ordoliberals conceive of the agents of the strong

state as modern day aristocrats of the common good, who connect with the honest core of the workers on the basis of reason and through educational effort" (Bonefeld 2012, 15). While this sounds authoritarian—and indeed some ordoliberals like Müller-Armack were sympathetic to Hitler—it could be reinterpreted as empowering elites that institutionally are interested in maintaining competitive conditions, like the European Commission. Habermas, for example, calls the European Council a "post-democratic exercise of political authority" (Habermas 2014, vii).

While not comprehensively explored in this dissertation, the EU looks a lot like the ordoliberal solution to the problem of how to overcome anti-competitive behaviors by governmental and non-governmental entities. It does not rely on jurisdictional competition, but instead, as ordoliberals suggest, on mechanisms to tame anti-competitive demands brought to the political system. For instance, Werner Bonefield argues:

> The EU provides a supranational anchor for the domestic pursuit of market freedom […]. The often-lamented democratic deficit of European governance is […] not a design fault. Rather, the market-liberal constitution of Europe identifies democracy as an impediment to the achievement of a free labor economy. In distinction to majoritarian democratic theory, according to which voting 'is a method for citizens to participate directly in making law, which is then the will of the people', the liberal Right holds that, at its best, democracy is a method of circulating governing elites" (Bonefeld 2015, 869f.).

In this sense, executive federalism and empowered guardians of liberty, i.e. the European Commission, are another solution to the neoliberal ambiguity—the solution preferred by ordoliberals.

This 'ideological' view is also supported by scholarship in political economy and sociology. Steven Vogel's study of pro-competitive reforms in Western democracies comes to the conclusion that markets actually require more rules and deregulation is often followed by juridical reregulation" (Kelemen 2011, 23; S. K. Vogel 1996). For him, the competitive federalism conception of free markets is a myth. Producing a free market in the sense of liberalizing economic flows within one country does not only require willingness/ability to liberalize but also willingness/ability to allow strong governments to intervene in the market for this goal. He argues that liberalization (more competition) and deregulation (less rules) are not the same goal and shows in his case studies that

meaningful liberalization was only possible in countries that specified and centrally enforced more rules. If this is true—and I argue it is—we should see a proliferation of interstate barriers in countries that adopt a competitive federalism conception of markets.

Today, many economists expect any regulation to be a non-tariff barrier, i.e. be potentially discriminatory: "If all regulations that disadvantaged importers were classified as non-tariff barriers, then virtually all regulations could be considered protectionist" (Grieco 1990; S. K. Vogel 1996, 14). Moreover, economists question how much inter-jurisdictional mobility and competition drives US states to regulatory change. In a review of 38 studies trying to relate jurisdictional competition to smaller government, only 25 of 38 studies found some support (Feld 2014). Economists have also questioned whether the assumptions of the Tiebout model hold. If they, do not, competition among governments might lead to inefficient public policies (Inman and Rubinfeld 1997). These arguments can be found in the literature as 'harmful competition' or 'race to the bottom' (Oates and Schwab 1988). For example, in 1998 the OECD published a widely-noted report *Harmful Tax Competition, an Emerging Global Issue* (OECD 1998). Similarly, some economists have found evidence that jurisdictional competition leads to a race to the bottom in environmental standards (Woods 2006). In general, people tend not to move to 'more efficient' jurisdictions leading to suboptimal outcomes (Jordana and Levi-Faur 2004).

All these points suggest that promoting markets could require extensive central action to restrict or replace state regulations. Neoliberal ideas therefore give raise to a second view—let's call it ordoliberal—making two different claims: (1) Markets are a political creation. It follows, that while government is often a bad allocative mechanism, it must be used to create markets, in particular by banning anti-market activities and policies by sub-national units. (2) Strong regulation by a central authority is necessary because losers from competition will always try undermine the existence of competitive markets. Central authority works best when it is partly insulated from populist and economic pressures. It follows: the first task for neoliberals is to centralize, insulate, and regulate.

Why have those different ideas become dominant in the respective polities? My dissertation shows this evolution for the US case. Existing scholarship and ideational explanations, especially on US conservatism give a good account of why this happened.

However, the crucial aspect they miss is how neoliberal ideas have systematically differed across the Atlantic, with the result that neoliberalism in the US has undermined the free market. To understand this, we have to focus on pre-existing attitudes about federal authority and how policy entrepreneurs and policy-makers mixed these ideational commitments with the rising neoliberal creed.

As will be demonstrated, neoliberal and neoclassical economics with its affinity to competitive federalism has long been dominant in American academics. This is well documented in accounts on the rise of neoliberal thought in the US (Prasad 2006; D. S. Jones 2012; Blyth 2002). In addition, the competitive federalism conception generally resonates more with American's antipathy to federal government. This has been widely noted, from Hartz's *Liberal Tradition* to current public opinion data (Hartz 1991). Open any textbook on US Politics and one will find a statement like this: "Indeed, central to the American political culture is a strong anti-government sentiment […]. Yet, there are many programs administered by the federal government that Americans favor. This seeming paradox reflects a cultural animosity to government combined with the widespread acceptance of specific government programs" (Bowles and McMahon 2014). Or similarly: "large majorities say they favor free enterprise and dislike government meddling in the economy" (Kernell et al. 2017, 374).

An emphasis on the distinct attitudes toward government making the US a distinct political culture can also be found in Fabbrini's comparison of EU and US democracy. He argues:

> Several factors explain why the formation of a national market was a political project in the European nation-states, whereas it was the outcome of a judicial action in America. Contrary to the European experience, America has shown that it is possible to build a market without a state, provided that a legal order is effectively promoted and guaranteed by the judiciary system. (Fabbrini 2010, 81).

However, as I show, building a market without a state has limitation, specifically the possible proliferation of interstate barriers by local governments. Hence, the fact that America was founded on contractual while European Countries were founded on statist foundations has important results: "Unlike the Jacobin legacy for France, republican ideology in America merely deepened the distrust of national mobilization. In Europe, by

contrast the centralized state not only established the legal conditions for the birth of the market, but also intervened in its material structuring" (Fabbrini 2010, 91).

Because of the general antipathy to government, competitive federalism also fell on fertile ground in the business community. David Vogel for instance argues that "the most characteristic, distinctive, and persistent belief of American corporate executives is an underlying suspicion and mistrust of government"(D. Vogel 1978, 45). Another study finds that one of the most common beliefs in the business community is "1. The state is intrinsically evil. State intervention in economic affairs is dangerous. 2. Freedom is defined as freedom from governmental intervention in economic affairs. Freedom exists naturally as long as government does not destroy it by interfering with economic affairs" (cited in D. Vogel 1978, 47). Similar arguments can be found in books like *A Necessary Evil: a History of American Distrust of Government* (Wills 2002).

After falling on such fertile ground and being elaborated by many academics, the competitive federalism conception was ready to be invoked by politics, which I show by following conservative think tanks scholars and conservative administrations. According to Robertson, states' rights have always been the second dimension of political debates in the US—an argument to be invoked instrumentally when other arguments have failed: "Public debates may evoke highly principled arguments for or against federalism or national power, but these philosophical assertions usually cloak the real purpose behind the struggle over states versus national power: to get government to do something that they want it to do, or to prevent government from doing something they want to prevent" (Robertson 2012, 9). In this way, Republicans starting in the late 1960 fused pro-market advocacy with states' rights as a political strategy, that unintentionally lead to the competitive federalism conception. This is well documented in the literature on the 'Southern Strategy' but interestingly has never been put together with the effects of increasing market barriers. In short, conservatives tried to break the New Deal coalition by combining selectively state's rights arguments to support socially conservative policy as well as color-blind racism with pro-business policies sold as deregulation on the federal level (Lowndes 2008; Hohle 2015). This account complements other arguments about how neoliberalism became dominant in the US. Blyth describes how conservatives adopted a coherent combination of monetarism, supply side economics, rational

expectations, and public choice as alternativeless response to the inflationary crisis in the 1970s (Blyth 2002). Similarly, Prasad describes how single elements of this new ideology were adopted because it allowed to combine several electorates (Prasad 2006).

While not systematically analyzed in this dissertation, there is some evidence that in continental Europe, rising neoliberal ideas in the 1970s connected in almost the opposite way with a new rationale to build central market authority, not weaken it. The ordoliberal conception fell on fertile ground due to a different cultural identity of the state as creator of markets and liberty (Fabbrini 2010). Support for government management of the economy is much for prevalent in continental Europe, particularly among conservatives and Christian Democrats as a careful study of post-war public opinion shows (Borre and Scarbrough 1998). There is quite a consensus on this: "At the end of the reconstruction of the economies shattered by war, redistribution and discretionary macroeconomic management emerged as the top priorities of governments of most Western European Governments" (Baake 1996, 1). Many authors write that in the 1980s Europe like the US shifted toward neoliberalism—however again they overlook how different their conceptions were. Even when France abandoned dirigisme they moved much more toward ordoliberalism than competitive federalism (Levy 1999). Early on, drivers of European Integration held ordoliberal conceptions. This was particularly true because ordoliberal market ideas mixed well with ideas about a United States of Europe that had been made relevant by two world wars. This is exemplified by Walter Hallstein, first President of the European Commission, who specifically invoked the ordoliberal theory discussed earlier:

> A free market economy is a basic principle of the Treaty of Rome. Such a liberal economic system […] does not exclude state intervention. On the contrary, it presupposes that the state provides a framework for the operation of such a system; for only an appropriate framework allows each section of the economy to exercise its freedom of action, *in fact compels it to exercise that freedom*. (Hallstein, Götz, and Narjes 1969, 110)

While in the US, state's rights were combined with the pro-market agenda, in Europe political leaders' economic agendas combined with their political commitments to the legitimacy of EU authority. This has been well demonstrated by the ideational scholarship on European integration (Parsons 2003). In short, the idea of Europe was able

to build a new coalition, in particular between free-marketeers, and usually more leftist pro-Europeanists. As with competitive federalism in the US, this new coalition set the EU on a new path. For example, in the Single European Act, German and BeNeLux ordoliberals were able to convince the British pro-market government as well as the supra-nationalist French government to support the deal by selectively emphasizing different aspects (Parsons 2007). This has been spearheaded by British European Commissioners Arthur Cockfield and Leon Brittan. As Hoffmann shows with evidence from interviews with political actors, the European Commission supported federal market authority—using specifically ordoliberal ideas to support mobility and more uniform regulation as the necessary condition to enact unfettered markets in Europe (Hoffmann 2011, 327ff.). For instance, one Commission official is cited explaining "the starting point is of course [that] the EU internal market is a political objective as such"—he believes that markets are politically created (cited in Hoffmann 2011, 326)

Why has the so-called neoliberal era, in the world's foremost liberal market economy—the US—not led to a buildup of federal market authority? The answer is, because in the US the competitive federalism conception of neoliberalism has become dominant in conservative circles of policy-makers, while in the EU the ordoliberal has. As a consequence, interstate barriers in the US increase to the detriment of neoliberal goals—empirically, competitive federalism is not effective. It is my assertion, that only when institutional reformers or federal policy makers have an ordoliberal conception of markets, barriers fall. In the absence of these ideas, even strong central power will remain unused. As discussed in the literature review, these ideological views do not simply map onto material, institutional, or broad cultural patters. Instead, we can only understand this rise by tracing the emergence these specific neoliberal ideas.

On the level of firms and interest groups, some are ideologically driven and embrace the predominant neoliberal ideas. This means that interest groups that inhabit comparable structural positions in the EU and the US, have different opinions on market barriers. Neoliberal ideas matter because "interests do not exist, but constructions of interests do. Such constructions are inherently normative and subjective/intersubjective conceptions of self-good—of what it would advantage the individual to do or to have done either on his or her behalf or inadvertently by others" (Hay 2010). Or as Woll puts it

in her careful study of actual business interests: "[they] rely on social devices to reduce uncertainty, such as traditions, networks, institutions, and the use of power"(Woll 2008, 12, 2005). Competitive federalism is such a 'social device', we can expect to be salient especially among those interests groups that were directly involved in promoting a new neoliberal agenda (Blyth 2002). Other researchers have shown that firms often rely on cues from higher level, more ideologically driven organizations when forming their preferences (C. J. Martin and Swank 2012). The fact that most people in the construction industry lean Republican should also lead to them perceiving of their interests within the conception of competitive federalism (Verdant Labs 2018). This argument does not even have to be framed in constructivist terms: assuming bounded rationality, and a high level of uncertainty in the policy arena, it seems reasonable that firms would have either no position at all on federal market authority, or having positions that simply reflect their personal identity or the identity of an industry association (A. Smith 2016; C. J. Martin and Swank 2012). However, I find that only few firms and interest groups, especially those that identify as Republicans, have strongly bought into competitive federalism, for instance Associated Builders and Contractors. Similarly, local legislators and regulators show some affinity to competitive federalism in that they cannot imagine how federal market authority could reduce market barriers or in that they do not see local heterogeneity of regulation as barriers at all. More importantly, most firm are influenced by it indirectly. In the absence of a national agenda or political entrepreneurs to mobilize them in favor federal market authority, they usually prefer to not get into politics and just take the regulatory environment for granted (see also A. Smith 2010).

However, in the activities of firms and local policy-makers, certain institutional effects are undeniable. As economic analysis shows, there are incentives and direct cost-saving related to single-market building. For example, an Oregon architect presumably has a strong incentive to dislike Washington laws that directly discriminate against them. While neoliberal ideas are influential on the federal level, on the local level these actors run into specific institutional obstacles, which is what we turn to next.

II.c.2. How the US Configuration of Federalism Stands out

The second part of my account focusses on institutional incentives for firms, interest groups, and sub-national governments. While the general institutional hypothesis (more federal resources, less state vested interests, high interaction density) did not seem very helpful, a more careful reading of the literature lets us identify specific institutional differences between the EU and US that prevent the mobilization of those interests. I argue that in the absence of ordoliberal institutional reformers, pro-single market interests cannot be effectively aggregated, and sub-national resistance not overcome. Specifically, dual federalism and the separation of powers in state-legislatures incentivizes state-officials to have anti-cooperative, autonomy-preserving attitudes, and pursue sectoral, non-binding ways of standardization. Given the virtual non-existence of inter-governmental cooperation combined with the extreme pluralism of the interest group organization and the weakness of the party system, firms and officials with a preference for federal market authority have no obvious point of contact to further their agenda. Furthermore, with the European Commission and the ECJ, pro-integration interests have natural allies on the federal level. In the US, it is no-one's job to reduce internal-market barriers.

In general comparison, it is often observed that the EU has little power compared to the US:

> Once the single market was completed and the EU was given the necessary policy competences to regulate this market, a new European 'constitutional settlement' had effectively been established: where the European level of government is responsible for the creation and regulation of the market (and the related external trade policies); the domestic level of government is responsible for taxation and redistribution (within constraints agreed at the European level); and the domestic governments are collectively responsible for policies on internal security (justice and crime) and external security (defense and foreign policy). (Hix 2007, 143f.)

The EU has little in terms of "resources for exercising core state powers" (Genschel and Jachtenfuchs 2014, 7). Its budget is roughly 2% of all government revenue while the US federal government commands at least 51% of all revenue (OECD 2017). Similarly, the EU employs less than 0.1% of civil servants while in the US 12.3% of public employees are federal (OECD 2017). As Kelemen puts it, European "bureaucracy

is tiny, roughly the size of the administration of a typical midsized European city" (Kelemen 2011, 7). As discussed earlier, theoretically the EU and the US have similar federal market authority. In addition though, the US federal government has much more competencies and resources from foreign policy to internal security. Due to these reasons, institutionalist expect the US market to be more integrated. However, a closer look shows key institutional differences that might just put the EU ahead.

Many have described the EU as *Regulatory Polity* or termed its style of governance *Eurolegalism* and thereby likened it to US (Majone 1994; Kelemen 2011). Fabbrini even argues that a closer analysis shows that both polities' governance structures are becoming extremely similar (Fabbrini 2010). However, the European Council/Commission have very different competencies and incentives than the US federal government. Consider the example of 'commandeering', i.e. the issuing of central commands to force sub-national governments to take regulatory action toward private actors. In the US, this is generally seen as prohibited (M. D. Adler 2001), making the dormant commerce clause an oddly inefficient tool. If the federal government wants something to happen (outside of enforcing civil rights), it can either creatively use its spending power to incentivize states to follow federal rules (grant-in-aid) or use its preemption power under the commerce clause. This means it has to do everything itself: set up the rules and enforce them nation-wide, cutting state-policy makers out of the process. Meanwhile, in the EU commandeering is generally accepted as an efficient tool of policy-making: "Member states […] prefer that the Community pass directives, which command a Member State to regulate in a particular area and thus require further Member State legislative action to become fully effective within that State" (Halberstam 2001, 215).

This relates to a more fundamental difference in institutional structure of federalism. Halberstam suggests that "under a simplified conception of the component State as a unified actor, these key features—that is, the corporate representation of the component State within the central law-making bodies, the relative completeness and effectiveness of the central and component State systems, and the prominent alternatives to commandeering—may account for differing component State preferences regarding commandeering in the various systems" (Halberstam 2001, 281). In short, under a form

of executive federalism, where state governments directly participate in central decision making, sub-national units are much more accepting of central action than under dual federalism. Under dual federalism where "each level of government has an autonomous sphere of responsibilities," and institutions are replicated on every level of government (Börzel and Hosli 2003, 183). Separation of powers is strictly maintained by the fact that the federal second chamber represents only functional electoral interests. In this system, inter-governmental cooperation is voluntary and hard to maintain.

Federal-state relationship, as described by Halberstam, are knows as cooperative federalism in the literature. It relies on a functional or fluid division of powers and empowers territorial interests through their representation in the second federal chamber: "The functional and fiscal interdependence of the two main levels of government […] gives rise to 'interlocking politics' and 'joint decision-making'" (Börzel and Hosli 2003, 183). As demonstrated in many examples, cooperative federalism like in the EU is much better at overcoming vested state-interests because state-executive remain decision-makers (Pierson 1996). This is for instance shown by Brown's analysis of institutional and economic reforms in Australia and Canada (D. Brown 2002). Combining parliamentary institutions with a tradition of cooperative federalism, Australia successfully mobilized pro-integration interests to create more federal market authority (D. Brown 2002). In the US meanwhile, states have little to gain from transferring power to the federal level. Goldstein calls this the 'member state resistance paradox', arguing that "Virtually every institutional reform advocated by rebellious voices during those antebellum decades of state protest against U.S. Supreme Court authority was implemented in one or another version on the European side" (L. F. Goldstein 2001, 44). Her study of 19th century integration resistance argues that there is more pro-European sentiment in member state officialdom than there is pro-federal sentiment among American state politicians: "The reason is that the pro-federal ones in the United States could be siphoned off to the federal capital, a source of power and prestige" while state-level politicians had nothing to gain from supporting integration (L. F. Goldstein 2001, 55f.).

Alberta Sbragia's analysis confirms this (Sbragia 1992). She argues that the main difference is that US sub-national units lack formal representation in Congress,

undermining the transformation of regional into national interests (Sbragia 2005; same argument in: McKay 2001, 148; L. F. Goldstein 2001). In addition, in US politics "territorial and functional politics are usually entangled" because regions are much more economically specialized than in the EU (Sbragia 2005, 209). As Krugman puts it, the "U.S. [automotive] industry is a Midwestern phenomenon, with only a scattering of assembly plants in other parts of the country. The European equivalent would be a concentration of half of the industry within 150 kilometers of Wolfsburg" (Krugman 1991, 78). This means, members of Congress are much more likely to represent one specific economic interest (that might be opposed to federal market authority) than a Head of Government in the EU, who represents a diversified economy. According to Sbragia, this for example explains why it was much easier for the EU to regulate acid rain and vehicle emissions than for US Congress (Sbragia 2005, 217). "The fact that ministers represent an entire nation rather than a limited constituencies allows them to make trade-offs […], which any single legislator is likely to find impossible to do" (Sbragia 2005, 220).

Similarly, Sergio Fabbrini argues that interests of officials and businesses alike remain local due to the organization of federalism:

> Federalism hampered the formation of a trans-state class movement pushing for the public control of the economy in order to protect the weaker interests operating within it. Instead, the territorially decentralized organization of state authority fostered the formation of sectional cleavages more than social or economic ones. This territorial diffusion of power also impeded the formation of a common interest of the business community, which in fact continued to be divided along regional lines. [… As a result,] the federal structure has restricted not only direct intervention by the (federal) state in market activities, but it has also curtailed the organizational development of political parties able to appeal to a national electorate. [Parties remain] confederations of state and local parties, vehicles for the promotion (or the defense) at federal level of sectional, state, county, and local interests. (Fabbrini 2010, 81, 138)

This is confirmed by studies of fiscal federalism; David McKay emphasize the fragmentation of power in Congress as undermining federal market authority:

> The organizational and institutional 'connective tissue' between state and federal governments has always been weak in the US. For the federal government successfully to challenge the states' fiscal powers would have

> required the emergence of a national coalition of both state and federal interests operating through federal institutions. But since the effective 'nationalization' of the Senate in the early part of the nineteenth century, no federal institution can facilitate such a process. Federal and state decision making processes are essentially separated. As a result, most of the conflicts between the two levels of government have been brokered through the courts. (McKay 2001, 43)

For us this means no federal market authority agenda. Legislative fragmentation leads to interest-group fragmentation: as a result, no one interest groups would aggregate all the benefits of market integration: "Policy fragmentation resulting from congressional institutional rules has also served to fragment interest-group activity and the operation of the federal bureaucracies. As a large and rich literature shows, the consequence for public policy has been to make it inordinately difficult to build winning coalitions across issue areas, let alone across states and regions" (McKay 2001, 43).

It is not only the incentives of the federal structure that make US states wary of central government action. Bolleyer's interviews with intergovernmental actors show that separation of powers within state legislatures and weak parties undermine attempts of inter-governmental cooperation in the US (Bolleyer 2009, 7f.; see also: Kousser and Phillips 2012).

> The coexistence of multiple, highly institutionalized IGAs [inter-governmental associations] present in the American system can be attributed to the striking inability to pool power within the individual state as well as the inability to speak with one voice for the states as a level of government. This has proven particularly detrimental to any cooperation efforts between the states. […As a result,] unable to represent the states as coherent actors, IGAs focus on lobbying for the interests of their particular members, members perceived predominantly as professionals, not as representatives of a political system with a particular interest profile. (Bolleyer 2009, 111f.)

This means 'cooperative institutions' like the National Association of Attorneys General (NAAG), National Governor's Association (NGA), Council of State Governments (CSA), and National Association of State Legislatures (NASL) are service organizations that provide lobbying networks and legislative expertise to their members (Bolleyer 2009, 118). Within this structure, farther undermined by "by numerous 'lower level' arrangements competing with state IGAs […] such as the United States Conference of Mayors," the only thing they can agree on is opposing federal encroachment (Bolleyer

2009, 114f.). The best hope for policy harmonization is policy diffusion, as promoted by the Commission on Uniform State Laws (Bolleyer 2009, 131). Table 1 displays the spectrum of possible mechanism for achieving an integrated market. It contrasts the general structure of the EU with the specific mechanisms I find in my US cases studies.

	Mechanisms for single market building
Federal market authority	Harmonization/Preemption~* General mutual recognition~
EU~	State compact~ Bilateral reciprocity*
Voluntary/sectoral cooperation	Model laws* Voluntary accords* Administrative cooperation*
US*	Private actor harmonization*
State protectionism	Heterogeneous regulations* Intentionally discriminatory laws* Tariffs and quotas

Table 1: Schemata of Mechanisms to Achieve Single Market

In sum, "Compulsory power-sharing leads to a strong emphasis on 'institutional interests' because it creates a distance in orientation between executive actors (who focus on policy delivery) and legislative actors (who want to protect legislative autonomy)" (Bolleyer 2009, 132). As a result, all state cooperation is sectorally fragmented and non-binding. An additional factor is the fragmentation of state-executives themselves: "bureaucracies have never developed a cross-cutting set of loyalties capable of tying departments together and connecting them to a hierarchical superior; governors must share executive power with other directly elected officials like secretaries of state (P. Peterson and Chubb 1989; Bolleyer 2009, 129; Kousser and Phillips 2012). This means agencies, like the National Association of Architecture Licensing Boards (NASCLA) work for uniformity under the constraint of trying to minimize legislative and executive involvement. This pattern is also congruent with the literature on standardization that describes the American approach as private, fragmented and competitive, and the European as integrated, government-driven, and cooperative (Krislov 1997; Schepel 2005). As a result of these institutional incentive structures, "efforts to address market barriers in the US have largely been ad-hoc and reactive […]. Except in specific moments of crisis, there has been little interest in the internal market as such among politicians and business advocates (C. Weiler 2012, 188f.).

Beyond the structure of federalism, it is two specific institutions that differentiate the EU from the US. As Leiff Hoffmann argues, in the US it is no one's job to reduce interstate barriers while the European Commission basically does just that (Hoffmann 2011). The European Commission is "essentially […] a well-endowed, official think tank with a basic mandate to propose more and more liberalizing and centralizing policies" (Hoffmann 2011, 62). They have an institutional mandate, with the sole power of legislative power to back it up, to create and use federal market authority. According to interviews conducted by Hoffmann, present and former Commission officials themselves saw "the creation of an internal market as *their* political objective, going even beyond the original demands and desires of their respective member states" and often emphasized that their understanding was ideologically different from similarly positioned officials in the United States" (Hoffmann 2011, 65).

Similarly, while the ECJ is much less powerful than the US Supreme Court, it has a narrowly-focused mandate on the single market: "In dealing with the discriminatory effects of regulatory barriers to trade, the European Court of Justice has played an active role in negative integration, by invalidating discriminatory national rules. [… In addition] the Court has provided the window of opportunity for the Community to foster positive integration through the creation of a new regulatory regime" (M. Egan 2001, 108). According to Joseph Weiler, "Because Member States enjoyed full voice—that is, a veto—in the decision-making process that produced the Community norms, [they] remained sanguine about ECJ's decision foreclosing exit options" (cited in: Halberstam 2001, 228). The pro-integration agenda is supported by the fact that judges and commissioners basically self-select for "political messianism" (J. Weiler 2012, 825). In addition, the ECJ could generate legitimacy by empowering traditionally less powerful lower courts (J. Weiler 1993) and appeals to member states by representing them explicitly on the court (L. F. Goldstein 2001). However, this is not an institutional argument per se. Under different ideational conditions, the US Supreme Court, the Federal Trade Commission (FTC), or the White House could have become motors of integration similar to the EU—but so far their more general roles and surrounding institutional incentive have encouraged them to focus on other issues and make different calculations (M. Egan 2015).

It could be different, if policy-makers relied on different coalitions and adopted a more ordoliberal conception of markets as a result, they might appoint different judges, executives, and administrators. Under these conditions, it seems plausible that US federal institutions would not necessarily be an obstacle to federal market authority. The FTC could use the court system to go, not only after companies as it does now, but also after discriminatory state legislation. It is imaginable that the Supreme Court would revise the market participant doctrine that now shields much of states' use of their police powers, emphasizing interstate commerce implications of state-by-state licensing for instance. Congress could use its preemption powers with the explicit goal of harmonizing regulation to reduce barriers to interstate commerce. Congress could also encourage states to transform their inter-governmental institutions from forums of exchange to decision-making bodies. These counterfactuals suggest that the developed ideational explanation is important, despite all those institutional factors.

I find evidence for the causal influence of the two institutional factors in the preferences of state legislatures, state regulators, firms, and interest groups. It blocks states from cooperating effectively for consumer interests and leaves business interests with nobody to talk to. Specifically, I find that big national firms that would benefit from federal market authority express diffuse interest for it but emphasize that there is nothing they can do about it. They take the impossibility of change due to state authority for granted and feel helpless in the absence of actors with a federal market building agenda. State and local regulators insist on their institutional autonomy, participating in sectoral coordination with other states in institutions that are mostly of 'service' not legislative nature. Particularly, executive agency regulators emphasize how it is outside of their authority to make any binding agreements with other states. As Bolleyer and McKay suggest, I do not find any inter-governmental cooperation that would aggregate benefits across several issue areas like the EU service liberalization. Instead, every niche has their own organizations leading to negative economies of scale (in terms of harmonization) which is cited by those organizations as inevitable costs. Given the decentralized and territorial nature of the US party and interest group system, I find nation-wide interest groups to only express a diffuse preference for federal market authority. As expected under dual federalism, I find that state-level interest groups are torn between preserving

state autonomy (which is where they have influence and where most of their members operate), and federal market authority preferred by their big competitive members. Given these difficulties in mobilizing pro-federal market authority interests, I find many 'creative' solutions to the problem of interstate mobility that look inefficient but can be explained as a path of least resistance. For example, architects are highly mobile and have been organized as a profession for more than a century. Given the material incentives for federal market authority, they founded a private non-profit organization that works with states to unify architecture licensing requirements. While this looks basically like a national license, states still issue their own licenses—because their interest in institutional autonomy remains the limiting factor—no actual authority is transferred. As expected, this kind of voluntary executive cooperation does preserve many interstate barriers, as architects from said association explained, "Yes this is inefficient, but this is as good as it gets" (Personal Interview, NCARB 2016).

Having presented the ideational and institutional part of my explanation, the question remains whether the two approaches are complementary or competitive. My answer is that they are discrete but complementary. Most generally, I am interested in understanding one case in comparative perspective here, not probabilistic regularities related to several variables. This means, I am looking at a case in-depth and carving out two main factors that help us understand the outcome. In addition, I do not want to assume that every politicians and firm is subject to the same exact causal model, the social world probably does not consist of law like regularities.

Generally, the ideational dynamic accounts well for the actions of national politicians and administrations, judges, as well as think tanks. All of them to some degree self-select into subscribing to dominant ideas of markets and authority. Due to their job, federal politicians need to have more elaborate, normative conceptions of markets and government. They cannot rely on statements of personally benefitting from a policy but must embed their arguments into conceptions that make policy congruent with the general public interest. Therefore, they regularly use those conceptions to argue for policies or win debates.

Firms, state officials, and interest groups seem to be more clearly influenced by their immediate material concerns filtered by the institutional dynamics. The more local

or private an actor, the more likely they are to argue with their perceived self-interest. Doing so can be done without explicitly referencing conceptions of markets—but often invokes those implicitly. Local policy-makers and officials are interested in preserving their autonomy, and due to the institutional structure, they have no authority to leverage their power into binding interstate agreements—often they emphasize both, their interest in autonomy, and they the perception that it was out of their power to initiate any changes to the system. At the same time, a national market building agenda based on ordoliberal ideas might just change their perceived self-interest.

Many firms perceive barriers, like local licensing, to their mobility but do not have an elaborate public policy position on how to ameliorate the situation. They clearly recognize the institutional obstacles along the lines of "I don't know who could help me with this" (Personal Interview, Warwick 2017). At the same time, many firms, despite complaints, cannot even imagine any changes. Similarly, some interest group cite clearly the absence of a federal agenda and the belief in localism as the problem, while other seem more influenced by the fragmentation of their organization. While my research is structured to distinguish between those dynamics, I often find them to be present at the same time.

As has been pointed out, the dynamics are inherently linked. At its outset in 1945, nobody could have predicted the rise of federal market authority in Europe. It can only be understood by looking at transforming ideas in connection with institutional innovations that led to a re-orientation of interests toward federal market authority. In the US, there is plenty of mobilizable interests for federal market authority, but nobody is assembling them.

Why has the so-called neoliberal era, in the world's foremost liberal market economy—the US—not led to a buildup of federal market authority? I have argued that it is due to different dominant conceptions of markets and institutional dynamics that situate sub-national actors differently. How can we evaluate the interplay of those two explanations? How can we evaluate my story against conventional structural and institutional explanations? In particular, how can this be done without designing a study that encompasses multiple countries and centuries? Theoretical and practical questions of research design is what I turn to next.

II.d. Methods

Political science offers a wide range of epistemologies, ontologies, and methods to choose from (Jackson 2011; G. King, Keohane, and Verba 1994; Goertz and Mahoney 2012; Yanow and Schwartz-Shea 2006). Ideally, to answer a research question, I would look at all policy sectors of both polities overtime—and combine different methods and logics of inquiry (Lieberman 2005). Specifically, on might try to combine qualitative and quantitative evidence, and try to convince positivists and interpretivists of each other's results alike. However, in a world of limited material and cognitive resources that is hardly possible. Instead, epistemological, ontological, and methodological decisions have to be made. In those decisions, I am a pragmatist, using whatever method furthering the goals of this dissertation effectively. However, as we will see those goals have certain implications suggesting certain methods over others. In the following, I lay out the meta-theoretical foundations for opting for a qualitative process-tracing approach that focusses on contrasting alternative explanations. Subsequently, I discuss how this method will be implemented in the empirical chapters. As justified below, the chapters will focus on two empirical realms: (1) tracing the agendas and ideological commitments of policy-makers, think tank scholars, judges, and federal agencies, who seem most likely to pursue pro-market policies, i.e. conservatives since the 'Reagan Revolution'. (2) Documenting existing interstate barriers in one important sector of the economy—the construction industry. Here I will focus on explaining the politics of maintaining those barriers in three areas that construction firms identified as the most discriminatory: licensing of professionals and firms; building codes and inspections; public procurement laws and practices.

II.d.1. Meta-Theoretical Considerations

A covering law model of explanation, coupled with a large-N analysis of correlated patterns, is a fairly mainstream method of analysis in political science (G. King, Keohane, and Verba 1994). Within this frequentist paradigm, one would try to develop a good measure of the dependent variable—federal market authority—and then correlate it to the explanatory models of the competing explanations expressed in indicatory variables. To deal with the problem of a limited number of observations—

since the universe of cases is so small—the literature would suggest to disaggregate those cases into policy-areas (G. King, Keohane, and Verba 1994). However, this method is inadequate here for several reasons: (1) Most of the data required does not exist. Gathering and coding comparable data on regulations in the US and EU is an immense challenge, even just in selected sectors. This means, to track regulatory change over time in ways that would be rigorous enough to defend the assumptions necessary for regression analysis is hard to imagine.[7] (2) Within a limited amount of cases—EU, US, perhaps Canada, Australia, India, and Brazil—the results of quantitative methods are of little power and contribute little to our understanding of the specific cases. It is not an accident that most foundational work on political development on both sides of the Atlantic has used qualitative methods. (3) I am fundamentally not concerned with the explanatory power of isolated causes expressed as regularities, but with understanding the specific case of the US; i.e. with the "causes of effects" (Goertz and Mahoney 2012). (4) Given a highly developed field of explanations on both sides of the Atlantic, what is needed is a careful study of the underlying 'causal processes and mechanisms' (Hedström and Ylikoski 2010). In other words, in a world of collinearity, we need to investigate the observable implication of the causal mechanisms underlying theories that are often observationally similar. (5) Investigating ideas as causes is generally deemed problematic using quantitative methods (Jacobs 2011). If we assume that causes have to pass through meaning-making actors, statistical investigation is often "frightfully inadequate" (Nathan 2005). Even working within a strictly rational-materialist framework, interview research often reveals that despite convincing correlational evidence, the causal assumptions cannot be verified when speaking to people on the ground.[8]

[7] Using composite indices from several policy areas makes it problematic to sustain necessary assumptions, like specifying the causal relationship correctly in a parametric form, the randomness of the unexplained error term, the relationship between statistical significance and causality, and the data being sampled randomly from a 'population' (Freedman 1999; Seawright 2005). As a mathematician puts it: "If random sampling assumptions do not apply, or the parameters are not clearly defined, or the inference are to a population that is only vaguely defined, the calibration of uncertainty that is offered by contemporary statistical techniques is rather questionable" (Freedman 2010).

[8] As an example, consider the notion that globalization forced a 'golden straightjacket' on leftist governments' social policies based on the demands of global capital (Cerny 1995; Rodrik 2002). While this seemed to be confirmed by the tendency toward more neo-liberal policies, interviews with actual investors revealed that they did not even know about the policies that they had been assumed to oppose (Mosley 2003).

These factors suggest a broadly scientific realist position, focusing on causal processes and their specific manifestations, as well as a qualitative methodology. Most fundamentally this means this dissertation will be a "systematic examination of diagnostic evidence selected and analyzed in light of research questions and hypotheses posed by the investigator" (Collier 2011, 823). To do so, I will use process tracing methods to examine the different causal patterns and processes that underlie the competing hypotheses. I am using a broad definition of causal mechanisms in this inquiry, including micro- and macro-level processes that transform the causes into the outcome under investigation (Brady and Collier 2004). Akin to a critical realist view, I assume that we can identify general causal mechanisms, but only explain in specific cases how their potentiality is translated into an outcome (Gorski 2013; D. Beach 2014; Jackson 2011; Wight 2006). The underlying model of causality therefore is deterministic, mechanismic, but skeptical of the existence of a world that can be generalized into laws (D. Beach 2014; Fischer 1998). I assume that

> Causal relations are not constituted by regularities or law connecting classes of social events or phenomena [even though regularities are important clues] instead, social causal relations are constituted by the causal power of various social events, conditions, structures, and the like, and the singular causal mechanism that lead form antecedent conditions to outcomes. Accordingly, a central goal of social research is to identify the causal mechanism. (Little 1998, 197f.)

This view has gained traction in political science due to scholarly works popularizing scientific realist ideas (among others: Wight 2006; Wendt 1987; Gorski 2013; Jackson 2011), the general dearth of 'social laws' discovered by social scientists, and a new focus of political scientists on 'problem-solving',' mid-level theorizing' or becoming more relevant for policy in general (among others: Flyvbjerg 2001; Sil and Katzenstein 2010; Yanow 2006; Reus-Smit 2013, 2013). However, instead of adopting an interpretive or eclectic stance, I argue for the competing engagement of theories in a limited empirical realm[9] (Parsons 2015).

[9] This can bridge the gap between interpretivist and positivist methods. In the *Handbook of Interpretive Political Science* Bevir and Rhodes argue that interpretivists "define objectivity as evaluation by comparing rival stories according to reasonable criteria" (Bevir and Rhodes 2015a, 12).

The goal is to test the explanatory power of several theories (explicated through causal processes) and use them to provide an explanation of federal market authority in the US. In doing so, I do not test the theories as hypothetico-deductive laws, but as models that have different degrees of usefulness for the cases at hand. This is in line with modern political science's view that models have multiple functions and that prediction is often not a useful goal[10] (Clarke and Primo 2007). While method books often try to clearly distinguish between inductive and deductive or between cause-of-effects and effects-of-causes approaches, this study recognizes that actual research is most often a non-linear iterative process that oscillates between those logics; i.e. an 'abductive' and 'retroductive' process (Fairfield and Charman 2017a). This means that this theory chapter itself is part of the research process it describes[11]. While iteration may lead to ad-hoc theorizing and confirmation bias[12], this can be successfully avoided within a Bayesian logic, because it automatically looks at all evidence from the perspective of competing explanations (Fairfield and Charman 2017a). Hence, my study follows the recent trend in political science to focus more explicitly on contrasting competing explanations (Parsons 2015, 2016; Tannenwald 2005).

To fulfill the ambition of this dissertation—explaining the US case, and testing competing theories—I will use process-tracing evidence gained mostly from within-case analysis, combined with a few crucial pieces of cross-case evidence. While some authors object to the combination of within-case process-tracing with cross-case evidence, those types of information can be integrated if I adopt a Bayesian logic of making inferences about the world (D. Beach 2014; Humphreys and Jacobs 2015; Fairfield and Charman 2017b): "Bayesian logic provides us with a set of logical tools for evaluating whether

[10] "Models should be assessed for their usefulness for a particular purpose, not solely for the accuracy of their predictions" (Clarke and Primo 2007, 741).

[11] "Theory testing—understood in Bayesian terms as inference to best explanation using probabilistic reasoning—takes all evidence into account, regardless of whether or not it was known to the investigator at the time hypotheses were devised; new evidence has no special status relative to old evidence. Scientific inference invariably entails a 'dialogue with the data', where we go back and forth between theory development, data collection, and data analysis, rather than a linear sequence from hypothesizing to testing" (Fairfield and Charman 2017a, 1f.).

[12] "We should not make it [our theory] more restrictive without collecting new data to test the new version of the theory" (G. King, Keohane, and Verba 1994, 22).

finding specific evidence confirms/disconfirms a hypothesis […] relative to the prior expected probability of finding this evidence" (D. Beach 2014, 83). This study will use this logic, albeit not numerically. This means I will identify prior likelihoods, likelihoods of observations given specific hypotheses, and posterior likelihoods. Assuming that causal mechanisms are more than-case specific, I can use different types of evidence from different sources and cases to reach more certainty about the hypothesis at hand. For example, I will use some limited EU-US comparison data to express my declining confidence into the causal processes commonly cited by conventional explanations, and then rely on within-case process tracing to increase the confidence into the here-proposed explanation. The advantage of this method is that evidence can be used eclectically with the only criterion being that it discriminates between hypotheses in increasing/decreasing certainty in specific ones.

Specific tests in which the evidence can be used have many names in the literature, for example 'hoop', 'straw-in-the-wind', 'smoking-gun', or 'doubly decisive'—however, fundamentally they refer to a continuum of strength in tests with two-dimensions: certainty (how much does confidence in the hypothesis decline when certain evidence is not found) and uniqueness (is the hypothesis uniquely confirmed given certain evidence?) (Collier 2011; D. Beach 2014). The goal must therefore be to find observable implications of the different causal mechanisms that maximize as much as possible uniqueness and certainty. Within the process tracing method, "observations are [are regarded as] raw material data; they become evidence only after being assessed for accuracy and interpreted in context" (D. Beach 2014, 120). This acknowledges the subjectivity of the research process. However, at the same time the explicit nature of the method combined with the emphasis on competing theories, creates a degree of inter-subjectivity similar to following certain procedures in a regression analysis. Expressed in the oft-used court metaphor, reasonable people might disagree about the verdict and interpretation of evidence; but this does not mean we should abandon the idea of verdicts altogether. Knowledge is uncertain in the whole spectrum between neo-positivist methods and interpretivism, but we should nonetheless strive for it (Bevir and Rhodes 2015b, 18). In the following, the logic and criteria used to evaluate explanations within this dissertation are laid out.

II.d.2. Concrete Empirical Implementation

The ambition of this dissertation is to answer the question, why has the so-called neoliberal era in the US not led to a buildup of federal market authority, by contrasting alternative explanations gained from the literature of European integration and market building. To get there, the first step was to distill existing scholarship into a respective materialist and institutionalist hypothesis, as well as to develop a novel explanation based on combining hitherto unconnected strands of institutional and ideational theorizing. I have shown in this chapter that the logic of conventional theories gained from EU scholarship awkwardly fits the US case and suggested in turn that my explanation can tell a more compelling story.

To evaluate this, I follow two broad empirical steps. The first one is to document federal level outcomes and the behavior of federal policymakers (US) in light of the EU trajectory (see Table 2). To boost feasibility, I focus on self-described neo-liberal actors that by this self-identification have economic incentives to (supported by big nationally operating firms) and are ideologically (pro-market) inclined to foster federal market authority. If they are not mobilizing around and pushing for rules facilitating single market building, nobody will. To establish, the outcome of central inaction on and lack of mobilization against interstate market barriers, I therefore focus on the agenda and achievements of the last three Republican Presidents—Ronald Reagan, George H. Bush, and George W. Bush—as well as the last two leaders of Republican majorities in the House—Newt Gingrich, and Paul Ryan—that produced comprehensive policy agendas. The crucial question here is: did they explicitly pursue any single market-building policies? If not, did they pursue regulatory changes or reforms of federalism that can be construed as creating federal market authority? Since the answer is mostly no, I consider competing explanations.

Overall, conventional explanations are not very convincing—as discussed in detail in the literature review—because the outcome happens despite the people in power explicitly having a pro-market agenda, and pro-market building incentives. What sets them apart is the specific tools they prefer to use (deregulation and devolution of power). I first turn to the materialist-structural hypothesis: to show that it is roughly implausible, I construct a few EU-US comparisons on economic interdependence and economic flows.

Subsequently, I turn to the institutionalist hypothesis, assessing whether there are constitutional or resource-based problems in addressing interstate-barriers. These cross-case comparisons reduce the confidence in those conventional explanations and I move on to my ideational hypothesis. This requires a more nuanced weighing of different kinds of evidence: to show how market ideas intersected with an antipathy to federal power into competitive federalism I analyze all Republican party platforms since 1980, look at memoirs and writings of Reagan and his close policy-advisors, as well as of other Republican leaders that explicitly addressed these issues like Newt Gingrich's *Contract with America* and Paul Ryan's *New Way*. This lets me reconstruct how they imagine markets in a certain way. While this kind of evidence is very close to the outcome, it is the right kind of evidence. The writings of neo-liberal policy-makers explicitly tell us the reasoning behind their agenda. This reasoning happens to be nearly identical to the theoretically deduced conception of competitive federalism, I have laid out.

Since the closeness between policy-makers and think tanks has been widely cited as influential in US politics, I conduct interviews with experts at pro-market think tanks (American Enterprise Institute, Heritage Foundation, Cato Institute). Based on these interviews, I can document how their competitive federalism conception of markets makes them overlook how state and local jurisdictions undermine the single market. Studying the positions of think tanks also shows how competitive federalism diffused from academia through the conservative law and economics movement, into policy-research, and how social-scientific propositions regarding jurisdictional competition and regulatory capture became an axiomatic set of beliefs in conservative circles. Additional confidence can be gained by looking at how conservative Supreme Court judges have justified internal-market barriers in recent commerce clause decisions. I also look at recent complaints the Federal Trade Commission has brought against states and local jurisdictions to see to which degree they are influence by the competitive federalism rhetoric.

Underling this approach is the Bayesian process tracing logic. I collect carefully selected pieces of evidence. In addition, for the analysis of documents I implicitly assume that particular "way[s] of talking about" the world reveal actors' "understandings of the world" and thereby give us an insight into why they take the positions they do (Jørgensen

and Phillips 2002, 1). Using discourse as evidence can be done without adopting a post-structuralist point of view and is pretty common in the literature on ideas (Blyth 2002; S. Berman 2006; Jabko 2012; Schmidt 2008; Parsons 2003; Milliken 1999; Yee 1996; Jacobs 2011). For instance, Jabko uses elite interviews in exactly this way to ascertain the causal influence of certain market discourses (Jabko 2012). The important point here is that, while I am using discursive evidence, I do not adopt discourse theory. I assume that writings give insights into the ideas of actors, but the proper discourse is epiphenomenal to those ideas, i.e. I am not investigating the relationship between language, subjectivity, and power (Jørgensen and Phillips 2002)[13].

This first empirical part creates an initial picture of why the US does not act on interstate barriers. This makes my hypothesis a plausible story. However, to make this complete, later study must investigate the EU story, but the findings from even my quick comparisons are suggestive for what one might find there.

To create more confidence in my hypothesis, the second empirical step is to examine a specific sector. This allows me to examine the existing market-barriers and their effects in more detail and assess the surrounding politics beyond just federal lawmakers. Since all explanations have to eventually pass through human action, it is prudent to focus on a specific area of market barriers to be able to observe how firms, interest groups, and government actors actually perceive and act on those barriers. Following a process-tracing methodology, I need to gather evidence of actors' positions and justifications to compare those to the observable implications of the different theories. Given the obvious time and monetary constraints, I focus on one substantial economic sector that is typical for the EU-US comparison, economically important, characterized by obvious incentives for increasing federal market authority, and that is exemplary for the rest of the economy.

[13] There is some confusion because a few scholars describe the work of mainstream qualitative methods in political science on ideas as "discursive institutionalism," trying to "strip [discourse analysis] of its postmodernist baggage to serve as a more generic term that encompasses not only the substantive content of ideas but also the interactive processes by which ideas are conveyed" (Schmidt 2008, 303). In Schmidt's word, I am focusing on "the coordinative discourse [that] consists of the individuals and groups at the center of policy construction who are involved in the creation, elaboration, and justification of policy and programmatic ideas" (Schmidt 2008, 310). However, in my opinion adopting the language of discourse is problematic since it is really ideas I am interested in and not discourse as it has been usually understood by interpretive scholars.

The literature on the EU often analyzes barriers in terms of for the mobility of goods, capital, services, and labor (Fligstein 2008; Sandholtz, Fligstein, and Stone Sweet 2001; M. Egan 2015). Therefore, an economically important sector to be selected would have implications for all of those areas, in particular services which accounts for at least 70% of the economy and the use of public purchasing, which accounts for at least 15% of economic activity (OECD 2017).

For the second empirical step, I have chosen to examine internal market barriers for the circulation of construction services as well as the politics among jurisdictions, firms, and interest groups to overcome those. There are several good reasons to focus on construction services:

(1) *Industry Structure:* The construction sector is ideal because it touches on service mobility (for instance architectural and construction management services), labor mobility (for instance cross-border plumbing services), as well as direct government involvement (public purchasing). It is a big industry, often seen as the backbone of the economy, i.e. what happens in construction matters. There are between 760,000 and 790,000 firms in the construction industry in the US (BLS 2017) with an annual revenue around $1.731 trillion. More importantly for our purposes, there is a significant number of firms that would presumably benefit from fewer interstate barriers and by extension more federal market authority, including the 400 biggest companies like Turner Corporation, Bechtel, Fluor Corporation that concentrate about 21% of the industry revenue (ENR 2017). In addition, there are many small and medium enterprises, for instance architects or construction managers, despite having less than 10 employees, provide their services region- or nation-wide. Combined with all the firms in border regions, they all have a material interest in pursuing federal market authority, which allows us to test whether they are thwarted by countervailing interests, institutional structures, or whether they hold a different idea of their own interest.

(2) *Comparable Outcomes*: The regulatory outcome is typical for the US-EU comparison, illustrating the overall puzzle (Gerring and Seawright 2007). In the EU, countries are relatively constrained in discriminating against out-of-state companies and professional licenses, while US states regularly do so. In terms of public purchasing, the EU displays federal market authority by providing an overall framework for competition,

while in the US there is no overall nation-wide or even state-wide system for procurement. It terms of building codes and standards, the EU relies on its authority to promote Europe-wide rules through so-called Euro-codes and its associated European Standardization Organizations, while the US relies on private competing standards that are erratically adopted and amended by the states. In addition, in the EU construction has generated land-mark free movement cases like Laval (2007) and Rüffert (2008) and federal legislation like the service directive (2006) or the lift directive (1995), while in the US construction has received relatively little Commerce Clause attention except in the case of public procurement, where courts have explicitly allowed discriminating against out-of-state companies (market participant exemption 1976).

(3) *Case Importance*: As the Economist has reported, "Construction holds the dubious honor of having the lowest productivity gains of any industry" and firms have failed to efficiently consolidate (Economist 2017). Explaining why this $1.7 trillion industry has not generated more demands for federal market authority is an important question in itself. Furthermore, findings on construction might be roughly similar to outcomes in other sectors. If we can ascertain the specific mechanisms that maintain market barriers in construction, it becomes more plausible that similar logics are at work in other sectors that face barriers of similar nature, like retail banking or alcoholic beverages, as well as professional services and public purchasing more generally.

In choosing the construction industry, I am building on Hoffman's pioneering work in several ways: he focused on public procurement laws, I am looking at formal and informal procurement practices and how they affect constructions firms; he focused on justifications for hairdresser licensing, I am looking at how different types of licensing and registration laws inhibit the mobility of construction firms; he focused on how elevator standards fragment the goods market; I am looking at how building codes and inspection procedures more generally impact the mobility of construction firms (Hoffmann 2011). Overall this will lend more empirical credence and economic importance to his initial claims by expanding the scope of inquiry in terms of issues and actors.

The first step in this case study is to characterize the outcome in the US. This means illuminating the absence of federal market authority; i.e. the degree of existing

local and state legislation, its use in potentially market distorting ways, and its impact on actual firm mobility. The dependent variable is the persistence of interstate barriers and the lack of mobilization around it. When easily available (the general legal framework), a comparison is made to the EU directly. While I do rely on secondary documents on state legislation, I base the characterization of the outcome mostly on numerous interviews I conducted with different types of construction firms, interest groups, regulators, and policy-makers. This is necessary because in many instances 'non-discriminatory' regulatory heterogeneity, has the same effect as real interstate barriers. In this case, interviews can deliver insights no other method can provide. Since the amount of potentially discriminatory regulation is vast, I focus on three areas: professional and firm licensing, public procurement decisions, building codes and inspections; only paying marginal attention to other areas mentioned like environment regulation or local taxation. These three areas are obvious and intuitive examples of interstate barriers—so I favor investigating those since they are easy enough to understand for firms and policy-makers. If I chose some technical barriers to trade, that can only be understood with specialized knowledge and data analysis, the easiest explanation for inaction would be ignorance. In addition, those three areas were most often named in my interviews.

When analyzing the impact of licensing, I contrast the liberal regime of the EU with the variety of barriers and heterogeneous regulations in plumbing licenses (most localized and discriminatory), contractor licensing (mostly state-wide but still discriminatory), and architecture licensing (discriminatory despite national uniformity). I combine data on differences with the actual experience of firms. I follow a similar approach for public purchasing preferences. A survey of state purchasing laws provides an initial insight, but as interviews with firms demonstrate, out-of-state firms are much more disadvantaged than a look at those laws would suggest. For building codes, sampling must be similarly restrictive because is just too many jurisdictions with different building codes. I compare the heterogeneity of model plumbing code as well as model residential code adoption across jurisdictions, and the differences of handling egress for fire safety in the residential building codes of all 50 states. I also look at who trains and employs building officials across the country. This is complemented by the

interviews with construction firms that speak more concretely to the actual effects of heterogeneity.

For the second step of explaining the outcome I investigate the perceptions and policy position of key actors in the arena. Selection of actors is based on testing the different theories. In terms of firms, I can distinguish the economic incentives for nationally- and regionally operating construction firms from locally operating constructions firms. This is complemented by the positions of interest groups/trade unions that represent different parts of the construction industry vs. interest groups that represent construction industry users, distinguished by locally vs. nation-wide organizations. The interests of regulators are assessed with interviews of state-licensing boards, state-legislators, as well as procurement and building officials. This can be compared to the positions of organizations founded to create nation-wide uniformity.

My sampling strategy tries to sample different groups that should have different positions and ideas according to the different theories.[14] Table 3, (p. 210) summarizes all conducted interviews. Because I cannot conduct in depth-interviews with all licensing boards for instance (and it turned out unnecessary since they all said the same thing), I focused on specific clusters of states with strong incentives for federal market authority whenever indicated. Those clusters were the I-5 corridor in the West, i.e. California, Oregon, and Washington, as well as the geographic cluster of North-Eastern states (CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VT). To some degree, these are all samples of convenience, because conducting semi-structured interviews always has to rely on the willingness of organizations to participate and many of the organizations targeted are hard to reach. However, the samples are also purposive since interviewees have been selected according to the discussed characteristics to gain inferential leverage (J. Lynch 2013). Nonetheless, statistics are inappropriate to describe the results. Instead, within the case study I "describe clearly which persons were interviewed, their status, [and] limit the findings and conclusions to these particular worldviews, which are only a certain part of

[14] Qualitative interview sampling does not work according to a quantitative logic: Targets "are suitable if they can provide the objects of reasoning as well as all relevant criteria and circumstances (e.g. cultural background, institutions) that are needed to be taken into account in order to investigate the research problem appropriately. It is the unit of investigation that counts, not the way how it was identified" (Diefenbach 2009, 879).

social reality, and put them into perspective, i.e. the wider picture" (Diefenbach 2009, 880). In accordance with the best practices in qualitative research, I describe who was contacted and who responded in detail in the case studies (Bleich and Pekkanen 2013). Answers are cross-checked with other interview partners and other available information. This allows me to indicate whether one groups of actors has predominantly one view or several views. When a diverse groups of firms agree on a specific problem perception, it increases my confidence that this accurately characterizes firm positions more generally (Bleich and Pekkanen 2013). Cross-checking also ameliorates the problem with people misrepresenting their own positions. I hope that the non-mainstream, low-salience subject matter, combined with possible anonymity, will create enough incentives for people to accurately describe their positions. In addition, "It is not [always] necessary to dig deeper in order to reveal the hidden layers of a person's personality and his or her 'real and genuine experiences or ideas'—on the contrary: It might be exactly these cultural scripts and stereotypes (and perhaps the first level of their reflection) the interviewer might be interested in" (Diefenbach 2009, 881). While one might object to this as subjective, I am doing my best, as most researcher do, to not be overly subjective. To further that I follow the best practices of the research community by being transparent and explicit in all my research decisions. In the end, actual research "is a creative process and its quality, for better or worse, is a result of the skills and courage of the researcher"[15] (Diefenbach 2009, 885).

Interview partners where contacted via email and phone, and all interviews were conducted via phone or email. The specific respondents and response rates are discussed in Chapter V. Over 100 interviews were conducted in 2016 and 2017. The results from this interview research are compared to the expectations of the different theories. Table 6 (p. 318) shows the groups targeted for interviews, as well as the expectations for their positions according to the theory section. In addition, I compare the observed strategies of market-building with the expectation of coordination mechanisms (Table 1). I find plenty of evidence for the institutional incentives discussed. Firms have diffuse interests

[15] "Endless freedom in the selection and interpretation of empirical data does not mean at all that 'anything goes'. There are still ethical, moral, legal, philosophical, social, technical, practical and professional standards in place which the researcher has to take into account" (Diefenbach 2009, 886).

in federal market authority, but those cannot be mobilized successfully. As expected I find the use of private coordination efforts, non-binding agreements, sectoral administrative cooperation, bilateral reciprocity, and model laws as opposed to mechanisms like state compacts, mutual recognition, cross-sectoral coordination, or federal action, which are mostly non-existent. Most intergovernmental institutions are service providers, focusing on information exchange and lobbying access. At the same time, it becomes clear that given a different federal policy agenda (i.e. a different ideational context) federal market building might be possible. In addition, some firms and interest groups directly repeat the competitive federalism argument.

In sum, I will proceed with four empirical chapters two focused on the federal level policy-making since the 1970s and the other two on the construction sector. They are each divided in a description part and an explanation part. The descriptive parts focus on establishing that while the EU has seen an increase, the US has experienced a decrease in federal market authority. The explanatory chapters evaluate the strength of conventional explanations for the US case and show the usefulness of the here developed new account.

Step in Analysis	Evidence	Sources	Goal
Establish central inaction and lack of mobilization around interstate market barriers/opposition to federal market authority	Policy agenda and policy achievements of Republicans do not address internal market barriers, despite general pro-market stance	Secondary sources, newspaper articles, policy-documents by Republicans	Establishes the outcome
Test structural hypothesis	US has more internal economic flows, more labor mobility, more national corporations, and more regional specialization of firms than EU	Data on aggregate bilateral goods trade; Data on aggregate mobility; Data on regional payment flows; Data on the number of big firms; Data on foreign trade exposure; Data on regional economic specialization	Reduces confidence in structural explanation
Test institutional hypothesis	US has more federal resources; constitution allows similar action on market barriers	Data on tax revenue and employees. Secondary sources on constitutional interpretation	Reduces confidence in institutional explanation
Test ideational hypothesis	Justifications and arguments of pro-market policy-makers, judges, and think-tank experts mirrors competitive federalism conception	Republican Party Platforms (1980-2016); Reagan, Gingrich, Ryan reform proposals; memoirs and books of Reagan advisors; interviews with AIA, CATO, Heritage; List of court cases; List of FTC actions	Increases confidence in ideational explanation

Table 2: Federal Policy and Think Tank Case Study

CHAPTER III

COMPETITIVE FEDERALISM AND THE 'REAGAN REVOLUTION'

As we have seen in the theory chapter, most theoretical accounts of market building expect more significant mobilization around federal market authority to deal with interstate barriers in the US than in the EU. This chapter demonstrates that this is not the case and that the presented ideational account is better than conventional approaches in explaining the persistence of interstate barriers and the non-mobilization around federal market authority in the US.

Liberal and institutional theories to some degree predict that we should see increasing mobilization around federal market authority since it creates economic benefits. Scholars have stressed that the size of these benefits depends on the degree of economic interdependence, the density of economic transaction, and potentials for economies of scale. (Moravcsik 1998; Genschel and Jachtenfuchs 2014; Sandholtz, Fligstein, and Stone Sweet 2001). While this is not a quantitative study, and as I discussed earlier, there are reasons to be skeptical of a quantitative approach to my research question, a few comparisons show that these theories would lead us to expect at least roughly more mobilization around federal market authority in the US than in the EU.

Economic benefits of single market building increase with a mobile workforce. In the US, there is much higher interstate labor mobility than in Europe: In 2014, 488,000 working-age people migrated within the EU, while in the US, at least 4.8 million working-age people migrated to another state (U.S. Census Bureau 2016b; Fries-Tersch, Tugran, and Bradley 2017). In terms of total population, in 2014 around 0.4% of the EU population migrated to another EU country, while over 2% of the US population moved to a different state. If we focus on smaller economic regions within the EU[16] (NUTS), the migration rate increases to 1.5%, still much lower than in the US (Fries-Tersch, Tugran, and Bradley 2017). However, while US labor mobility has been decreasing since the 1980s, in the EU it steadily increases, which we might interpret as an effect of increasing

[16] NUTS regions are administrative statistical units. They are much smaller in area to the average US state, but much bigger population-wise, reaching from three to twenty million inhabitants.

market integration (Fries-Tersch, Tugran, and Bradley 2017; Wozniak 2016). Overall, the stock of 'foreign' population is very different among the two polities. In the EU about 4% of the working age population live permanently in a different EU country than they were born, while in the US 30% of the population lives in a different state than they were born (Arpaia et al. 2014).

In theory, economic benefits of single market building also increase with economic interdependence and denser flows of goods and services across the area: the external trade exposure of the EU and US is roughly similar. In the EU, imports of goods and services accounted for 12.3% of GDP in 2015, while exports in goods and services accounted for 13% (Eurostat 2017). In the US, import of goods and services accounted to 15% of GDP in 2015, while export in goods and services accounted for 12.6% of GDP. Most EU trade is intra-EU trade reaching up 28% of GDP for goods and services (Eurostat 2017). Presumably, there is much more internal trade within the US, but comparable numbers are not as easily available because trade is mostly tracked at country-borders. While not identical in measure, in 2010 77.3% of (registered) transported goods were traded across US state borders (Tomer and Kane 2016). In both polities there is still a strong home bias. For instance, one paper estimates national trade to be 10 times likelier that international trade for any EU country (Nitsch 2000). Economists, trying to measure 'home-bias' in inter-state trade have found that there is a significant bias toward intra-state trade in the US and Canada (Wolf 2000; Millimet and Osang 2007; Hakan Yilmazkudayy 2011). However, the few comparative works have found that this home bias is 3 to 4 times stronger for EU countries than for US states (Pacchioli 2011).

The benefits of federal market authority should increase with economic interdependence since the latter implies more cross-border division of labor and hence more cross-border trade. If we assume that the benefits of market integration apply to any transaction, there are more benefits with increasing numbers of transactions. We might measure economic interdependence by regional specialization. While comparing regional specialization is difficult due to many geographic differences, we do find this more strongly in the US. As Krugman puts it, the "U.S. [automotive] industry is a Midwestern phenomenon, with only a scattering of assembly plants in other parts of the country. The

European equivalent would be a concentration of half of the industry within 150 kilometers of Wolfsburg" (Krugman 1991, 78). More recent studies show that European industries, especially technology industries, are becoming more regionally specialized, while US states are becoming less so, but there is still a small edge for the US (Midelfart-Karvik and Overman 2000; Crescenzi, Rodríguez-Pose, and Storper 2007; Fagerberg, Feldman, and Srholec 2014; Kogler, Essletzbichler, and Rigby 2017).

The mechanism, stressed by liberal theories for creating federal market authority, is that interest groups, especially the ones representing large firms present in all the different states, lobby for single market building (Moravcsik 1998; Frieden 2002). According to some observers, the influence of big business groups, that operate nationally, is much higher in the US (Mahoney 2008; Gilens and Page 2014); we might therefore expect more mobilization around federal market authority in the US. In addition, there are more, larger firms in the US that potentially can realize the benefits from measures like harmonization of standards. While the median TOP 500 American company is worth $18 billion with a net income of $746 million in 2015, the median European firm is worth $8 billion with a net income of $440 million (Economist 2016a). Both economies are dominated by small (less than 10 employees) companies in terms of numbers, and in both economies most profits are generated by big businesses; the difference however is that the US has many more very large companies (Economist 2016b; Chitnis 2016; Eurostat 2015). In addition, many sectors of the EU economy seem to have less concentration in terms of market power than in the US (Aiginger and Leitner 2002; Mariniello 2014; Economist 2017).

Institutional scholars have stressed that the pressures toward federal market authority can only be realized within some institutional structures. Specifically, scholars argue that historical decisions to give power to federal agencies and courts might create a feedback loop for further centralization (Sandholtz and Sweet 1998). Accordingly, we can expect much more federal market authority in the US since the national market already developed in the 19th century (L. F. Goldstein 2001; M. Egan 2015).

The US also has a larger scope of (legal) federal powers and resources it can use to shape its national market. The most obvious example is the EU's lack of authority over guaranteeing the external security of its territory and to conduct foreign policy (Menon

2013; Mérand and Angers 2013). While internal policing is decentralized in the US as well, the federal government has several nation-wide law enforcement agencies, while the EU can only coordinate national efforts (Kelemen 2013). The US federal government also has the power to levy taxes, as well as shape social policies from Medicare to Social Security, which the EU does not. Similarly, while there has been some military integration and coordination through the Common Security and Defense Policy, there is no unified control of the military and streamlined foreign policy as there is in the US (Mérand and Angers 2013).

In terms of financial resources, the US federal government controls around 50%-60% of all government revenue, while the EU controls 2% (Genschel and Jachtenfuchs 2011; Wallis 2000). The federal share of civilian public employment is also much lower in the EU. In the US 14% of civilian public employees work for the federal government while in the EU this lays around 0.1% (Kelemen 2013). In terms of constitutional powers, it is generally acknowledged that the US constitution contains clauses similar to the EU, that have historically, and could now be harnessed to create federal market authority (Skowronek 1982; Denning 2008; Bork and Troy 2001b; Barnett 2001).

Overall then, conventional theoretical approaches would lead us to expect significantly more mobilization around federal market authority in the US than in the EU. Ideational scholars might object that those conditions alone are not enough, but that ideological motivations, and specific ideas are necessary for any outcome. A prominent branch of this scholarship has focused on the influence of neoliberal ideas since the 1980s, arguing that this time period has been seen a revolutionary re-commitment to market principles in the US (Harvey 2005; D. S. Jones 2012; Centeno and Cohen 2012; Swarts 2013; Prasad 2006; Saad-Filho and Johnston 2005; Steger and Roy 2010). Many scholars see President Reagan as spearheading the global neoliberal movement. For instance, Prasad writes, "Tax cuts are not the only neoliberal policy, but the ERTA [Economic Recovery Tax Act of 1981[17]] can make a claim to being the most important instance of American neoliberalism."(Prasad 2012, 351). King and Wood ask in a piece on neoliberalism, "Why did neoliberalism flourish in the United Kingdom and the United

[17] 26 U.S.C. §1 (1981).

States but not in other countries?" (D. S. King and Wood 1999, 372). Roy and Steger in their introduction to neoliberalism call 'Reaganomics' "the first wave of neoliberalism" (Steger and Roy 2010, 21). Harvey in his *Brief History of Neoliberalism* notes that "The election of Reagan was the […] first step in the long process" that he would later call "neoliberalization" (Harvey 2005, 22). In another book it is remarked that "The emergence of Reagan and Thatcher as trailblazers for radical market reform hardly require[s] elaboration" (Leitner, Peck, and Sheppard 2007, 45). Blyth, in his book-length treatment of the rise of neoliberal ideas focusses on the Reagan's policies as 'the great transformation' (Blyth 2002).

Overall, as discussed in the theory chapter, many different strands of scholarship point toward more mobilization around federal market authority in the US than the EU. This chapter demonstrates the opposite—the outcome in terms of federal policy is central inaction on and a lack of mobilization against inter-state market barriers. Conservatives since Reagan have adopted a set of ideas better described as competitive federalism that often opposed federal market authority, and by doing so, at times undermined a competitive national market. I show this by first documenting federal level outcomes and the behavior of federal policymakers in the US since the 1980s. To boost feasibility, I focus on self-described neo-liberal actors that by this self-identification have economic incentives to (supported by big nationally operating firms) and are ideologically (pro-market) inclined to foster federal market authority. While the EU trajectory would make us expect similar trends in the US, I show that they are not mobilizing around and pushing for rules facilitating single market building. I specifically demonstrate this by scrutinizing the agenda and achievements of Reagan. This receives further support by following the agenda of the Republican Presidents that succeeded him, George H. Bush, and George W. Bush, as well as the last two leaders of Republican majorities in the House, Newt Gingrich, and Paul Ryan, that laid out comprehensive agendas to restructure the US economy.

As argued, conventional explanations for this phenomenon are not very convincing because the outcome of federal inaction on interstate barriers happens despite standard structural and institutional incentives pushing the US towards more federal market authority, and conservatives in power explicitly having a pro-market agenda.

However, what does set them apart from neoliberals elsewhere is the specific tools they prefer to use (deregulation and devolution of power). This quite obviously relates to the intersection of pro-market ideas with an antipathy to federal power that I have called competitive federalism. To show the plausibility of this explanation I analyze all Republican Party platforms since 1980 and look at writings of Reagan and his close policy-advisors.[18] This is followed by a less thorough—because the trend is already established—analysis of the writings of other Republican leaders and their advisors, that explicitly addressed these issues, like Newt Gingrich's *Contract with America* and Paul Ryan's *A Better Way*.

This careful reconstruction of how American conservatives imagine markets shows the power of competitive federalism. Fusing neoliberalism, with antipathy toward central government suggested that when government—a principally flawed mechanism—retreats, markets evolve naturally. If government is necessary, it is preferred on the local level, held 'in check' by competition with other jurisdictions. This view suggested a conservative agenda around a fiscal project to cut government spending and taxes, flanked with erratic attention to issue-specific deregulation that was conceived as wiping away federal intrusions to reduce business cost, not creating competitive markets. The notion of state- or city-based protectionism essentially never came up, and at no point was there any hint whatsoever of aspiring to establish a more competitive national market through federal market authority.

To lend more credence to this argument and provide more historical contextualization, the subsequent chapter discusses the results of interviewing experts at

[18] I analyze books by Craig Roberts (Assistant secretary of the treasury, Congressional Staff of Jack Kemp), David Stockman (Congressman, direction of OMB), William Niskanen (Council of Economic Advisors), Robert Bartley (editor of the Wall Street Journal when it started supporting Reagan), Lawrence Lindsey (Council of Economic Advisors), Martin Feldstein (Chairman of Council of Economic Advisors), Martin Anderson (Chief domestic policy advisor in the White House), Michael Boskin (Chairman of Council of Economic Advisors under Bush), Jude Wanniski (Journalist that popularized the Laffer Curve), Jack Kemp (Congressman, architect of Reagan tax cuts), William Greider (in-depth interview with David Stockman), Murray Weidenbaum (chairman of president's council of Economic advisers), Edwin Meese (Counselor to the President with cabinet rank), James Baker (Chief of Staff), Donald Regan (Secretary of the Treasury), Milton Friedman (advisor to the President) and academic books from right-leaning economists predominantly at think tanks (McKenzie 1995; Sloan 1999; Yandle 1986; Mitchell 1991; Niskanen and Moore 1996; G. Peterson 1984; B. D. Friedman 1995; James M. Buchanan and Institute of Economic Affairs 1989; Roger E. Meiners and Yandle 1989; Robert J. Mackay et al. 1987; Gilder 2012).

some of the most important pro-market think tanks (American Enterprise Institute, Heritage Foundation, Cato Institute) supplemented by an analysis of the online archives of said institutions. Based on that, I document the specific interlinking beliefs within competitive federalism and demonstrate how this conception of markets diffused from the libertarian strand of law and economics scholarship, i.e. the conservative legal movement, through think tanks into federal policy. Like federal policy-makers, scholars at think tanks regularly overlook how state and local jurisdictions undermine the single market, question the need for federal market authority, and even when seeing the necessity of federal regulation, often oppose it.

III.a. Reagan's Pro-Market Agenda

The principles behind Reagan's policy agenda can be found in the 1980 and 1984 Republican Party platform. It combines the belief in markets with a rejection of government power: "A defense of the individual against government was never more needed. And we will continue to mount it […] for we believe that at the root of most of our troubles today is the misguided and discredited philosophy of an all-powerful government" (Republican National Convention 1980, 1984). In none of the documents can we find anything resembling a single-market building agenda. Instead, we find a policy-agenda based around fiscal priorities, justified with theories that paint government as a generally flawed mechanism opposed to markets. Regulatory policy, introduced as a crisis of overregulation, is understood similarly—regulation is seen as a detriment to market competition, and its reduction a solution to most problems. Decentralization specifically is mentioned as a remedy to always problematic federal market authority. Taken together, these priorities preclude any assessment of interstate barriers.

This first impression is substantiated by reviewing the internal campaign document, *Avoiding a GOP Economic Dunkirk* (Stockman 1981) and Reagan's presentation of his *Program for Economic Recovery* on February 18, 1981 (Reagan 1981). Those two documents name four priorities based on similar justifications; namely tax cuts (especially income, capital gains, and business depreciation schedules), balancing the budget via growth and spending cuts (reduced eligibility for government programs, fighting abuse, less staff), limiting monetary growth, and a "substantial

rescission of the regulatory burden" (Stockman 1981). The main priority, as we will see below, is taxation and fiscal policy justified by the ideas that government is a generally flawed mechanism that undermines market allocation (Niskanen 1994). Deregulation—which was not as seriously pursued as macro-economic policy—is explicitly motivated by the belief that government regulation is always bad and a cost for business, and importantly not from a perspective of market creation or maintenance (see also Prasad 2006). In terms of federalism, the dominating idea is that local governments would make better policy because they are less likely captured by interest groups (see also G. Peterson 1984). There is no discussion or consideration of protectionist local policies or the effects of national regulatory heterogeneity, based on the belief that (jurisdictional) competition works.

III.a.1. Taxation and Fiscal Policy as a Priority

It was taxation and fiscal policy, the administration spent most their efforts on.[19] Most of the insider accounts of the Reagan administration focus solely on the efforts to reduce taxes and balance the budget. In his book, *The Triumph of Politics,* OMB director David Stockman chronicles the fights over tax cuts and spending cuts in detail, while only commenting in passing on unsuccessful deregulatory attempts, making it clear that macro-economic policy was Reagan's priority (Stockman 1986). Similarly, assistant secretary for the treasury and fellow at the Hoover Institute Craig Roberts' book *The Supply Side Revolution* focuses solely on taxes, seeing even attempted budget cuts as sabotaging the original Reagan program, which is corroborated by Donald Regan, secretary of the treasury and later chief of staff (P. C. Roberts 1984; D. Regan 1988)

William Niskanen, member of the Council of Economic advisors, argues that the main part of the Reagan program was a concerted effort to limit taxation and spending (Niskanen 1988, 115). Chief domestic policy advisor Martin Anderson's book, *Revolution*, praises Reagan's achievements which he describes solely as his macro-

[19] The Reagan administration was the first to embrace monetarism ('steady monetary growth'). Tight monetary policy, after initially causing a recession, brought inflation under control (Niskanen 1988, Chapter 5). But the FED, that determines monetary policy independently, had started following monetarist prescription even before Reagan came to power (Volcker shock), so the description of policies excludes this part of his program.

economic policy (M. Anderson 1988). Other accounts that describe economic policy only in terms of taxation and spending include Wall Street editor Robert Bartley's *The Seven Fat Years*, economic Advisor Lindsey's book, *The Growth Experiment*, counselor to the President with Cabinet rank Edwin Meese's book *With Reagan*, Reagan Chief of Staff, James Baker's book, *Work Hard and Keep out of Politics,* as well Martin Feldstein, Chairman of the Council of Economic advisors' summary of Reagan's economic policy (Isaac 1994; J. Baker and Fiffer 2008; L. Lindsey 1990; Bartley 1992; Meese 1992; Feldstein 1994).

If we look at Reagan's legislative initiatives it becomes clear that he used most of his political capital for bringing tax legislation through Congress and negotiating budget resolutions. Reagan's biggest success, even according to Stockman, was the Economic Recovery Tax Act of 1981[20] (ERTA), "The biggest tax cut in American history" (Sloan 1999, 156). It was the first tax cut that had as a theoretical rationale an incentive effect (supply side theory, micro- instead of macro-level analysis) instead of a demand-stimulus effect (the previously prevalent model of the economy that saw government spending as a main determinant of economic performance). ERTA included the Kemp-Roth income tax cuts (5% 1st year, 10% 2nd year, 10% 3rd year), reductions in capital gains taxes, an accelerated depreciation schedule, and an indexing of tax brackets to inflation. Furthermore, a 'bidding war' in Congress made law makers add numerous provisions catering to specific constituents to make the law feasible, producing an extent of tax reductions nobody had anticipated (Conlan 1998, 161ff.).

However, this was just the start of the tax policy activity of this administration. Confronting huge budget deficits, especially due to the 1982 recession, taxes were raised or reformed in 1982, 1983, 1984, and 1986 (Brownlee and Steuerle 2003, 161f.). This included the Tax Equity and Fiscal Responsibility Act of 1982[21], social security payroll tax increases in 1983, and the Deficit Reduction Act of 1984[22], all mostly focused on repealing special tax favors and increasing corporate taxes. The impetus in Congress

[20] 26 U.S.C. §1 (1981).

[21] 26 U.S.C. §1 (1982).

[22] 26 U.S.C. §1 (1985).

were less economic policy considerations but the need to increase revenue (Fullerton 1994). The 1986 Tax Reform Act[23] tried to simplify the tax system by reducing fourteen tax brackets to two, thereby drastically reducing marginal tax rates for individuals. However, these massive tax cuts could only be financed by shifting the tax burden to corporations. Despite the regression from the initial tax cuts, which led to negative assessment of supply-siders like Roberts, Stockman, or Regan, as overall result remained a significant lowering of marginal and average tax rates (Boskin 1987, 156).

Spending cuts were an important priority for the Reagan administration, but partly controversial among Reagan's advisors. The language of the 1980 Republican platform already anticipated this debate by being unclear on whether the budget can be balanced by economic growth alone or through spending cuts (Republican National Convention 1980). On the one hand, supply-siders like Roberts and Regan argued that current budget deficits were largely irrelevant in the long run. Tax cuts would be partly self-financing (Laffer curve), and improved incentives to investment and production would eventually lead to growth, diminishing budget deficits (D. Regan 1988; P. C. Roberts 1984). On the other hand, Stockman and more traditional conservatives argued that tax and budget cuts had to go hand in hand, because they feared adverse effects on interest rates and inflation (Stockman 1986; Weidenbaum 1988; Isaac 1994). More broadly, they argued that government allocation of resources was generally inefficient and detrimental to market competition, and so every "reduction in government" would be an improvement; most existing government activity was described as "wasteful" (Republican National Convention 1980).

In the end, this debate did not matter much, because after increasing defense spending and after losing the battle over cutting social security, there was not much left to cut. Reform of social security was the largest single item thought to be used to cut the budget, but the initial proposal provoked such a negative reaction that the Reagan administration abandoned the idea for minor changes in the 1983 Social Security Amendments[24] (Boskin 1987, 123).

[23] Pub. L. 99-514, 100 Stat. 2085 (1986).

[24] Pub. L. 98-21, 97 Stat. 65 (1983).

Stockman's book, *The Triumph of Politics*, mostly chronicles how despite increasing deficits, he was unable to win any major spending cuts (Stockman 1986). He learned that propitious areas for spending cuts, like social security, agricultural price supports, and farm subsidies, were politically not feasible. Other programs the administration unsuccessfully tried to cut or eliminate were maritime subsidies, transportation subsidies, urban development action grants, community development block grants, postal subsidies, and the rural electrification program (Boskin 1987, 128). Interestingly, major privatization of de-facto government owned enterprises was not attempted (Niskanen 1988, 59). So despite the necessity of major spending cuts and the general desirability of cuts for anti-government conservatives, the main tools for savings were reducing "waste, fraud, extravagance, and abuse" and cutting some other smaller government programs (Niskanen 1988, 25).

The approach of balancing the budget by eliminating waste was supported by the administration's Grace Commission that claimed a third of all income taxes were lost on inefficiency and unnecessary expenses (Grace Commission 1984). However, even more serious conservative scholars described this statement as 'largely exaggerated' (Boskin 1987, 131) and Stockman was mostly unsuccessful in convincing federal departments and Congress to actually act on the suggestions (Stockman 1986, Chapter 5). 70% of recommendations, mostly those that could be achieved within the executive branch, were adopted. However, despite much effort the actual savings were estimated to be marginal (Niskanen 1988, 57). In all its submitted budgets (revised FY82, FY 83, FY 84, FY 85, FY 86, FY 87), the administration tried to convince Congress of significant reductions around reducing subsidies, increasing user fees, reducing federal government personnel costs, and reducing national support programs, but most were rejected or overwritten in the political process (Boskin 1987, 82).

Successes (in terms of spending cuts) can be found in reducing eligibility criteria for Aid for Families with Dependent Children (AFDC) and encouraging states to make it a 'workfare program,' as well as cuts to food stamps, Medicaid, subsidized housing, the school lunch program, child care assistance, public mental health and counseling services, legal aid and host of other small means tested programs (Prasad 2006, 83f.). Some parts of the 1983 New Federalism initiative also cut spending by consolidating

grants. These priorities suggest that after discovering that major spending cuts were not feasible, Stockman concentrated on cutting spending for vulnerable populations, that had previously been labeled as the 'lazy poor' living at the cost of the government (Lowndes 2008; Prasad 2006, 86). None of this was enough to prevent a huge increase in public debt, even though later on conservative scholars at think tanks tended to either see the deficits as unrelated to policy or as exaggerated (Niskanen 1988, 108; Yellen 1989; Niskanen and Moore 1996). The important take-away from analyzing the budget policies, is not how much cuts they achieved, but that the administration tried very hard for a very long time.

From this review we can see that the Reagan administration pursued an impressive amount of reforms—but not the kind of market-based reforms one might expect. Instead, political fights were about taxation and spending, leaving not much political capital for other initiatives. It was not only by design that macro-economic polices became a priority. The economic problems of the 1970s, the economic recession early in the term, and looming budget deficits forced politics to be centered on those issues. At the same time, the discussion of ideology makes clear that Reagan advisors did see those policies as the core of their 'neoliberal revolution' without being forced to by external circumstances. Tax and spending cuts were at the core because in a system of thinking, where critique of government takes center stage, reducing its size becomes a priority.

III.a.2. Deregulation Without Regard to Markets

The three most striking observations about regulatory policy, as opposed to fiscal and tax policy, are (1) that policy was always made from the vantage point of opposition to government, framed as reducing business-cost, which implied an across-the-board repeal of regulation without regard for context, (2) that efforts to reduce regulation were of minor priority, limited, and often failed, and (3) that more power was given to state and local governments without attention to effects on interstate commerce. This fits well with the competitive federalism conception of markets—but is surprising from a generic view of neoliberalism. The latter's pro-market position might have implied that regulation be reformed in a market-enhancing and -creating way, or at least with some

language around single market building. But this was not true for the Reagan administration, who assumed that the market would follow naturally.

The administration never had in mind a comprehensive overhaul of regulation, or the use of government power to ensure competitive markets. When initially emphasized as a policy priority, they conceptualized regulation as reducing the amount of regulation businesses have to comply with (instead of consumer welfare, or competition). Stating that "Well-intentioned government regulations do not contribute to economic vitality," the possibility of market-efficiency for consumers or market-based regulatory reform was denied from the beginning (Reagan 1981b). One lonely conservative observer criticized this as undermining the very goal of pro-market conservatives: "The sensible goal is not to reduce the burden on business by easing the enforcement of existing regulation but to ensure that the regulations that are enforced benefit the consumer" (Weidenbaum 1988, 241).

Already the 1980 Republican Platform shows that the approach toward regulation is very different than in the EU, where competitive deficits of markets and trade barriers are identified systematically. While regulation is mentioned in every other paragraph, there is no specific passage that lays out an overall approach. Lip service is paid to the positive potential of regulation: "Government performs certain limited functions and enforce certain safeguards to ensure that equity, free competition, and safety exist in the free market economy" (Republican National Convention 1980). However, as a practical matter the program only sees room for abolishing regulations, not for market-enhancing regulation. In all policy areas, "The Republican Party declares war on government overregulation," usually without discussing potential negative effects of deregulation (Republican National Convention 1980). According to the document, regulation is always "excessive," "bureaucratic," "expensive," or "discriminatory" (Republican National Convention 1980). The document makes clear that government itself is always the problem, and the best option would be to take its "presumption of legality" away (Republican National Convention 1980). That regulation is only understood as inefficient cost, without benefit, on business is easily glanced from the 1984 Republican Platform saying, "Some $150 billion will thereby be saved over the next decade by […] businesses." (Republican National Convention 1984).

While not stated explicitly, this implies efficient markets will naturally evolve, because everything that is needed, is for the government to get out of the way (Republican National Convention 1984). If government cannot 'get out of the way' the second-best alternative is "to renew the dispersion of power from the federal government to the states and localities." In the Republican Party Platform, there is no concern or discussion of the potential for state-level protectionism or existing obstacles to interstate commerce (Republican National Convention 1980). The platform makes clear that the principle goal is limiting government, without regard whether it fosters (and might even be contrary to) to a single market.

The same notion is found in the Heritage Foundation's *Mandate for Leadership*, widely seen as the intellectual basis for Reagan's specific policy proposals[25]. Ed Feulner, President of Heritage explains, "Seven days after the election we met with Marin Anderson, Dick Allen Ed Meese and other [the Reagan transition team …] and we delivered them the first draft copies of Mandate for Leadership" (McCombs 1983). On regulation, the proposal suggests, "The conservative's dream of doing away with government controls and abolishing federal agencies is now more generally understood and accepted" (Heatherly 1981, 700). The solution to the country's "crisis of overregulation" can only be found in deregulation and "returning powers to state and local government" (Heatherly 1981, 698f.). Reducing regulation is equated with "market competition" (Heatherly 1981, 304). Overall though, there is no serious discussion of federal market authority, preemption, or interstate barriers in over 1000 pages.

The notion of maintaining functioning free markets, which can be partly found in the Republican Party platform, is completely gone in the internal campaign document, *Avoiding a GOP Economic Dunkirk*, being replaced with the notion of a "substantial rescission of the regulatory burden" (Stockman 1981). Regulation is not evaluated in terms of free markets, but is simply a list of potential cost savings for different industries, stating that "The most important effects of regulation […] are the adverse impacts on economic growth" (Stockman 1981; Reagan 1981b). Reagan's Program for Economic

[25] Heritage takes credit for most of Reagan's policy proposals, saying, "Heritage was President Reagan's favorite think tank, and Reagan was the embodiment of the ideas and principles Heritage holds dear" (Blasko 2004).

Recovery only examines regulation in terms of costs for business without mention of potentially anti-competitive or market-fragmenting effects (Reagan 1981a). The promised "omnibus suspense bill" to curtail regulation (not improve it) never came (Reagan 1981a).

Many conservative authors judge regulatory reform as a failure since not pursued seriously—"The failure to achieve substantial reduction in or reform of federal regulations […] was the major missed opportunity of the initial Reagan program" (Niskanen 1988, 115). In addition, when successful, reducing regulation sometimes directly contributed to economic problems as seen in the Savings and Loans Crisis or empowered sub-national protectionism as seen in anti-trust (Sloan 1999). Most contemporary observers that do mention regulation, only comment on it 'in passing;' concepts like federal preemption, commerce power, harmonization, or state protectionism are never mentioned (Boskin 1987; McKenzie 1995; G. Peterson 1984; Bartley 1992; L. Lindsey 1990; M. Anderson 1988; D. Regan 1988; Meese 1992; Wanniski 1978b).

Though consumer-focused, competitive-friendly deregulation of monopolies had momentum when Reagan entered office, write Paul Joscow and Roger Noll,

> If anything […] the Reagan administration reduced the chance that these reforms would endure: by refusing to let FAA programs expand in pace with airline growth after deregulation, by permitting several anticompetitive airline mergers, by failing to stop the banking debacle when the cost was still in the tens of billions, by allowing federal devolution to have priority over regulatory reform and so to be too deferential to states that seek to increase regulation (insurance, telecommunications), and by generally ignoring economic regulatory issues in the second term. (Joskow and Noll 1994, 437).

The consumer-based deregulatory movement in the 1970s, focused on industries that had been regulated as natural monopolies, achieved their goals before Reagan gained office, and the President did not carry that momentum forward except in a few cases. The traditional regulation of entry, exit, and prices by government regulatory commissions was widely criticized as inefficient and mostly benefiting the regulated businesses by lawyers, public administrators, political scientists, and economists (Derthick and Quirk 1985, 8). Initial deregulation of government-established monopolies in the airline, trucking, and railroads, was achieved before Reagan took office. This "Deregulation was a populist phenomenon, protecting consumers at the expense of particular industries, that

is deregulation […] was not in the interest of business" (Prasad 2006, 63). But as we have already seen, Reagan's focus was on business costs. According to Prasad, performing a comprehensive content analysis of periodical in the 1960s to 1980s, Reagan reframed the critique of industry capture, which had been in the center of the deregulatory impetus of consumer advocates in the 1970s, as not one of business but of government (Prasad 2006). This transformed the mainstream regulatory reform agenda into a conservative policy (B. D. Friedman 1995, 57). The problem description was shifted from high costs for consumers to high costs for businesses, regulation became not a flawed process that can be improved (through stronger institutions) but a principled obstacle to economic activity, and the problem was not capture of regulators but government intervention in the free market (Prasad 2006, 72ff.). The anti-government frame of regulatory critique also implied the inefficiency of health, safety, and environmental regulations, which had been seen as generally desirable by earlier deregulatory champions (Prasad 2006, 77).

This interpretation is mirrored by the evidence of how Republicans talk about regulation, presented here, and is confirmed by other observers: "The [Reagan] Administration […] principally used the system of OMB review […] to implement a myopic vision of the regulatory process which places the elimination of cost to industry above all other considerations" (Bagley and Revesz 2006, 1265). An alternative interpretation—preferred by ordoliberals—could have been to improve regulation through better governance, but the conservative solution of regulating less prevailed.

During the Reagan administration, there was no attempt to change the basic regulatory framework, just rhetoric, executive action, lax enforcement, and strategic agency appointments. Kip Viscusi argues: "The legislative energies of the Reagan administration were devoted to tax reform rather than rewriting the legislative mandates of regulatory agencies. Although regulatory reform was one of the four key pillars of the Reagan economic program, it was generally viewed as meriting the lowest priority of the four major areas of concern" (Viscusi 1994, 470f.).

This becomes especially clear when looking at the second term—in the 1984 campaign and later policy "Deregulation played no significant role" (Prasad 2006, 80). In the end, one account concludes "The Reagan administration made the fateful decision to forgo laborious attempts to institutionalize the program in statute, opting instead for an

aggressive management strategy. Thus, as the Reagan era drew to a close, the US Code contained no record of Reagan's regulatory reform" (B. D. Friedman 1995, 158).

From reviewing the overall policy record, we already know that the priorities lay elsewhere—this notion is strengthened when looking at the specific regulatory policies pursued. Simply reducing the regulatory burden and trusting free markets to arise sometimes directly undermined competitive markets, and many obvious areas for market-based reforms were ignored. Even the limited efforts of the Reagan administration are seen as failure by many observers, as we have already heard.[26] Even more harshly, Timothy Muris, a professor of law at George Mason University, argues, "Viewing competition across the entire range of governmental activity, our economy ended the 1980s more circumscribed by governmental intervention than it began, particularly when the amount of trade subject to international restraints[27], such as 'voluntary' quotas, is considered" (Muris 1989, 56f.).

Instead of a comprehensive framework of addressing regulatory issues, Reagan's main achievements—policies that scholars identify as the neoliberal turn—are restricted to executive action coming from the White House. A presidential task force on regulatory relief was established to review all regulations' impact on business and state governments (Conlan 1998, 196). In complementary fashion, the Paperwork Reduction Act of 1980[28] and Executive Order 12,498[29] tasked the Office of Information and Regulatory Affairs (OIRA) with a centralized review all newly promulgated regulations (B. D. Friedman 1995). Significant executive orders coming out of this process were mandating cost-benefit analysis for all regulation (Executive Order 12,291[30]) and weakening Davis-

[26] This contradicts pretty much Blyth's argument—he presents deregulation as major success of Reagan (Blyth 2002).

[27] In a climate of economic recession, trade deficits, and declining international competitiveness of traditional manufacturing, many protectionist measures were taken. This included Japanese voluntary auto export restraints, steel quotas, the multi-fiber agreement, the semi-conductor agreement, as well as the 1988 Omnibus Foreign Trade and Competitiveness Act, Pub. L. 100-418, 102 Stat. 1107 (1988), which allowed for aggressive retaliatory action against unfair trade practices (Richardson 1994). In addition, the US seemed to turn away from multi-lateral trade liberalization to bilateral trade agreements (Richardson 1994).

[28] 44 U.S.C. § 3501-3521.

[29] 3 C.F.R. 323 (1985).

[30] 3 C.F.R. 127 (1981).

Bacon regulations that had guaranteed above state-average wages in construction projects. According to the Executive Order, all new regulations were to be referred to OIRA for centralized review[31]—establishing a tool for presidential control of the regulatory agenda, a tool used to this day (B. D. Friedman 1995, 33).

However, it is questionable whether the mandating of cost-benefit analysis had much of an effect initially, because authorizing legislation (which remained unchanged) often required a different decision criterion. Since then, the cost-benefit executive order has been renewed by all following presidents and accepted by most independent regulatory agencies (Eisner 2017). With Executive Order 12,866[32], Clinton set the precedent for future presidents to keep using OIRA to gain influence over the federal regulatory apparatus (Bagley and Revesz 2006, 1267). Cost-benefit in this context extends the logic of competitive federalism by putting the cost of government and not market competitiveness into the foreground. All pending regulation was initially suspended, but most were later approved without changes (Niskanen 1988, 133). It is questionable whether a single executive office in the White House had the expertise or the resources to review all pending regulations thoroughly.[33] In terms of rescinding existing regulations, "The Reagan administration's most comprehensive deregulation effort was its automobile industry relief package;" however the results were mostly the delay of regulations that would later be approved (Viscusi 1994, 475).[34] In fact, many observers concluded that delay was the main result of most of the review done by OIRA (B. D. Friedman 1995, 134).

Public pressure mounted against the presidential taskforce for regulatory relief, because it seemed secretive and circumventing the normal regulatory process, leading to

[31] Legally, following recommendations by OIRA was completely voluntary for regulatory officials at independent regulatory agencies (B. D. Friedman 1995, 34).

[32] 58 F.R. 51735 (1993).

[33] In a Senate hearing, an OIRA officer is quoted saying, "I didn't have the technical expertise to work on EPA issues. I just didn't know [how to evaluate the conflicting arguments]. I knew I would do well from by boss' perspective if I got rid of rules" (cited in B. D. Friedman 1995, 57).

[34] In addition, the power of labor was restricted symbolically through the firing of all striking members of the air-traffic controllers union and substantially by appointing pro-business members to the National Labor Relations Board that in turn consistently ruled against workers (Blyth 2002, 182).

its dismantlement in 1983 (B. D. Friedman 1995, 40). At the same time, in some instances OIRA could be harnessed to achieve, if not the goal of less regulation, the goal of no new regulation: "In practice, OIRA reviewed agencies' cost-benefit analyses only to ensure that they do not enact regulations with costs that exceed their benefits," focusing on cases of "overregulation" (Bagley and Revesz 2006, 1268f.). Another indirect effect, according to some evidence is, that agencies, aware that strong regulation might draw scrutiny, "have powerful incentives to make their regulations less stringent (i.e., impose fewer compliance costs) if the expected benefits of a particular regulation are contingent, fairly contestable, or difficult to quantify—that is, nearly always" (Bagley and Revesz 2006, 1270). For instance, based on interviews with regulatory officials, Erik Olson reports that "A more subtle and consequential internal EPA development induced by OMB review is a 'guessing game,' in which the EPA attempts to draft rules it believes will clear OMB" (E. D. Olson 1984, 50). Similarly, a General Accounting Office review found that "The knowledge that all regulations must be reviewed by OMB may indirectly cause delay due to intensified internal review within the agency" (GAO 1982, 51). Two critical observers conclude "Under Reagan's Orders, regulatory benefits would be systematically undervalued, costs systematically inflated—and the administrative state would grind to a halt"—all because "To conservatives in the 1980s, rational regulation necessarily meant less regulation[35]" (Bagley and Revesz 2006, 1266).

The task force adopted the principle that "Federal regulation should not preempt state laws or regulations, except to guarantee rights of national citizenship," disregarding the potentially detrimental effect on trade from non-uniform standards (cited in Viscusi 1994, 464). Another observer comments on this, "The regulatory relief approach was designed to fortify state governments with legal authority while relieving the national government of certain expenditures" (B. D. Friedman 1995, 57). Due to increasing heterogeneity of standards, the Chamber of Commerce and the Federation of Independent Business soon argued that "The cost of OIRA review exceeded the benefits" (cited in B. D. Friedman 1995, 156).

[35] "OIRA's denials notwithstanding, there is substantial evidence that emphasizing the cost side of the cost-benefit ledger remains a pervasive and entrenched feature of OIRA review" (Bagley and Revesz 2006, 1269).

Social regulatory agencies, like the EPA and OHSA, have independent statutory authority, and were therefore less influenced by the centralized review of regulation—the only way of influence was the appointment of executive officers. While the 1970s deregulatory movement had seen these agencies as potentially efficient, in the competitive federalism view of regulation these agencies were just another instance of distorting the free market. The Reagan administration reorganized the EPA, OHSA, and the Department of the Interior to eliminate officials opposed to their agenda and reduced their budgets. Reagan appointed an explicitly anti-environmental person as the head of the EPA and drained enforcement resources (Prasad 2006, 79). In several case studies, it is shown that there are many instances in which the OMB convinced the EPA and OHSA to take back or not establish new standards (B. D. Friedman 1995, 101ff.). For instance, due to pressure of the Reagan administration, OHSA relaxed lead exposure standards (B. D. Friedman 1995, 103). Nonetheless, observers conclude that the attempt to change health, safety, and environmental regulation "was a near complete failure" (Niskanen 1988, 125).

In health, safety, and environmental regulation there is substantial policy variation because states use their competencies in governing every day affairs to regulate as they see fit, even when implementing federal legislation like the Clean Air Act (Teske 2004). In none of the Republican Party platforms or Regan's policy positions was there a call for a general preemption of those powers, despite their ability to severely interfere with interstate commerce—and Reagan's regulatory task force principally opposed federal preemption in this area (C. Weiler 2012; Republican National Convention 1980, 1984). Observers find a stronger emphasis on cost-benefit analysis and new enforcement priorities at the OSHA, but none mention any attention to interstate barriers (Walton and Langenfeld 1989). Even in industries where business themselves lobbied for uniform rules like for instance packaging of consumer goods, the "Application of the federalism principles suggested that there is no reason for the government to intervene, and the government did not" (Viscusi 1994, 464). Instead heterogeneous rules, like for instance California Proposition 65 on labeling, were allowed to proliferate. Conservative legal-economic scholars in the Reagan administration, often coming from places like the AEI,

opposed standardization as by definition inefficient government intervention[36] (DeMuth 1994, 509ff.). Similarly, James Burnley, Reagan appointee to the Department of Transportation, argued that there are huge theoretical benefits of complete federal preemption of the airline market, most significantly to create a national market, but this should not trump federalism concerns (Burnley 1994, 512).

In the end, deregulation of health and environmental standards was not sustainable because of public opposition of the environmental movement (Prasad 2006, 80). For instance, Reagan was forced to appoint a more pro-environment administrator to the EPA (Burnham 1983). An attempt by the National Highway and Traffic Safety Administration to scrap the airbag mandate, seen as unnecessary uniform rule, was scraped by courts (DeMuth 1994). While this might have led to a change in perspective towards federal market authority, it led to a phasing out of regulatory efforts altogether (Prasad 2006, 81).

The major preemptive laws under Reagan, pushed for by trucking industry interests, were the Surface Transportation Assistance Act of 1982[37] and the Motor Carrier Safety Act of 1984[38] (and successive laws) establishing federal standards for truck sizes and weights using grants-in-aid requirements and preempting some state regulations (Zimmerman 2003, 95). One of the few complete preemption laws was the Bus Regulatory Reform Act of 1982[39] preempting states from limiting entrance, exit, and pricing of buses (Zimmerman 2005, 78f.). However, most of the laws were not complete field preemptions. Because many accounts do not address the question of federal market authority, national market unification, or interstate barriers, it is often unclear whether those regulations unified rules.[40] In many instances, laws were responses "to complaints

[36] DeMuth, executive director of the Presidential Task Force on Regulatory Relief, equated product standards with the "evil of quality fixing" (DeMuth 1994, 509ff.).

[37] Pub.L. 97-424, 97 Stat. 2097 (1982).

[38] Pub.L. 98-554, 98 Stat 2892 (1984).

[39] Pub.L. 97-261, 96 Stat. 1102 (1982).

[40] For instance, Zimmerman counts 96 preemption bills signed by Reagan (Zimmerman 1991). However, many of them only have incidental effects on states (like the tax legislation), or even expand regulatory powers by state governments (Motor Carrier Safety Act).

voiced by state and local officials relative to several preemption statute" not part of any systematic market building policy (Zimmerman 1991, 15). For instance, transportation laws allowed states to create and enforce additional trucking standards, establishing no complete preemption (Zimmerman 2003, 95). Similarly, the creation of a national commercial operator license, debated during the passage of the Commercial Motor Vehicle Safety Act of 1986[41], was not adopted (*The New York Times* 1986). As a result, "The states continue to have the power to regulate noneconomic aspects of the industry, such as weight and height limitations, carriage of hazardous materials, and other related safety and environmental issues" (Teske 2004, 55). In addition, states were allowed to continue the economic regulation of intra-state trucking until 1994 (Teske 2004, 8). More generally, the Local Government Antitrust Act of 1984[42] made it more difficult to sue states for creating barriers to competition (Zimmerman 1991).

Given Reagan's anti-government deregulatory agenda, a few areas of remaining state barriers are particularly interesting because directly related to the competitive federalism conception that does not problematize state regulation. For instance, the FCC pursued competitive reforms—driven by ideology but more importantly technological changes—like the break-up of AT&T and loosing restrictions on regulation of telecommunication (Derthick and Quirk 1985). However, there was no legislative action and significant federal preemption did not come on the agenda until the 1996 Telecommunications Act[43] (Teske 2004). This means, state public utility commissions continued the regulation of intra-state telecommunication services in an anti-competitive ways until the late 1990s (Teske 2004, 59). A similar trend can be observed in electricity markets. Despite deregulating energy prices, the Reagan administration left a system in control in which states decide whether to allow free access to electricity markets or highly regulate prices and participants (Teske 2004, 72). Deregulatory changes were only introduced in the 1990s (Teske 2004, 80). Even today, only a handful of states allow completely free choice of electricity providers (Energy Tariff Experts 2017). Similarly,

[41] Pub. L. 99-570, 100 Stat. 3207 (1986).

[42] Pub. L. 98-544, 98 Stat. 2750 (1984).

[43] Pub. L. 104-104, 110 Stat. 56 (1996).

natural gas remained a market in which the federal government highly controlled quantities and prices (Teske 2004, 72). The same argument can be made for the insurance industry: "Supposedly committed to removing unnecessary regulations, and pricing and availability problems, the regulatory reform movement of the 1980s passed the insurance industry by," presumably because the decentralized structure of regulation was seen as disciplined by jurisdictional competition (Joskow and Noll 1994, 388). Establishing some uniformity in insurance regulation by the federal government only came on the agenda in the 1990s, culminating in the Gramm-Leach-Bliley Act of 1999.

These examples are not designed to completely contradict Joseph Zimmerman's assessment that Reagan's "silent face encouraged additional centralization of political power in several functional areas" (Zimmerman 1991, 7). However, they clearly show that the administrations conceptualization of markets did not allow a comprehensive assessment of regulations that impede market competition. Instead, based on a theory that sees no positive role for government, they initially tried to abolish as much regulation as possible and abandoned all efforts later on. Progress towards federal market authority was only made in a fragmented and sectoral fashion, like in trucking, when industries mobilized. Due to this ideology, areas that would have been obvious for European neoliberals to reform, like state barriers in insurance markets, were completely overseen.

III.a.3. New Federalism—Trusting in Competitive federalism

Reagan's New Federalism initiative fits remarkably well into this pattern of anti-government neoliberalism, i.e. competitive federalism. While government was seen as the problem, state and local governments were viewed as less problematic—without any regard to or mention of interstate barriers. With Milton Friedman as Reagan's advisor, conservatives adopted the belief that while government intervention must fail, "State and local regulation is rarely worrisome" (Friedman 1962, 11). The idea that reducing spending and taxation alone would lead to a flourishing of markets, was also applied to inter-governmental relations, suggesting federalism reform as a fiscal project.

Reagan claimed devolving government powers as a main priority: "It is my intention to curb the size and influence of the Federal establishment and to demand recognition of the distinction between the powers granted to the Federal Government and

those reserved to the States or to the people" (Reagan 1981a). This was also expressed in the GOP platform in 1980, "We pledge to continue and redouble our efforts to return power to the state and local governments" and in the Inauguration speech, "Everything that can be run more effectively by state and local government we shall turn over to state and local government, along with the funding sources to pay for it" (Republican National Convention 1980; Reagan 1980). While the advocacy for states' rights had been a long Republican tradition for many reasons, the main theoretical argument that became dominant in the 1980s, was that of competitive federalism: returning powers to the states would, through competition, reduce government altogether (G. Peterson 1984, 224)

In reducing federal power, the focus was again on fiscal policy not markets. In the 1982 State of the Union Address, Reagan promised a comprehensive federalism reform that was never introduced in Congress (Reagan 1982). "The crushing weight of central government" was never eliminated, federal-state relations were not disentangled, and 43 federal programs were never returned to the states (Conlan 1998, 173). In the end, the main achievement was to consolidate 77 grants into 7 block grants increasing state discretion somewhat (Conlan 1998, 204). The termination of General Revenue Sharing, i.e. cutting funding to local governments, also fits the pattern of 'reducing government' (Zimmerman 1991). One unintended effect of giving local governments less oversight, but keeping the regulations that are attached to federal funds, was a proliferation of different local interpretation of federal law (Kettl 1983).

The regulatory agenda was also part of this tendency: "Like other facets of Reagan's 'New Federalism,' the regulatory relief approach was designed to fortify state governments with legal authority while relieving the national government of certain expenditures" (B. D. Friedman 1995, 56). As discussed, this could be seen by the principles adopted by the Regulatory Relief Task Force, as well as Executive Order 12,372[44], requiring all regulatory agencies to take criticism of state and local governments seriously (Williamson 1986). Executive Order 12,612[45] reiterated the

[44] 47 F.R. 30959 (1993).

[45] 52 F.R. 41685 (1987). Probably due to the amount of executive orders in general, this one was never implemented. The prescribed review of federalism effects of all new regulations were never executed (Gilman 2011, 349).

Reagan's administration commitment to dual federalism, directing that

> Executive departments and agencies shall not submit to the Congress legislation that would […] preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policymaking criteria set forth in section 3, cannot otherwise be met. (Reagan 1987a)

In some areas in which the economic argument for federal market authority is the strongest due to external effects, more authority was given to the states. "An example of a major administrative decision designed to increase the discretionary authority of states was an Environmental Protection Agency (EPA) regulation allowing a state to employ the 'bubble' concept in determining whether a change in a stationary source within an industrial plant met the requirements of the Clean Air Act" (Zimmerman 1991, 10). This created heterogeneity among states, leading to uncertainty among businesses on how EPA rules would be interpreted not unlike what I found in building code enforcement (Conlan 1998, 198).

Tim Conlan argues, as Zimmerman does, that despite the prevailing anti-government discourse, "federal regulatory authority was advocated or endorsed by the administration in areas such as trucking, state workfare, national product liability insurance, coastal zone management, local taxicab and affirmative action policies, and the nationwide minimum drinking age" (Conlan 1998, 193; Zimmerman 1991). However as discussed earlier, none of those activities qualitatively addressed the major issues in terms of internal market barriers but are better explained by conservative social policy. At the same time, most of those initiatives were deregulatory, and were not designed to increase competition in any meaningful way. In addition, many of the changes were actually minor or allowed more state discretion. For example, significant state regulation remains in trucking that creates heterogeneity in market regulation. But because there has been no public attention dedicated to the internal market (and no scientific assessment), it is often unclear whether any of those preemptive laws actually integrated the market.[46]

[46] In fact, "the most comprehensive critic of US state barriers has been the EU" with several publications that assess the amount of mostly external but also some internal barriers to trade with the US (Weiler 2012, 12; Pelkmans 1988; Business Europe 2015; Berden et al. 2009).

None of the laws Zimmerman simply enumerates for his assessment, has addressed any of the major state-level barriers of the construction industry addressed in this dissertation (Zimmerman 1991).

One of the most comprehensive reviews of state regulatory activities concludes, "Since 1980, the state regulatory role has emerged as more robust than expected, solidifying and even expanding as part of a trend toward devolution of powers, in which some states have chosen not to phase out their regulatory powers but instead to counter federal deregulation and 'de-enforcement' with their own 're-enforcement' policies" (Teske 2004, 1). And indeed, conservative activism on the federal level has provoked liberal state action from welfare policy to environmental protection which presumably again increases market fragmentation (Robertson 2012, 154). For instance, anti-trust enforcement became fragmentized because state-attorney generals, judging the administration's approach as "too lax," started creating their own anti-trust laws and enforcement strategies (Areeda 1994, 575). Another example are local product labeling laws, created in response to inaction of the FDA (Viscusi 1994, 465). Twenty state legislatures considered various forms of nutrition labeling laws, until in response to industry pressure for preemption, Congress passed the Nutrition Labeling and Education Act of 1990[47] (Teske 2005). Similarly, due to federalism concerns the NHTSA left it up to the states to establish seat belt laws (Viscusi 1994, 485).

III.a.4. Anti-Trust—Victory of Law and Economics

Generally, a new approach to anti-trust and consumer protection was established. New rules allowed taking into account foreign competition or efficiency gains as allowable justification for mergers, focused not on market power but actual harm to consumers, reduced potential penalties, and considered efficiency as justification for near-monopoly power (Niskanen 1988, 134). These changes to anti-trust policy under Reagan cannot me simply described as complete inattention to competitive markets. However, at the same time they do displays the power of the libertarian strand of law and economics. Conservative takes on public choice theories that substantively justify

[47] Pub. L. 101-535, 104 Stat. 2353 (1990).

competitive federalism were implemented within anti-trust (see next chapter). Legal scholars, trained in these disciplines and coming from conservative think tanks came to lead key agencies. James Miller III., formerly scholar at AEI, was appointed to the FTC. William Baxter, Chicago style law and economics scholar came to head the anti-trust division of the Justice Department (Metzenbaum 1981). In addition Reagan appointed four Supreme Court Justices as well as numerous lower federal court justices like Bork, Easterbrook, Winter, and Posner, all trained in law and economics and part of the conservative legal movement, significantly shaping anti-trust jurisprudence (Kovacic 1991, 52).

Anti-trust policy since the 1930s used to see big business in general, and mergers in particular, very skeptically, believing in the positive effect of government intervention to decrease market concentration (Kovacic and Shapiro 2000, 44ff.). This was challenged by Chicago-style law and economics scholars, many with prominent roles in the Reagan administration. The new anti-trust beliefs exemplified American neoliberal thinking with its emphasis on markets and distrust of government:

> (a) A belief that the allocative efficiencies associated with economies of scale and scope are of paramount importance; (b) A belief that most markets are competitive, even if they contain a relatively few number of firms; (c) A view *that monopolies will not last forever* [i.e. disappear naturally over time]; (d) A view that most barriers to entry, *except perhaps those created by government*, are not nearly as significant as once thought; (e) A belief that monopolistic firms have no incentive to facilitate or leverage their monopoly power in vertically related markets; (f) A view that most business organizations maximize profits; firms that do not will not survive over time; (g) A belief that even when markets generate anticompetitive outcomes, *government intervention* […] *might not be preferable*. (Rubinfeld 2005, 556f.)

This new philosophy resulted in allowing more mergers and acquisitions with the exception of AT&T, and a focus of the FTC on harmful regulation by "government sponsored monopoly" (Roger E. Meiners and Yandle 1989, 96f.). For instance, the FTC tried to inhibit the Consumer Product Safety Commission for promulgating nation-wide standards as well as challenging the ability of governments to establish building codes (Roger E. Meiners and Yandle 1989, 97).

However, new anti-trust guidelines were not a completely successful use of federal market authority: "As the federal government was being perceived to leave a lacuna in antitrust enforcement, state attorneys general moved into it," and state legislators established their own anti-trust laws (Areeda 1994, 618). Another good example of an issue where federal market authority would have been logically preferable for conservatives if not detrimental to their ideology.

While many of the anti-trust principles of the 1980s have become mainstream internationally, there is still differences between the US and the EU that can be described as indicative of the ideological difference. Observers note that "The objectives pursued by the two legal systems are, for the most part, identical" and "the basic legal framework concerning restraints of competition is in essence the same" (Moeschel 2007, 3f.). At the same time there are big differences. "The particularity of EU competition law may be explained through the intellectual origins of its framework. It has consequently been argued that Article 102 of TFEU is a product of ordoliberalism" (A. Regan 2016; Felice and Vatiero 2014). In the meantime, under Reagan US competition policy was transformed to one informed by Chicago style economics (Parakkal 2016; Davies 2010). Nicolo Giocoli, professor of economics at the University of Pisa and anti-trust expert, explains that it is only in the US that the Chicago anti-trust approach as remained dominant: "While meeting enormous success among industrial economists, the Post Chicago approach has failed to have any significant impact upon antitrust courts in the US" (Giocoli 2015, 102). While there are many credible criticisms of this old antirust approach, it has remained in the center of the imagination of conservative scholars[48] (Giocoli 2015).

In the EU, a bigger emphasis is laid on evaluating market competitiveness and preserving a level playing field: "The case law of the European Court of Justice seeks to prevent an interference with the freedom to compete; the USA tend to pursue a more consumer welfare-oriented approach. The difference is of importance in a philosophical sense, less so in the day-to-day application of competition law" (Moeschel 2007, 5). For

[48] "Modern economic literature, especially the game-theoretic, so-called Post Chicago approach to industrial economics, has showed that several Chicago claims, in both theory and policy, are at best only partially correct and, sometimes, utterly wrong" (Giocoli 2015, 97).

instance, this means that predatory pricing can be more easily be pursued in the EU as principally anti-competitive practice, while a US court would require economic modelling to prove long term harm. In the EU horizontal "restrictive agreements [are often] deemed void unless they qualify for a particular block or individual exemption in a marked contrast to the American procedure of presuming an agreement lawful unless it is proved to be anticompetitive [per se rules vs. reason analysis]" (Abbott 2005, 3).

In terms of vertical restraints the US follows the Chicago school thinking of considering them as potentially efficient, while the EU sees them as "interfering with the single market" (Abbott 2005, 7; J. Cooper et al. 2005). Similarly, "American antitrust law does not treat obtaining or maintaining a monopoly as an antitrust violation, unless the potential or actual monopolist has engaged in exclusionary conduct" while the ECJ holds in the Michelin I decision (1983) that firms with a dominant market position are subject to scrutiny even if their behavior is efficient (Abbott 2005, 9). This explains, for instance, that Google has been subject to significant penalties in the EU, while its conduct has been un-concerning for US competition authorities (Fox 2014).

This leads European officials to be more critical of mergers, while US courts require hard facts of harm, based on Chicago models to object to mergers (Abbott 2005, 15). It is not surprising then that US conservatives criticizes the EU for its willingness to "invoke non-standard theories" (Abbott 2005, 16). Consistent with the 'ordoliberals-competitive federalism' distinction, EU law recognizes an affirmative obligation to make markets better, which has for example been used against power companies to ease access for new competitors. The US does not include any similar provision, seeing regulatory intervention always as potentially harmful (Fox 2014). Similarly congruent, most anti-trust enforcement is done by public competition authorities in the EU, while in the US 75% of all cases are brought by private actors (Moeschel 2007, 5).

Overall, while conservative anti-trust policy does not shy away from using federal market authority, it is well contained within competitive federalism in that it locates most obstacles to competition in government intervention in markets and requires a comparatively high level of evidence to justify any anti-trust action. Even the current FTC chairwoman's positions are reminiscent of Milton Friedman: She argues in a recent statement that even market imperfections or natural monopoly "rarely justify government

intervention," especially when consumer harm cannot be demonstrated beyond reasonable doubt (Ohlhausen 2017, 106f., 122f.).

III.a.5. Banking as an Exception?

Generally, the US has established a dual banking system with nationally and state-regulated banks (OCC 2003). Since the National Bank Act of 1863[49], the federal government has created uniform regulations including state-regulatory preemption for a system of federally chartered banks. However, this is not a complete preemption. States are still allowed to create and regulate their own state-chartered banking system, creating the possibilities for banks to choose different types of regulations, and in some instances circumvent more stringent national standards (Silver-Greenberg 2012). In addition, "States retain some power to regulate national banks in areas such as contracts, debt collection, acquisition and transfer of property, and taxation, zoning, criminal, and tort law" as well as putting some restrictions on how new out of-state branches can be acquired (OCC 2003, 27). Current research concludes that some provisions, like the state-wide deposit cap and prohibitions on the acquisition of single branches, still create significant interstate barriers (C. Johnson and Rice 2008, 20). While about 70% of assets are held by nationally chartered banks, more and more branches are established under state charters, and many banks have changed from federal to state charters since the 2000s (Whalen 2010).

Due to the dual regulation, interstate banking was mostly prohibited through state laws, even for federally chartered banks, despite Congressional attempts to change that (C. Johnson and Rice 2008, 7). For instance, the McFadden Act of 1927[50] let national banks establish new branches only in accordance with state law. Multi-bank holding companies (MBHC) were a loophole that allowed a holding company, through subsidiaries, to establish interstate banking. However, this practice was severely limited by the Douglas Amendment to the Bank Holding Company Act of 1956[51], except when

[49] 12 U.S.C. 343, §1 (1863).

[50] 12 U.S.C. 1 § 36, 81 (1927).

[51] Pub. L. 84-511, 70 Stat. 133 (1956).

allowed by state law. This means in the 1980s, a patch-work of state and county laws, including bilateral reciprocity agreements and regional pacts, regulated to which degree banks were allowed to establish branches intra- and inter-state (Amel 1993). By 1994, only 6 states allowed interstate banking without any limitations (Amel 1993).

In the 1980s, many states liberalized their banking laws to attract more business (Cacciatore, Ghironi, and Stebunovs 2015). This trend culminated in the passage of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994[52] (IBBEA), with support from an overwhelming majority in Congress, which removed remaining federal and state restrictions on interstate bank expansion (C. Johnson and Rice 2008). However, it still allowed states to govern entry by out-of-state banks to some degree and to hold federally-chartered banks to a wide variety of state regulations (C. Johnson and Rice 2008).

With this law, banking became one of the few areas that saw dramatic mobilization around federal market authority with the use of explicit interstate barriers and single market arguments. For instance, one democratic member of Congress argued in the debate over IBBEA, "It has always seemed anomalous to me that products of every description could move so readily across State borders as a natural part of interstate commerce, but banking services could not" (cited in Rollinger 1996, 211). Thinks tanks, like AEI, Heritage, and CATO had long advocated for allowing interstate banking (AEI 1993; Geunther 1985; England 1994).

Interstate banking is one of the few fields where conservatives have argued for federal regulation and uniformity, curiously forgoing their usual competitive federalism argument (S. Horwitz and Selgin 1987). This is the only area where I have seen consistent arguments against state power. For instance, Heritage argues: "In some markets, a better model is federal pre-emption of state law or, alternatively, state 'passporting,' which allows a company that complies with one state's laws to operate across the nation" (Calabria 2017; Dwyer 2017). However, they point out themselves how much of an exception this is by qualifying immediately that in other areas, like "Insurance for instance […], a state-based approach might be more effective and less

[52] Pub. L. 103-328, 108 Stat. 2338 (1994).

costly than federal regulation"(Calabria 2017; Dwyer 2017). It is also important to point out that in general arguments for less regulation seems to prevail over arguments for more streamlined regulation as position statements by AEI and CATO reveal (Wallison 2005, 2015; Calabria 2017).

While think tanks have made this argument explicitly, and the banking industry as well as consumer advocates were embracing the federal market authority argument in the 1980s, Reagan's deregulatory agenda did not. The Reagan administration supported several financial deregulation initiatives, but interstate banking was not one of them. That it was not a priority was already clear from the fact that none of the Republican Party Platforms nor any State of the Union address mentioned banking (Reagan 1982, 1983, 1984, 1985, 1986, 1987b, 1988, Republican National Convention 1980, 1984). The Reagan administration did not buy into the limited federal preemption proposal made by think tanks at the time, and instead preferred 'reducing the size of government altogether' (Geunther 1985). This nicely illustrates the point that deregulation might undermine the functioning of markets and that Reagan officials did not consider regulation as an important tool due to their ideology.

John Sloan argues that deregulatory executive actions and legislative changes did not only worsen but led to the Savings and Loan (S&L) Crisis in the 1980s (Sloan 1999, 166). Many S&L's were in trouble in the beginning of the 1980s due to a combination of the macro-economic environment and specific regulatory requirements; the Reagan administration tried to solve this with deregulation[53] (Litan 1994). Leverage requirements were relaxed, concentration of ownership by investors was encouraged, and accounting principles were made less stringent (Sloan 1999, 170f.). However, the administration did not make interstate banking a priority within those banking reforms: "The first of several failed attempts at reform occurred in 1981, when Congress took no action in response to a Treasury Department report calling for more interstate banking. A House bill in 1985 was

[53] Depository Institutions Deregulation and Monetary Control Act (DIDMCA) of 1980, U.S.C. §226 (1980); Economic Recovery Tax Act of 1981, 26 U.S.C. §1 (1981); Garn-St Germain Depository Institutions Act of 1982, U.S.C. §226 (1982).

also unsuccessful[54]. In 1987, the ongoing struggle was highlighted by the controversy surrounding a proposed exception to the Douglas Amendment [for failing banks]." (Mulloy and Lasker 1995, 195). Conservative state-banking supervisors, consumer groups, and politicians argued that banks were best managed and regulated on the local level (Rollinger 1996, 197f.). Even the Supreme Court embraced that view, for instance ruling in 1980 that "As a matter of history and as a matter of present commercial reality, banking and related financial activities are of profound local concern," thereby upholding regional banking compacts excluding extra-regional states[55] (cited in Rollinger 1996, 197; Mulloy and Lasker 1995, 260).

The Garn St. Germain Depository Institution Act of 1982 allowed some emergency inter-state acquisition of banks, but mostly phased out interest rate ceilings and reduced regulations on how S&Ls can invest (Mulloy and Lasker 1995). It also allowed S&L's to choose between federal and state charters thereby basically inducing a regulatory race to the bottom (Sloan 1999, 172). Requests of the regulator FHLBB for more enforcement staff were ignored (Sloan 1999, 173). "OMB's deregulation fervor entered the picture as the office cut staffing for the relevant regulatory agencies [with Stockman arguing] that deregulation meant fewer, not more examiners" (B. D. Friedman 1995, 152). In response to increasing bankruptcies the Competitive Equality Banking Act[56] was passed in 1987, which did not provide sufficient funds for recapitalization, but allowed to relax rules for banks in trouble. In the end, due to mismanagement and fraud one quarter of S&L's became insolvent costing tax-payers between $90 and $130 billion—a sum that could have been significantly reduced through government intervention in the early 1980s (Litan 1994, 534).

Even conservative observers at the time agreed that better regulation and supervision could have prevented the S & L Crisis—making it again a case where some use of federal market authority might have led to better results (Litan 1994, 553; Isaac

[54] Depository Institutions Acquisitions Act of 1985, H.R. 15, 99th Cong. (1986), would have made inter-state banking easier but never went into committee mark-up.

[55] Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System, 472 U.S. 159 (1985).

[56] Pub. L. 100-86, 101 Stat. 552 (1987).

1994; Strunk, Case, and Associations 1988). Sloan argues, that "The ideology of the Reagan presidency created a blind faith that deregulation would solve the problems of the S&Ls" (Sloan 1999, 192). Ideology blinded the regulators that were mostly from the industry itself from the considerations of accompanying deregulation with increased monitoring against moral hazard. Many quotes show, that Reagan thought all the problems could be remedied with less regulation (Sloan 1999, 192). In the end one might think the events have a certain irony—one usually thinks of economists as particularly good at understanding bad incentives (especially moral hazard as main contributor) but as we have seen in Reagan's neoliberalism this has not to be true.

Despite increasing interest in liberalizing interstate banking, in 1988 the Republican Party did not put interstate banking on the agenda (Republican National Convention 1988; Bush 1990, 1989a). However, a series of hearings on the competitiveness of the US financial industry by the Senate Banking Committee, initiated by Chairmen Donald Riegle in 1989, put interstate banking on the Congressional agenda (Mulloy and Lasker 1995). It is important to note here that it was a Democrat, albeit a very centrist one, who put increasing federal market authority for banking on the agenda. Supported by major industry experts, the committee demanded of the treasury to propose appropriate reform. In response the Bush administration recommended reforms, including interstate banking (Bush 1991). In 1991, Congress came close to recognizing the obsolescence of geographic restrictions when it considered the Financial Institutions Safety and Consumer Choice Act[57]. However, in the end there was no majority for making major modifications to the regulatory structure, Congress confined its attention to enforcement issues and the recapitalization of the Bank Insurance Fund (Mulloy and Lasker 1995).

It took until 1994 to pass the Riegle Neal Interstate Banking and Branching Efficiency Act with explicit support by the Clinton Administration, who made it a "top legislative priority" (Bradsher 1994). Detailed review of the Congressional debate in 1993 and 1994 shows an overwhelming support for inter-state banking, illustrating the point that mobilization around federal market authority, void an agency and ideology that

[57] H.R. 6, 102nd Cong. (1991).

creates a comprehensive agenda around it, only happens in specific areas in specific historical circumstances (Rollinger 1996).

Congressional hearings reveal arguments very much in debt to conservative rhetoric, framing the effort not as single-market building effort or opposing protectionism, but as "deregulation" or "eliminating government imposition" (Rollinger 1996, 215f.). Edward Kane argues that banking reform suddenly became feasible in the 1990s because of

> The sustained surges in failure rates and in organizational and service reengineering experienced in the deposit-institution industry during the prior decade and a half. High failure rates among geographically confined banks and S&Ls teach taxpayer-customers important lessons about the long-run dangers of doing business with under-diversified institutions, especially at a time when advancing financial technology is fusing financial markets across the nation and around the globe. (Kane 1996, 142)

In Congressional debate, concerns about the international competitiveness of US financial institutions dominated (Rollinger 1996; Mulloy and Lasker 1995).

Despite these development, the bill remained indebted to competitive federalism, especially by preserving the dual banking system. "The preservation of states' rights [was] a major theme" in the Congressional debates (Rollinger 1996, 257). Accordingly, "The Riegle-Neal Act nevertheless respects the deeply held American conviction that the states are often better positioned than the federal government to make regulatory judgments" (Rollinger 1996, 259).

Due to this, "The laws of the host State regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches apply to any branch in the host State of an out-of-state national bank to the same extent as such State laws apply to a branch of a bank chartered by that State" (Riegle-Neal Act 1994). Preserving the dual system has led to a continuous shifting of power between the levels of government, with the Office of the Comptroller of the Currency trying to declare some state laws invalid, and states pushing back (Ding et al. 2012). Most recently, the Dodd-Frank Consumer Protection Act of 2010[58] allowed states more leeway in regulating lending practices of national banks (Nelson 2011)

[58] Pub. L. 111-203, 124 Stat. 1376-2223 (2010).

Even if banking seems to be an exception to the American inattention to interstate barriers, then, a closer look as shown that the efforts have still been hampered by a hesitation to embrace federal market authority. Instead of federal preemption or at least national standardization of all banking regulation, the dual banking system remains, and federally-charters banks are still subject to a wide-range of local regulations that are potentially market-fragmenting. The extent to which even these banking reforms do not display particular enthusiasm for market-building regulations can also be highlighted by contrasting these steps to parallel (but earlier) developments in the EU.

While interstate banking, branching, and acquisitions are less frequent, and the banking safety net is mostly on the national level, the EU endeavored earlier on a path to liberalize capital flows between states (Garcia 2009). Despite public interest restrictions to mergers and acquisitions, starting with the Banking Directive in 1977[59] interstate banking and branching has principally been allowed (Garcia 2009). With the Second Banking Coordination Directive[60], the EU pursued its standard approach of mutual recognition, free establishment, common minimum standards (like capital requirements), as well as home country supervision. The European Commission and the ECB have constantly pursued more integration of the market for financial services, for instance through the Financial Action Service Plan in 1999 (Nieto and Wall 2015). In the 2000s, the European Commission published several reports on how certain national regulations were creating barriers to interstate banking (Nieto and Wall 2015). Since the financial crisis, the EU has created more centralized supervision and regulation of banks. For instance, the European Banking Authority and new harmonized regulations were established in the EU (Singh 2015). The Banking Union, mostly limited to the euro area, established the Single Supervisory Mechanism (ECB), a Single Resolution Mechanism for troubled banks, as well as a deposit insurance system (Singh 2015).

Interesting is also the comparison between banking and insurance in the US, where state regulation has remained prevalent despite being operated by national

[59] 77/780 [1977] OJ. L. 322/30.

[60] 89/646 [1986] OJ. L. 386/1.

companies, specifically banks. In 1945, Congress passed the McCarran-Ferguson Act[61], explicitly exempting insurance from federal regulation, specifically anti-trust (Scott 2007). While the Financial Services Modernization Act of 1999[62] allowed some federal regulation, especially allowing banks and investment firms to engage in insurance activities, it maintained a system of state regulation and oversight. Due to industry pressure, states have coordinated their actions through the National Association of Insurance Commissioners, but most insurance companies continue to consider interstate heterogeneity as a major obstacle (Scott 2007, 154). Even today, the only areas of insurance the federal government significantly intervenes in is health and flood insurance (Hsieh 2017). In another comparison, securities regulation has fallen on the other end of the spectrum. Starting in 1933, and with additional laws in 1975, 1996 and 1998, the federal government seized nearly complete control over securities (Scott 2007). The trajectory of securities regulation can only be explained by the impact of the Great Depression and the general support for federal regulations during the New Deal[63]. Documents created by the Peccora Commission, established to investigate the Crash of 1929, clearly show that many legislators and experts[64] came to belief that the fragmentation of securities regulation into 50 different regulatory regimes, combined with lax self-regulation by the industry, was one of the main reasons why dangerous and fraudulent activity "was not discovered" (Peccora Commission 1934, 56). The Commission therefore recommended to establish federal market authority for securities, resulting in the Glass-Steagall Banking Act and the Securities Act of 1933[65]. However, it shied away from a complete field prevention allowing states to regulate any aspect that is not explicitly prohibited by legislation of SEC rules (Scott 2007, 151).

In summary, the regulatory role of government was never closely examined and

[61] 15 U.S.C. § 1011-1015 (1945).

[62] Also, Gramm-Leach-Biley Act. Pub. L. 106–102, 113 Stat. 133 (1999).

[63] A dissertation and several papers by Kris Mitchener clearly show the relationship between state regulation and the Great Depression (Mitchener 2001, 2004, 2007).

[64] S. Rep. 1455, 73rd Cong. (1934).

[65] Pub. L. 73-66, 48 Stat. 162 (1933).

never became a priority of the Reagan administration. If mentioned, less regulation was always seen as better; it is never examined in terms of whether it impedes or enhances the functioning of competitive markets, only whether it reduces business cost. “There was [… no] broad-based effort to adopt market-based approaches to controlling risk or to emphasize more performance-oriented regulations” (Viscusi 1994, 502). The general aversion to government let Reagan to prefer local power over central power. There was never any awareness of trade-barriers that might be created by political fragmentation. Economists and advisors see the policy record in regulation either as failure, or more commonly, ignore the regulatory side of policies completely. The erratic attention to deregulation followed more from external pressures (in S&L crisis for example), instead of a comprehensive program. This was quite the opposite with the main priority of fiscal and taxation policy, where everything was streamlined to achieve the ‘Reagan revolution.’

III.b. Ideational Account—Competitive Federalism

American neoliberalism bore (and still bears) little resemblance to the liberalizing and centralizing program that was launched concurrently in Europe. Though the rhetorical fervor for markets in Reagan’s circles was at least as zealous as the most radical voices in Europe, like some of Thatcher’s compatriots, it does not seem to have occurred to most American conservatives that some elements of their economic goals might be furthered by strong and general federal rules to bind sub-national levels of government to standards of open and non-discriminatory exchange. To the contrary, through their filtering ideas—competitive federalism in abstract theory, deeply American-conservative in content and motivation—they consistently saw federal authority as antithetical to their neoliberal agenda. Despite twelve years of Republican presidents from 1980 to 1992 and another eight from 2000 to 2008 (separated by a centrist Democratic president who openly accepted much of Reagan’s economic legacy), the United States made practically no progress toward a single market through the neoliberal period.

The roots of the “why” argument run deeper historically than developed here, since a comprehensive history of the conservative movement is not the subject of this

dissertation. In this section, I focus on the most direct link—how the orientations of late-mid-20th-century American conservatism for markets but against federal authority made significant mobilization around federal market authority unlikely. As argued earlier, this can be related to a split in neoliberal thinking going back to different interpretation of Hayek's writings. In the next chapter, I will fill in this link more by looking at how these ideas became dominant in conservative think tanks before taking hold in policy-circles.

While long ago Republicans championed federal authority against Jeffersonian Democrats, by the early 1970s they were broadly critics of federal authority and advocates of 'states' rights'—privileging the US Constitution's assignation of default rights to the states. By the late 1960s and early 1970s, as the postwar boom years slowed and new economic challenges rose, conservatives looking for new economic messages were primed with an idea that would become Reagan's most famous phrase (from his first Inaugural Address): "Government is the problem" (Reagan 1981a). Or, to capture the real content of Reagan's thought, *federal* government is the problem. At the same time, these ideas were not only sourced in states' right conservatism but connected to a specific strand of neoliberal thinking that had become prevalent. Non-Keynesian economists and legal scholars, that often had found refuge in conservative or libertarian think tanks (see next chapter), combined monetarism, rational expectation theory, micro-economics, and public choice theory to create new policy answers (neoliberal ones) to the pressing problems of the day (Blyth 2002). These ideas, derived from thinkers like Hayek, emphasized the superiority of markets, but because of their anti-authoritarian origin, also resonated well with the anti-federal government discourse of conservative politics. These semi-academic ideas diffused into politics for many reasons (that cannot be adjudicated here), the perception of economic crisis, entrepreneurial politicians seeking for new ideas, business mobilization, and the Republican Party's realignment (Prasad 2006; Harvey 2005; Lowndes 2008).

To understand Reagan's neoliberalism, it therefore makes sense to have a closer look the writings of neoliberal economists that were part of the administration or have associated themselves with the 'supply side revolution.'[66] Many of them have written

[66] See Footnote 18 for list of analyzed writings.

either detailed exposés on future policy or assessments of their own time in government. From these writings, we get a better understanding of what neoliberalism meant for them and how they juxtaposed ideas differently than policy-makers in the EU.

Probably one of the most important gurus, who moved Hayekian thinking toward politically-mobilizable ideas for American politics and against federal market authority, was Milton Friedman. In writings that were unusually politically explicit for an economist, Friedman laid out his version of Hayekian views in his 1962 book *Capitalism and Freedom* as well as in speeches and writings in many other forums (Friedman 1962). He defined a minimalist role for government—including features like a volunteer military and school vouchers for education—and provided arguments why cutting back central government to this minimum would have major economic, social and political benefits. Friedman did acknowledge that markets could run into problems of monopoly or local protectionism in the absence of strong central authority, but he argued that in most cases central-government fixes were worse than these diseases. Politics inevitably becomes corrupted to serve special interests, so even the best-intentioned central initiatives could have dramatically bad effects. Thus, even dysfunctional market situations are preferable to central power. In the case of natural monopolies, he writes, "I reluctantly conclude that, if tolerable, private monopoly may be the least of the evils" (Friedman 1962, 31). By arguing this, limiting the role of government becomes a principle in itself. To this general criticism of government, he added the idea that, the higher the level of political authority, the more dangerous it was: "If government is to exercise power, better in the county than in the state, better in the state than in Washington" (Friedman 1962, 11). Friedman interprets Hayek in the 'American way;' from the fact that government is often flawed he concludes that many small governments are preferable over one central government—a conclusion that while not logically necessary, became dominant among American neoliberals. In sum, Friedman's writings already exemplify the tenet, which I describe as competitive federalism, that it is better to let markets evolve naturally than using central government to promote them.

Friedman himself would go on to have frequent and influential conversations with Reagan , but other figures played important roles in carrying similar themes into conservative political circles in the 1970s (M. Anderson 1988, 172). One important

vector for this process was an idea about taxes that grabbed Republicans' attention due to the raising popular sentiment against high taxation. A famous origins anecdote concerns a 1974 dinner with Dick Cheney, Donald Rumsfeld, and Wall Street Journalist Jude Wanniski, where University of Chicago economist Arthur Laffer sketched on a napkin a curve suggesting that tax cuts could increase tax revenue—a theoretical claim that could square tax cuts with conservatives' historical emphasis on balanced budgets. Wanniski coined the name 'Laffer curve' and spread the idea to key conservative politicians and in broad publications (Wanniski 1978b, 1978a). In particular, with the help of Irving Kristol, then editor of the conservative journal *the Public Interest* and fellow at AEI, Wanniski was able to prominently publicize these ideas in the *Wall Street Journal* and the *Public Interest* (Wanniski 1975, 1974). This created 'an in' for self-proclaimed supply-siders, who saw themselves as part of a broader intellectual movement, especially going beyond just tax rates to a broader agenda (for a similar account: Blyth 2002; Prasad 2006; D. S. Jones 2012).

Supply-siders, often seeing themselves as outsider-economists[67], became one of the leading edges of Friedmanesque arguments that a reduction in federal resources and authority would liberate market competition, innovation, and wealth creation in ways that would eventually lift all boats. They offered a new argumentation for conservative policies based on simplified neo-classical economic models seeing themselves in a tradition of classical economists like Adam Smith and Austrian School economists like Friedrich Hayek (Jones 2012). This markedly pushed American neoliberals to an understanding of markets that sees itself in opposition to federal authority.

Conservative think tanks, and the revolving door between them, conservative media, and congressional staffers, "Were integral in selling this new product in the market place of ideas" (Stahl 2016, 96). Through generous financing, "Think tanks greatly decreased the entry barriers into the marketplace of ideas;" for instance the AEI financed Wanniski's supply side manifesto, *The Way the World Works*, through a year-

[67] Many of the authors try to present themselves as academic outcasts or rebels. However, many of the ideas they were building on (i.e. micro-economics, rational expectations, public choice) were widely discussed in the academy but had not really found a way into the policy world (P. C. Roberts 1984; Niskanen 1988, chap. 1).

long fellowship (Stahl 2016, 101). Despite scathing reviews by contemporary economists, conservatives embraced the book—Irving Kristol urged Wanniski to give a 'book tour' on capitol hill (B. J. Cohen 1979; Norman 1979, 38). Not surprisingly then, in the 1970s an increasing number of Republican Congressmen had close advisors that called themselves supply-siders (P. C. Roberts 1984). Their intellectual network developed a particularly strong node around the office of Republican Congressman Jack Kemp. Stockman recounts that in the 1970s, "Kemp's office became a kind of postgraduate seminar in supply side economics" where ideas where exchanged and traded (Stockman 1986, 39). Bartley, then editor of the *Wall Street Journal*, reports on similar 'economic seminars' in New York City and California (Bartley 1992, Chapter 3).

Martin Anderson, Reagan's chief domestic policy advisor writes,

> When an idea's time has come, whether it's a new one or an old one polished up a bit, it's apt to occur to a lot of people at the same time. Robert Mundell, Arthur Laffer, Paul Craig Roberts, Robert Bartley and Jude Wanniski all played important roles in spreading the essential idea that tax rates matter […]. There were others who also helped, writing and arguing the case—Jack Kemp, Norman Ture, Bruce Bartlett, Irving Kristol, Steven Entin, and Alan Reynolds […]. All but Kemp were intellectuals […]. They were like a many linked chain. Perhaps the chain would have held without any one of them, or two of them, but we know it would not have been without all of them. (M. Anderson 1988, Chapter 1)

Several (failed) bills show that neoliberal ideas in its American brand had got ahold of Republicans in Congress in the late 1970s. The first supply-side argument is found in Congressman Rousselot's amendment to the third budget resolution in 1977[68] (Roberts 1984, Chapter 1). According to Roberts, the supply-side revolution started with the "Transformation of House Republicans between October 1976 and February 1977" (Roberts 1984, 27). While the new idea resonated with some for theoretical or ideological reasons, many Republicans adopted the new argumentation because within the old Keynesian framework (and given the economic crisis), they had run out of feasible policy options (Roberts 1984, Chapter 1). The Laffer curve rhetoric seemed to reconcile tax-cutting with balanced-budget conservatism.

[68] S.Con.Res. 10, 95th Cong. (1977).

In 1980 Kemp, the leader of the movement, lost the Republican nomination battle to Reagan, but his ties carried the movement into Reagan's administration and the Republican Party more broadly. Reagan was apparently a rather late convert, though this is subject to some controversy. Roberts claims that Reagan was the purest supply-sider and all deviations from it can be attributed to the president losing control of his staff (Roberts 1984, Chapter 5). Others claim that Reagan always supported tax cuts but did not consciously have a comprehensive economic program. Accordingly it was a swarm of supply-sider advisors in his presidential campaign as well as the intervention of Kemp, that convinced the presidential candidate of a broader neoliberal agenda (Stockman 1986, 61ff.; M. Anderson 1988, 112; Sloan 1999; Prasad 2006).

Either way, the influence of the new thinking reached its culmination in the Republican Platform of 1980 and subsequently with the election of Reagan (Republican National Convention 1980). He pursued a policy program, deliberately and explicitly based on the new neoliberal arguments, corresponded with many leading (neoliberal) economists like Milton Friedman and Alan Greenspan, employed 74 economic policy advisors, identifying as supply-siders, and appointing those to key positions in his administration (Niskanen 1988; M. Anderson 1988, 165f., 172). Reagan's cabinet consisted less of established Republicans that 'deserved' a post in government, but people that more closely identified with supply-side theories or libertarianism, often recruiting personnel directly from think tanks, like AEI, Hoover, Heritage, and CATO (Stahl 2016, 96ff.; Sloan 1999). For instance, a former Reagan speech writer remembers, "Perhaps the foundation's [Heritage] biggest impact was channeling a lot of conservative thinkers and policy specialists into the White House and agencies " (Bakshian cited in McCombs 1983).

Thus, the broad mid-century conservative distrust of federal authority appended neoliberal pro-market arguments, culminating in an agenda with the described priorities based on one logic: the idea that federal cutbacks—in terms of taxation and regulation—would stimulate growth, increase government revenue, and make markets naturally bubble from the bottom-up. Opposition to government biased conservatives toward a competitive federalism conception of market-government relationships. Hence, they were unable to formulate neoliberal goals that rely on the harnessing of central authority.

Disregarding the influence of sub-national power in creating protectionist policy and disregarding the importance of regulation for competitive markets, they created a distinct American neoliberal ideology identity that is always optimistic that markets will come naturally the second government retracts. This explains the focus on fiscal policy and taxations, as well as the inattention to internal-market barriers. This competitive federalism conception of markets is often hard to miss in the huge number of 'tell-all' books by Reagan's advisors or other participants in his administrations.

Insider's assessments of the 'revolution's' success illustrate this in the breach by never mentioning interstate barriers or market building. Some criticize Reagan for never making policy from a strictly neoliberal perspective, instead often preferring compromise; as Stockman says he "proved to be too kind, gentle, and sentimental for that [following the theoretical prescriptions]" (Stockman 1986, 11). On the other side of the argument, Reagan was trying to follow a coherent policy program, but was actively sabotaged by Stockman who was secretly a fiscal conservative (Roberts 1984, 95ff.). Despite this argument, Stockman and Roberts both see the 'revolution' as failed, mostly due to the *Triumph of Politics* or the power of distributional coalitions in Congress. However, this is not shared by later published accounts: Bartley calls it *The Seven Fat Years* to emphasize the success of Reagan's tax cuts (Bartley 1992). Even more enthusiastically, Anderson argues that the Reagan government changed everything: "The world is now in the midst of a profound intellectual and political revolution that may rival in scope and importance the transition from the Dark Ages to Enlightenment" (M. Anderson 1988, 17). Similarly, Boskin argues that while Reagan failed to institutionalize the changes in policy, his most important accomplishment was to "change the general understanding of what constitutes a reasonable economic policy" (Boskin 1987, 255).

Failed or not, what these accounts have in common is an inattention to interstate barriers. Some of the Reagan officials appear to have thought only in terms of what effects spending and taxation have on the economy because they were concerned with economic forecasting and fiscal state retrenchment (P. C. Roberts 1984; Wanniski 1978b). They wanted to switch from Keynesian demand-driven models to new supply-side driven models based on microeconomics. But they were still mostly concerned with macro-economic variables (e.g. GDP growth) and focused on macro-economic policy.

Within the context of the movement and its attention to omnipresent government failure, they were not able to seriously consider priorities beyond taxation and fiscal policy.

In Wanniski's *The Way the World Works* we find the strongest emphasis on taxes. The title is to be read literally (Wanniski 1978b). Economic growth and decline in history can be explained in reference to the Laffer curve. Every time tax incentives to production and investment are improved (which in the examples always entails lowering taxes), growth ensures. According to the author, this explains a wide range of phenomena, from the rise of the Roman Empire, over British industrialization, to American hegemony. For Wanniski, the world evolves around taxes and tariffs. There is no discussion of how functioning markets are created or any aspect of government regulation.

In the related book, *Wealth and Poverty* by George Gilder, we see a similar pattern (Gilder 2012). Over 400 pages it is argued that "The source of the gifts of capitalism is the supply side of the economy" (Gilder 2012, 28). The central theme is how, over history, government programs have always distorted incentives for Americans, forcing them into unproductive jobs (Gilder 2012, 9ff.). The cause is the attempts of government to redistribute and regulate (Gilder 2012, 326f.). According to him, the free market flourishes, when government withdraws—with no mentioning of interstate barriers. Inequality is not a problem because wealth will "trickle down" (Gilder 2012, 101). Government policy is always caused by big business trying to distort the market (Gilder 2012, 327). "Despite the fact that [Wanniski's and Gilder's] claims were increasingly taking to the realm of the fantastical, they were widely read, widely disseminated and widely debated"(Stahl 2016, 117). For instance, Steve Forbes, an executive at Heritage would write about *Wealth and Poverty*: "One of the great books of Western Civilization, on par with Adam Smith's the Wealth of Nations and the late Jude Wanniski's 'the Way the World Works" (Gilder 2012, x). Others would claim that Gilder became "President Reagan's most frequently quoted living author" (Discovery Institute 2017).

For Roberts, big government itself was not the problem. Supply side policies for the author were foremost about what the right model of the economy is. Keynesian forecasting had only taken macro-economic variables into account, while ignoring any micro-economic effects (Roberts 1984, Chapter 2). The fight then was over putting

micro-incentives back into forecasting which led to a new focus on tax policy and steady monetary growth. The battle was basically won when Congressional Committee staff stopped using the Philips-curve trade-offs and put individual incentives back into forecasting. While he says Reagan's supply side policies were about restoring individual incentives to save, invest, and produce, he exclusively focusses on marginal tax rates. There is no discussion of creating competitive markets and government regulation is barely mentioned. The only related comment is a short discussion of how special interests undermined Reagan's free trade position starting with VERs for Japanese cars (Roberts 1984, 122). Most of the book is devoted to chronicling the fight for the 'supply-side revolution,' which Roberts saw happening between the real supply-siders in the treasury and fiscal-conservatives and Keynesians everywhere else. In particular, he blames Stockman for sabotaging the revolutionary goals against Reagan's own convictions (Roberts 1984, chapter 6). Of course Stockman claims directly the opposite (Stockman 1986).

Other books I reviewed also only focus and taxation and spending. This is true for the book of Wall Street editor Robert Bartley, *The Seven Fat Years*, who argues that tax cuts and technological changes were responsible for a period of remarkable growth (Bartley 1992). His main point is that other observers view the Reagan era negatively because they forgot how miserable the 1970s were, or because they do not understand that fairness (as opposed to setting the incentives right), is an impossible political agenda. Regulation or market barriers are not mentioned. Economic Advisor Lindsey's account, *The Growth Experiment*, focuses exclusively on taxes too (Lindsey 1990). He uses econometric models to show that it was mostly supply-side effects, not demand stimulation or monetary policy, which was responsible for growth in the 1980s. Chief domestic policy advisor Martin Anderson's work falls into the same category of books praising Reagan's achievements (M. Anderson 1988). He does this in anecdotal form, without discussing policy-making in much detail. The tax cuts stand in the center of his description and deregulation and market-building are barely mentioned. He is focusing on the big picture, which is that "The ultimate irony of the twentieth century may be that lasting, worldwide political revolution was accomplished not by Trotsky and the communists but instead by Reagan and the capitalists" (M. Anderson 1988, 1). By

revolution, he seems to mean mostly spending cuts, tax cuts, sound monetary policy, and the restoration of confidence, since market-based reforms are not part of his vocabulary.

Similar things can be said about Reagan's Chief of Staff, James Baker's book. While being more a collection of personal anecdotes and description of staff politics, the chapters that do deal with economic policy are solely focused on taxation and spending (Baker and Fiffer 2008). Donald Regan, first secretary of the treasury then chief of staff, also solely focuses on the battles about reforming taxation (Donald T. Regan 1988). For him, even short-term budget deficits were rather unimportant. Regulation and market-building is not discussed.

While this group of advisors focused solely on taxation, another group combined this more explicitly with an anti-government sentiment that precluded any mobilization around federal market authority. To the belief in market rationality they added the conviction that "The most important cause of our economic problems has been the government itself" (Reagan 1981b). Stockman describes himself explicitly as anti-statist (Stockman 1986). It is therefore not surprising then that he would not focus on using government to ensure the functioning of markets. As Niskanen argues, "The origins of 'Reaganomics' lay not only in economic problems and new economic theories, but also reduced public support for central government" (Niskanen 1988, chapter 1). This is most clearly expressed by Boskin, "For Reagan and his advisors, freedom, including freedom from government interference, was enormously important, far beyond the superiority of free markets to controlled ones" (Boskin 1987, 3). Most people in Reagan's circles appear to have assumed that the latter would follow from the former.

Kemp's *An American Renaissance* puts government failure in the center: "What poisons that [American] dream is when government stands in the way" (Kemp 1979, 1). Government always creates barriers to growth, by taxing too high and regulating too much, which is all due to the redistributive and flawed nature of politics—one of the central tenets distinguishing ordoliberal from competitive federalism thinking. According to Kemp, real growth happens in the private economy; markets are the only efficient mechanism to coordinate behavior (Kemp 1979, Chapter 7). So, the right policy is cutting taxes, because this will increase incentives to work harder and innovate. Keynesian models should be replaced with supply-side models that are closer to how real people

behave (Kemp 1979, Chapter 4). Similarly, he advocates a return to the gold standard so politicians cannot manipulate the currency—again the motivated by the belief that government always fails (Kemp 1979, Chapter 6). Also important, regulation has to be cut back (Kemp 1979, Chapter 7). While some of those are standard neoliberal arguments, we find everything framed in terms of competitive federalism. The biggest chunk of the book deals with taxes. Nowhere do we find a positive role for government in fostering competitive markets. In fact, government should be devolved to the more local level. Competition between governments will lead to efficient policies (Kemp 1979, Chapter 10).

Stockman anchors his ideology in what he calls 'anti-statism':

> Behind the hoopla of the Kemp-Roth tax cut and my thick black books of budget cuts was the central idea of the Reagan revolution. It was minimalist government—a spare and stingy creature, which offered evenhanded public justice, but no more. Its vision of the good society rested on the strength and productive potential of free men in free markets. (Stockman 1986, 8)

The opposition to government is mainly rooted in the believe that it is generally a flawed mechanism: "The sovereign state ended up an open bazaar, its fiscal and legal resources plundered by organized interest groups by means of political muscle bargaining, and logrolling" (Stockman 1986, 33). This is of course combined with a strong belief in the ability of markets: "I did battle with this monster [the state] every day, hacking away at it with a sword forged in the free market smithy of F.A. Hayek" (Stockman 1986, 38). For Stockman, the "dismantling of state erected barriers" is all encompassing: tax cuts, draconian spending cuts, elimination of all subsidies, ending welfare, cutting social security, and reducing all kinds of regulation (Stockman 1986, 41).

Unlike Roberts or Wanniski, for Stockman 'Reaganomics' is not only about macro-economic policy: Reducing government and government regulation, especially farm subsidies and price regulation (152f.), enforcing free trade (155) and energy deregulation (103), are important issues (Stockman 1986). However, as noted previously, the focus is on cutting specific regulations, not safeguarding competitive markets. He sees no positive role for regulation, an attitude that can also be seen in the numerous memos he wrote for the Reagan campaign (Stockman 1981). He only uses terms like "regulatory relief" and "rescinding regulation," never competitive conditions, consumer

welfare, or market-enhancing regulation—terms we would expect from an a generic neoliberal perspective (Stockman 1981). For the details, we only get a list of 14 regulatory areas where standards should be rescinded with an estimate how much money it would save businesses—no mention of competition and markets (Stockman 1981).

The main part of Stockman's book—roughly 70%—is devoted to policy making during the first few years of the Reagan administration. Here he chronicles the fights over tax cuts and spending cuts, in which he became to be the main broker between the Executive and Congress. While a few unsuccessful deregulatory attempts are mentioned (agricultural price controls, automobile tariffs), it becomes clear that macro-economic policy, and not regulatory policy, was Reagan's priority. There is never an explanation of why, but the impression is that deregulation had never been a comprehensive policy program, but more a set of individual grievances against specific regulations (like requiring airbags), that were sustained by a general anti-government attitude.

For Stockman, the book is really an explanation of the failure of what could have been the Reagan revolution. The failure, which Stockman blames on the "triumph of politics"[69] is really that tax cuts could not be sustained, spending cuts failed (especially in social security), and the budget deficit grew. The non-existence of efficiency enhancing comprehensive policy reforms is not discussed. But he again highlights the strong believe against government, even if in failure. "By 1985, only the White House speechwriters carried on a lonely war of words, hurling a stream of presidential rhetoric at a ghostly abstraction called Big Government" (Stockman 1986, 380).

Niskanen's review of 'Reaganomics' is more policy focused and does not contain direct personal statements of ideology. He argues that "The most important general principle guiding the initial Reagan program were its long run orientation and its reliance on markets as the primary process for organizing economic activity" but adds, the general idea was that "The most important cause of our economic problems has been the government itself" (Niskanen 1988, 20, 4). At the same time, he shows that the concerted

[69] "The spending politics of Washington do reflect the heterogeneous and parochial demands that arise from the diverse, activated fragments of the electorate scattered across the land. What you see done in the halls of the politicians may not be wise, but it is the only real and viable definition of what the electorate wants" (Stockman 1986, 377).

effort was limited to spending and taxation. The book, being one of the few with a chapter on regulation, argues that "The failure to achieve substantial reduction in or reform of federal regulations […] was the major missed opportunity of the initial Reagan program" (Niskanen 1988, 115). And even in the few areas were progress was made, he criticizes, "The initial and continuing focus of the Reagan regulatory program was relief, not reform" (Niskanen 1994, 441).

He blames that on the fact that "Reagan's convictions on those issues were admirable, but not strong. […] The administration did not demonstrate a political commitment to follow through on these convictions" (Niskanen 1988, 314). According to Niskanen, this lacking commitment can be seen in many ways, especially in mediocre appointments of staff that cared more about short term budget savings than good economics. It can also be seen in the neglect of obvious areas for market-based reforms, like privatization of government owned enterprises, deregulation of the agricultural sector, and free trade. In all of those areas, Reagan apparently did not have convictions principled enough.

Edwin Meese, counselor to the President with Cabinet rank, later attorney General, wrote his book *With Reagan* to counter all liberal pundits and ex-administration officials that try to misrepresent 'the greatness' of the Reagan administration. Most of his effort is designated to rebut all critics, be it that they misrepresent supply-side economics, or be it that they claim that inequality increased. In the end, the main takeaway uses language that reminds of Hayek, "Ronald Reagan led the cause of liberty to an unprecedented victory over the forces of oppression and slavery" (Meese 1992, XVf.). His chapters on economic policy do not deal with regulation or market barriers; especially his chapter 'the Triumph of Reaganomics' is silent on the issue. The main point seems to be to show that all economic policy was flowing directly from Reagan (he never needed convincing by supply siders) except when it failed, in which case rogue staffers like Stockman or Congress were to blame. Market-building is not important. For him, free markets and limited government are part of the same philosophy: "I was there when he translated the principle of liberty, limited government, and free-market economics […] into a successful policies and programs that characterized his presidency" (Meese 1992, XVI).

Murray Weidenbaum, chairman of the President's council of economic advisors, is one of the few previous officials who have to say more on regulation (Weidenbaum 1988). His critique of the Reagan era is basically presented as an account of what future direction policy should take. The most pressing issue, of course, is the budget deficit. But regulation has its chapter, and he recommends focusing on consumer-benefitting reforms. This is the closest thing I have found in any of this literature to a call to market-based reforms. In particular, he criticizes the Reagan administration for a 'wrong' understanding of deregulation that is one focused on saving money for business. "For one thing, the Reagan administration's term regulatory relief should be promptly abandoned. The sensible goal is not to reduce the burden on business by easing the enforcement of existing regulation but to ensure that the regulations that are enforced benefit the consumer" (Weidenbaum 1988, 241). He does not present a reason for why the Reagan administration diverged from his understanding, but given that he argues that the biggest achievement was to make the claim "government is the problem" common wisdom, it stands to reason that antipathy toward the federal government does not combine well with pro-market regulation (Weidenbaum 1988, 15). Despite the fact that he is the only policy-maker who really writes about market-based reforms, he does not advocate more central authority. In fact, he argues that independent action by state and local government is a best approach to regulation (Weidenbaum 1988, 262). So even when we find neoliberalism connected with the advocacy of incentive-improving regulation of the economy, it is still invested in reducing the authority of the central government.

Macro-economic policy is also the focus of many conservative academics that review the Reagan administration. For example, Michael Boskin's book, neoliberal economist associated with the Hoover Institutions, deals solely with taxation, despite the broader title, *Reagan and the Economy* (Boskin 1987). According to him, Reagan's most important accomplishment was to "change the general understanding of what constitutes a reasonable economic policy" (Boskin 1987, 255). In particular, the new understanding is that one needs a comprehensive approach to the economy to win elections, which includes that in most cases government is the problem and not the solution. This claim interestingly contrasts with the actual policy Reagan pursued: He did not have a comprehensive program to create markets (positive), only a strategy to reduce

government (negative). In this way, Boskin's book is another clue that American neoliberals simply to not perceive of the market-creating force of federal authority. Hence, despite the assessment of comprehensiveness, regulation and market building are only commented on in passing. Two things are said: "There were high hopes and good intentions, but the problems were so numerous and diffuse, it was unclear how much could be accomplished." And, "Reducing regulation has only been partially successful" (Boskin 1987, 259f.).

Richard Mckenzie's *What Went Right in the 1980s* is a similar analysis that tries to show Reagan's policies increased competitiveness and raised disposable incomes for the rich and the poor (McKenzie 1995). However, regulation is not one of the main causes discussed. There is a chapter on airline deregulation that tries to show how market-based reforms in this sector made services better, cheaper, and safer. While this is true, as he says himself, policy changes were brought about in the 1970s, and are largely unconnected to the Reagan 'revolution'.

John Sloan presents an account of the Reagan administration, seeing its economic policy as largely successful with the exception of handling the S&L crisis (Sloan 1999). Interestingly, what he describes as "the most ambitious policy agenda since Roosevelt," solely consists of a discussion of taxation, spending, and macro-economic variables (Sloan 1999, 10).

Martin Feldstein, another Chairman of Reagan's Council of Economic advisors, put together an edited volume that contrasts academic analysis with the assessment of Reagan policy-makers (Feldstein 1994). In his overall summary he focuses solely on tax cuts, budget policies, monetary policy, and the trade deficit. The economists that review economic regulation, health and safety regulation, and financial regulation concur with the general argument made in this chapter, while policy-makers point out the specific things they achieved. They all note surprise that market-based reforms did not become an important priority (Joskow and Noll 1994, Viscusi 1994).

In an edited volume for the American Enterprise Institute, Philip Cagan also describes tax cuts as the main revolutionary achievement; regulations are only evaluated in terms of how much they were cut (Cagan 1986). The chapter on regulation is typical of the other accounts: there is no discussion of interstate barriers and the number of

rescinded regulations and staff reduction is used as a measure of the success of the Reagan administration (Yandle 1986). With the exception of the chapter on banking, interstate barriers or federal preemption are not mentioned at all (Pyle 1986). A review by the Heritage Foundation solely focuses on how tax cuts create growth and help the poor (Mitchell 1991). Similarly, a retrospective by the CATO Institute is dedicated to "busting the myth" of increased deficits and decreased economic performance in the 1980s with the sole attention to macro-economic policy, not regulation (Niskanen and Moore 1996). Robert Meiner and Bruce Yandle, in a retrospective for the Independent Institute write: "Regulatory reform was quickly perceived as a set of actions, consistent with the Administration's conservative philosophy, but not a program that would add noticeably to GNP" (Roger E. Meiners and Yandle 1989, x). While they claim "Reagan failed in his assault on excessive government," they support the goal, since all regulation "is merely the outcome of private interests lobbying for various types of protection from competition" (Roger E. Meiners and Yandle 1989, xii). The book does not contain any discussion of market-enhancing regulation or of the problem of regulatory heterogeneity with retrenching federal regulation.

Beyond thematic points, it is interesting to note that after Reagan, many think tank retrospectives declared that problems could be attributed to the fact that his policy was not radical enough. For instance, Heritage proclaimed "The radical surgery that was required in Washington was not performed" (Weyrich 1984, 19). Similarly, CATO president Edward Crane argued that Reagan's ideology was not "internally consistent" enough in its "commitment to liberty" (Crane 1983). The line of attack was clear—if Reagan had followed his outlined principles better, he would have been much more successful. One scholar argues that "By Reagan's second term, think tanks like Heritage were integral outposts in the project of critiquing conservatives from the right" (Stahl 2016, 125). This allowed them to hold lawmakers accountable, while attributing every failing of their policies to not following their prescription strictly enough as well as the general tendency of "government failure" (Stahl 2016, 125). Undoubtedly, in this way think tanks contributed to the 'renewal of Republican Revolutions' under Gingrich and Ryan (see next section).

In short then, reviewing books by Reagan's advisors reveals the following about

their specific brand of neoliberalism. It combines great confidence in markets with a general critique of all government action. Their neoliberal ideology flows from and combines with a completely negative view of government. From this it follows that the regulatory role of government is not examined (in terms of efficiency) but rejected. Markets are thought to evolve naturally. If government is necessary, they prefer local power over central power. There is no concern for subnational competition leading to protectionism—there is unlimited optimism into the power of markets to evolve naturally—just as competitive federalism prescribes. It follows, that in concrete policy terms, they focused most of their writing and action on macro-economic policy, in particular on spending and taxation.

III.c. American Neoliberals and Federal Market Authority after Reagan

The American neoliberal agenda has not changed much since Reagan. As I will show, competitive federalism has continued to inhibit any systematic mobilization around federal market authority. The priority of American neoliberals has remained cutting government spending and taxation, assuming that more competitive market will follow from this retrenchment naturally. This is not to say that no increase in federal market authority has happened. In a piecemeal fashion, always against the will of state and local governments, and in response to successful business mobilization, lawmakers have sometimes voted for national rules or standards. This took place most significantly under Clinton, who embraced federal market authority arguments in telecommunication and banking, while still maintaining a traditional deference to localism for instance by creating a dual not exclusively federal banking system.

An analysis of Republican Party Platforms between 1988 and 2012 shows that with the exception of 2004 (foreign policy and terrorism), cutting taxes and reducing spending has been the main priority, guided by a theory that a retrenching government will lead to more market (Republican National Convention 1988, 1992, 1996, 2000, 2004, 2008, 2012). This is often combined with a count of "business cost of regulation" and a call for rescinding them: "America's formula [is] to cut tax rates, loosen regulation, and free the private sector" or put differently "liberation through deregulation" (Republican National Convention 1988, 1992). Government is seen as a principally

flawed mechanism, meaning that "even well-intentioned regulation" will have "job-crippling effects" (Republican National Convention 2012). The free market is always imagined as natural state—"Government interference […] causes the free market to take longer to correct itself" (Republican National Convention 2008). Returning power to the states is not as prominent as under Reagan, but is always mentioned: "We are committed to further return power from the federal government to state and local governments," or "more reliance on the market and decentralized decision-making," or "federalism is threatened and liberty retreats" (Republican National Convention 1988, 2000, 2012). In no instance are potential problem of interstate barriers discussed. Areas where Republicans have actively supported preemption, like in banking, are not mentioned in the platforms. There is never an explicit endorsement of federal market authority.

Competitive federalism at work is further demonstrated by mentions of interstate barriers without endorsement of federal market authority. For instance, the 1996 platform criticizes the fact that federal regulation is often differently interpreted by state and local authorities. However, at the same time it is argued: "We reaffirm the traditional deference by the federal government to the States in the allocation and appropriation of water. We deplore the Clinton Administration's disregard for State primacy through attempts to preempt State law with respect to water usage and watershed protection[70]" (Republican National Convention 1996). Similarly, the 2000 platform highlights that local regulation makes housing construction complicated and expensive—but the solution is only a call on local governments to change, "We see no role for any federal regulation of homebuilding" (Republican National Convention 2000). The same is said about the local interpretation of EPA standards and occupational licensing—while seen as problematic, it is stated that "Our overall philosophy is to trust state and local government to know what best suits the needs of their people" (Republican National Convention 2000). The same phenomenon can be observed in health care policy. The 2008 platform introduces the idea that costs could be driven down with "interstate competition" (Republican National Convention 2008). At the same time they see "no role for the federal government" to create that competition, and argue that "The federal government should respect the states'

[70] This is a response to democratic environmental policies that tried to protect some public lands from logging and mining.

traditional authority to regulate health insurance, health care professionals, and health practice guidelines through their medical boards" (Republican National Convention 2008).

Following Reagan, the agenda of Republicans would be constraint to some degree by how the policy program had been articulated. An observer at the AEI notes "President Reagan thus left behind [for President Bush] the need to reconcile (1) the aversion to taxation and regulation, (2) the benefits the public expected from government, and (3) a widespread feeling that reduction of the deficit was important" (Stein 1994, 415). While commentators note that Bush was not an ideological advocate of this agenda—"As far as can be judged from his history before he became vice president, he was not then a strict antigovernment Reaganite"—he made reducing taxes and balancing the budget a promised priority[71] (Stein 1994, 416; Bush 1990). Major reviews of the presidency focus on those two (plus foreign policy) without any significant discussion of federal market authority (Greene 2000; Duffy and Goodgame 1992; Heclo 2014). Given the neo-conservative, Christian background, Bush added to this the need "to make America a kinder, gentler place" (Bush 1990). However, "De did not want the government to pay for it: he wanted private individuals to rally around and deal with the problems of making America kinder and gentler voluntarily" (Stein 1994, 418).

Perhaps distracted by foreign policy[72], deregulation became still less of a priority. "George Bush's accession to the presidency resulted in a suspension of the anti-regulation fervor that had emanated from the White House for eight years" (B. D. Friedman 1995, 160). While Bush recited Reaganesque conservative ideology, "He was much more oriented towards maintaining the status quo" (B. D. Friedman 1995, 161). For this reason, he soon was criticized by the renewing Republican establishment. A one scholar puts it, "Bush's traditional conservatism was distrusted by proponents of a newer form of American conservatism" (Heclo 2014, 51). At same time, rhetorically, competitive federalism had become dominant with Bush announcing, "My philosophy is

[71] According to Bush, his goal was to "Clear away the obstacles to growth: high taxes, high regulation, red tape, and yes, wasteful Government spending" (cited in Han 2011, 136).

[72] Many observers agree that Bush's interests lay in foreign policy, domestic policy did not interest him much (Duffy and Goodgame 1992).

this: that when it comes to necessary regulation of business, I'm committed to letting the states take the lead, not the federal Government" (Bush 1989b). This can be seen for instance in education policy, which Bush called an important priority, while maintaining that all federal programs would be voluntary, and no uniform standards would be mandated (Greene 2000, 104).

Unlike Reagan, Bush did not follow a deregulatory agenda through appointments: "Bush's appointments of moderates [to agencies as well as OMB and OIRA] who were neither programmed not inclined to undermine the missions of their respective agencies defused the tension between political appointees and civil servants" (B. D. Friedman 1995, 162). Bush replaced the Task Force on Regulatory Relief, which he had chaired under Reagan, with a Council on Competitiveness in 1989, with the goal of finding ways to make the US more competitive internationally. Another legacy of Reagan's transformation of American neoliberal thinking can be seen in how that council evaluated the economy. In its first report, the internal market, interstate barriers, and even federalism are not mentioned. Instead, the sole focus is on how to encourage more savings and investment to be able to compete with foreign powers, a discussion of corporate structure, and a consideration of industrial policy (Council on Competitiveness 1992). The same is true for the following reports until the Council's dismantlement (Council on Competitiveness 1993, 1994, 1995).

In terms of policy, Bush became president without having a vision or any comprehensive program and no majority in either chamber—which basically suggested a veto-strategy of governing (Greene 2000, 72). As a result, Bush mostly used his powers to soften Democratic legislation (C. Campbell, Rockman, and Rudalevige 2008, 3). Under looming deficits, budget negotiations with Democrats made it hard to keep up the campaign promise of no new taxes and spending reductions. To the dismay of the Republican establishment, Bush agreed to some tax increases (which he would later call a mistake) in exchange for moderate spending cuts (Greene 2000, 103). This empowered Republicans around Newt Gingrich to oppose the whole budget deal and provided the impetus for the coalition building around the coming *Contract with America* (Greene 2000, 106; Heclo 2014, 76). One conservative observer argues that "The Bush experience […] solidified the Republican opposition to tax increases" (Stein 1994, 424).

None of the industry demands for more uniformity in regulation, for example in banking (see Chapter III.a.5) or telecommunication (Telecommunications Act of 1996, see below), was put on the agenda by Bush. According to Zimmerman, "Bush approved thirty-four preemption bills, but only the Clean Air Act Amendments of 1990[73] had a major impact on subnational governments" (Zimmerman 2008, 127). According to Friedman, in terms of health, safety, and the environment, a movement for reregulation under the Democrat controlled Congress was gaining strength culminating among other things in stricter environmental policy (B. D. Friedman 1995, 161). Despite a moderate record given a democratically controlled Congress, conservatives soon criticized Bush for being a "reregulation president" (cited in B. D. Friedman 1995, 163). In response, Bush followed in Reagan's footsteps in 1992 by announcing a moratorium on all new regulation that would last 180 days (B. D. Friedman 1995, 167). Bush's somewhat tempered neoliberal fervor lead to a renewed *Republican Revolution* among House Republicans under Gingrich (Gingrich 2005).

The tenure of Bill Clinton shows that Democrats are ideologically more inclined to embrace federal market authority, and do not rely explicitly on competitive federalism arguments. At the same time, the dominance of those arguments in American discourse shines through in many documents, meaning that a single market building project is not to be expected. As opposed to Republicans, Clinton was open to using federal market authority, in particular in response to business demands. At the same time, he is definitely not an ordoliberal—despite piecemeal endorsements of federal market authority, big signature initiatives, like improving regulation, completely ignored the issues of interstate barriers or the heterogeneity of regulations across states.

It was a Democratic president that put some market barriers on the agenda, which firms had complained about. Clinton approved 64 preemption bills with only three significantly preempting state regulations that were undermining the single market: Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Telecommunications Act of 1996 , and Gramm-Leach-Bliley Financial Modernization Act of 1999 (Zimmerman 2008, 69). Of course, this was not part of a broader single

[73] Pub. L. 101-549, 104 Stat. 2399 (1990).

market agenda but was only responding in a fragmented way to problems that stood out due to significant business mobilization. We have already seen this to be true for banking. Similarly, after the court-mandated break-up of ATT, firms in the broadcasting and technology sector, as well as corporate telecommunication user groups, started lobbying Congress to get access to local telecommunication markets, which could only be achieved through federal preemption (Teske and Kuljiev 2000; Zhong, Cao, and Ning 2008). However, the bill was mostly framed as 'deregulation' not as market building (Olufs 1999, 67). By the time the bill passed, most of the industry had embraced the new market expansion opportunities, despite some loss in local monopoly power.

To some degree, understanding the regulation as business cost to be reduced became universal, with Clinton assessing the "total regulatory costs" for businesses and then promising a reduction (B. D. Friedman 1995, 176). In an effort to distinguish his regulatory agenda from Reagan, Clinton created a new commission headed by Al Gore, the Performance Review. The main focus of the first report is "eliminating regulatory overkill" (National Performance Review 1993). Single market issues, or even federalism are not mentioned, but one chapter asks to "empower State and Local Governments" in fiscal terms (National Performance Review 1993). The 1994 report mostly focusses on making government more cost-effective and customer friendly; federalism issues are not mentioned (National Performance Review 1994). This theme continues with the next reports focusing on establishing more performance based standards and improving the efficiency of federal agencies (National Performance Review 1996). Another report boasts about downsizing the federal government by 240,000 people, along with Clinton's slogan, "The era of big government is over" (Gore 1996). The last reports continue the theme of reorganizing government like a business and adding online services (National Performance Review 1997b, 1997a). One observer concludes "The conservative tone of the reinventing-government reform program—emphasizing, efficiency, streamlining, rationality, and quality—is consistent with other conservative themes of the Clinton administration" (B. D. Friedman 1995, 178). Completely consistent with competitive federalism, none of those words is systematically applied to federal market authority. Streamlining government, as least according to these documents, did not include a mobilization around federal market authority.

To the contrary, in 1993 Clinton issued Executive Order 12,875, “Enhancing the Intergovernmental Partnership," which permitted states seeking to avoid federal agency regulations by submitting alternative policy approaches to federal agencies, who then had to respond to state requests within 120 days” (Gilman 2011, 346).

In an odd intermezzo, Clinton reversed this approach in 1998 with Executive Order 13,083, which “listed nine nonexclusive conditions, under which federal agencies could displace state authority,” for instance the “need for uniform standards,” which was a clear departure from Reagan’s federalism order with the presumption of no preemption (Gilman 2011, 346). The source of this policy reversal is unclear; none of the contemporary news articles or academic papers report any major supporters (Broder 1998b, 1998a; Thompson 1998; Blake 2000). An aide was cited saying, “This was a mistake. We screwed up” (Broder 1998a). In response, local and state governments as well has Congress and conservative think tanks mobilized arguing that preemption should “be restricted to the minimum level necessary;” Clinton was forced to meet with the nation’s Governors and eventually reversed his order[74] (Gilman 2011, 346; W. Beach 1998). Congress introduced the Federalism Enforcement Act of 1998[75], codifying the presumption against federal regulation and preemption in agency rule making, that had been in effect since Reagan’s executive order (Bailey 2000, 342). This again shows that US states cannot mobilize for uniform standards, but they can successfully organize public campaigns to prevent federal preemption.

More important for my story is showing how the Republican conception of markets, in terms of competitive federalism continued its influence, preventing any systematic mobilization around federal market authority. This can be seen in the language and resulting policy of the *Contract with America*, which led to the self-declared “Republican Revolution” of 1994 with Republican winning majorities in Senate and House (S. Moore 2005). Newt Gingrich (to become speaker of the House) and Dick Armey (to become House majority leader) engineered *Contract with America*—a strategy to win the 1994 elections, and a policy program that they saw as the culmination of what

[74] Executive Order 13,132, 64 FR 43255 (1999) remains in effect today.

[75] S. 2445, 105th Cong. (1998).

Reagan had started (Gingrich 2005, 1). Conservative think tanks, important conduits for the policy ideas behind the contract, argued "Decades from now, historians quite likely will reflect back upon the *Contract with America* as one of the most significant developments in the political history of the United States" (Gayner 1996). Two Heritage Foundation studies, widely seen as basis for the policy proposals in the Contract, squarely focus on the problem of too much government, with little mention of markets (Felten 1993; G. S. Jones and Marini 1988).

Contract with America was designed around goals similar to the Reagan's program. To Armey, the mind behind the document, "Dismantling the federal bureaucracy was an academic, ideological, and personal quest […] Milton Friedman was his hero" (Maraniss 1996, 73f.). Dismantling the government and thereby "freeing the economy" is the main theme of his book *The Freedom Revolution*, written to explain *Contract with America* (Armey 1995, 161). According to the author, every problem can be solved by market competition, and it is achieved through radical retrenchment of government (i.e. "cutting the government in half") because "The market is rational and the government is dumb" (Armey 1995, 285, 316). He makes clear, that he imagines market to evolve naturally, criticizing "a certain cast of mind, [which mistakenly believes] regulations ultimately make us more free;" Armey's axiom is "Why regulate at all?" (Armey 1995, 171ff.).

Operating within the competitive federalism view, according to Armey, government, specifically federal government will always make market-distorting policy advocated for by regulators and special interests: "It's a self-justifying cycle that leads inexorably to bigger and bigger government" (Armey 1995, 300f.). The now familiar approach of counting business cost of regulation is repeated: "Regulations kill jobs, slow economic growth, and lower most everyone's standard of living" (Armey 1995, 170). The only "healthy, common-sense regulation is generally self-regulation" or regulation by "local government" (Armey 1995, 172). In the whole book, there is not a single reference to which degree federal market authority might be necessary or whether local regulation might turn protectionist. For instance on federalism, where he only addresses state and local business subsidies, Armey argues for a hands-off approach: "Let cities

tend to their own fiscal affairs," since "competition" will solve all inefficiencies (Armey 1995, 304).

A journalistic account of the 'Revolution' recounts, "Everything that Republicans pushed, even the most neutral sounding, had as its purpose curbing of federal government power" (Drew 1997, 93). But as with Reagan, it was mostly organized around taxation and spending ideas, aiming to end "tax-and-spend-liberalism" (Drew 1997, 26). This includes a balanced budget amendment to the constitution, spending reductions in many areas, most prominently welfare for families with dependent children, "ending the spending madness," as well as tax cuts for individuals and businesses marketed as "supply side incentives" (Gingrich et al. 1994, 23, 126). Promised regulatory reform was based on the idea that "Government regulations do more harm than good" (Gingrich et al. 1994, 141). As with Reagan, this is premised on the theory that all regulation serves special interests and distorts the free market that could otherwise exist (Gingrich et al. 1994, 141). However, as expected federal government is seen as more problematic than local government, as in the Heritage Foundation's description of the Republican agenda "*Central* government attempts to solve many problems have only made them worse" (Gayner 1996). Federal market authority does not play a role in the *Contract*, and interstate barriers are never mentioned (Gingrich et al. 1994, 22). Instead, it is argued that "We must replace our centralized, micro-managed, Washington-based bureaucracy with a dramatically decentralized system more appropriate to a continent-wide country[76]" (Gingrich et al. 1994, 22). The document elaborates that state and city governments will always do better because they are "closer to the people" (Gingrich et al. 1994, 133). In addition to these goals, the *Contract* also adds policies for the neo-conservative part, and Christian Right part of the Republican coalition, like "increasing defense spending," "stopping violent criminals with harsher sentencing," and "supporting traditional families" (Gingrich et al. 1994, 91f., 37f., 65f.).

The 1994 election swept Republicans into power which would last through the Bush presidency until 2006. Having 367 candidate-signees, Newt Gingrich and other

[76] Or as the Heritage Foundations puts it, "This can become the defining moment in the transformation of the responsibility for government in the United States away from the central government and back to state and local governments" (Gayner 1996).

leaders started with the implementation of their *Contract* immediately (Gingrich 2005). First on the agenda were reforms to Congress designed to restore trust in government, which of course seems unlikely given their rhetoric around government failure. Nonetheless, the House enacted new budgeting rules, term limits for the leadership, banned proxy voting in committees, opened committee hearings to the public, required a three-fifth vote to increase taxes, started a comprehensive audit of the House, and applied anti-discrimination and workplace safety rules to Congress itself (S. Moore 2005, 27). The attempt of creating congressional term limits failed. In contrast to these internal bills, most promised legislation had a more complicated fate, facing delays and abandonment in the Senate, as well as presidential vetoes. The main priority remained taxation and spending. In every year between 1994 and 2004 Republicans attempted tax cuts, with limited success in 1997, and significant success after the election of President Bush in 2001 and 2003[77] (Haskins 2005, 37). Rolling back government by cutting spending was the other priority. One legislative aid remembers "Newt Gingrich's finest hour as Speaker of the House was when he persuaded House Republicans to adopt a seven-year balanced budget plan" (S. Moore 2005, 61). After fights with the Clinton administration and two government shut downs, a recovering economy helped balance the budget[78]. Scholars at the Heritage Foundation soon argued that more significant cuts and better arguments were necessary: "Budget cutters need to convince the public that there is a financial and freedom dividend from smaller government" (S. Moore 2005, 69). The most significant achievement in terms of spending cuts were made in welfare reform, where Republicans were able to eventually get the cooperation of the president. Here spending cuts could be combined with federalism principles. In his first speech as majority leader in the Senate, Robert Dole, had declared, "If I have one goal for the 104th Congress, it is this: that we will dust off the tenth amendment and restore it to its rightful place in our Constitution" (cited in T. Lynch 2005, 213). AFDC was transformed into TANF, a block grant that

[77] For conservative think tanks, this was not enough. For instance, CATO argues "Tax cutting continuous to be the key to electoral success, but more fundamental tax reform is needed" (C. Edwards 2005, 56).

[78] The more significant balanced budget constitutional amendment, S.J.Res 1, 104th Cong. (1995), failed in the Senate (Glass 2012).

would give states flexibility in implementation and save money by freezing benefits and putting time limits on them (Haskins 2005).

The impression of a priority on fiscal matters and the neglect of interstate barriers is supported by reviewing journalistic and insider accounts. For instance, Gingrich's own retrospective does not mention the latter, focusing on the former bracketed by the theme of 'curtailing government' (Gingrich 1998, 2005). Similarly, the account of journalists David Maraniss and Michael Weisskopf as well as Elizabeth Drew portray the 'Republican Revolution' mostly in terms of budget fights (Maraniss 1996; Drew 1997). A similar retrospective by conservative authors, assembled by CATO, reviews the era without mentioning internal market barriers at all (Crews 2005).

All accounts that make comments on regulatory policy do it in a manner that readers will now find familiar. The chief architect of *the Contract's* regulatory policy, Tom DeLay, "Considered the central mission of his political career: the demise of the modern era of government regulation" (Weisskopf and Maraniss 1995). Heading the "Project Relief," he initiated a 13-month moratorium to all government regulation. The argument was a familiar one, insisting that regulation created 'excessive business cost' as high as "$662 billion by 2000" (Eckerly 1995). However, a comprehensive regulatory reform act never passed Congress. The CATO retrospective complains that Republicans have endorsed some new health and safety regulations and not made any real progress. It never asks about the quality just the quantity of the regulations, because every regulation "undermines the market's ability to self-regulate" (Crews 2005, 201). A good example for this is the open access rule of the Telecommunications Act, adopted to create more competition for phone providers. Here it is argued, "This is a crucial time for Republicans to take a solid stand against such managed competition [open access rule]" (Crews 2005, 202).

Despite the rhetoric around federalism, Republicans had gone along with Clinton's preemption bills. Following the priority of fiscal matters, they celebrated block-granting TANF as major return of power to the states. Most importantly though, their position to not embracing federal market authority was put into law through the

Unfunded Mandate Reform Act of 1995[79], "Hailed as both a symbol and substance of a renewed congressional commitment to federalism" (P. L. Posner 1997, 53). The law specifies that "any mandate with an uncompensated state and local cost greater than $50 million a year […] could be stopped by a point of order raised on the House or Senate floor[80]" (P. L. Posner 1997, 53). In addition, several bills were passed that increased the amount of 'local government consultation' required before enacting regulation (Dinan 2004). Six other laws proposed Republicans, with more stringent provisions against federal mandates and preemption, for instance the Tenth Amendment Enforcement Act[81], failed to be enacted (Dinan 2004, 83).

With the election of George W. Bush, Republican gained control of both branches of government. Despite the rhetoric around federalism, "George W. Bush did not advance a signature federalism proposal or executive order" (Conlan and Dinan 2007, 280). As preceding Republicans, Bush campaigned on a deregulatory platform[82] and his OIRA director details fights with "agencies and their pro-regulation advocates" to stop regulation in his assessment of the presidency (Graham 2010, 260). As with previous presidents, in most scholarly accounts the issue of federal market authority and interstate barriers is not mentioned (Graham 2010; G. C. Edwards and King 2007; Kelley and Shields 2013). Barring his foreign policy and anti-terror measures, "supply-side tax cuts" were his top priority and biggest achievement (Graham 2010, 6, 28). Other items on his agenda, like cuts to Medicaid, Medicare, and Social security were not successful. An anomaly within the Republican set of ideas, was Bush's No Child Left Behind legislation that aimed at increasing the role of federal standards in public education. Contentious with the base, due to the inconsistency with ideas over local control, the bill passed with bipartisan support and opposition (Graham 2010, 92). However, Republicans were soon its biggest critics, with all major conservative foundations opposing it and asking

[79] Pub. L. 104-4, 109 Stat. 48 (1995).

[80] A majority can override the point of order.

[81] S. 1629, 104th Cong. (1996).

[82] He campaigned on reducing the "Unnecessary burdens caused by America's complex tort liability system" and the "excessive regulatory and paperwork burdens" of the federal government (Graham 2010, 251).

Congress to "break up public education monopolies" and "eliminating federal mandates[83]" (AEI 2015, 5f.).

States saw Bush's legislative initiatives, such as "the No Child Left Behind Act, standardizing public educational goals; the REAL ID Act, mandating state driver's license requirements; and the Help America Vote Act of 2002, imposing national election requirements on states," as limiting their autonomy (Gilman 2011, 352).[84] Based on this, some authors call the Bush administration a "centralizing agent" (Conlan and Dinan 2007, 279). However, Zimmerman argues that many of "these standards are not preemptive," are "explained by anti-terrorism," or merely "generate pressure by citizens upon state legislatures to adopt the standards" (Zimmerman 2007, 433f.). Because of this, he reports that there was "relatively little state lobbying of Congress with respect to most preemption bills the President signed" with the exception of the driver's license minimum requirements (Zimmerman 2007, 443). In the end, he counts 87 counts preemption bills under Bush but concludes that "These statutes removed relatively little power from states[85]" describing them as "ad hoc responses to problems" (Zimmerman 2008, 69, 2007, 445). Crises, like terrorism and hurricanes have a centralizing effect, but this can be hardly understood as endorsement of federal market authority. As Zimmerman notes, the bills' "relative silence with respect to pressing problems inherent in non-harmonious state regulations" is surprising (Zimmerman 2007, 445).

Another instance of endorsement of federal market authority due to specific business pressures is litigation as related to health, safety, and environmental issues. Starting with the *Contract with America*, and more so under Bush's presidential campaign, the "utility of frivolous and junk law suits as a political issue" was discovered (McGarity 2008, 4). This led to the priority of tort reform with the clear goal of reducing law suits through federal preemption, however no comprehensive measures passed. In

[83] AEI: "NCLB inconsistent with the spirit of federalism, and therefore much less likely to succeed" (AEI 2015, 5). Heritage: "Congress should eliminate the many federal mandates" (Burke 2014). CATO: "The dangers of centralized education policy" (Uzzell 2005, 1).

[84] Pub. L. 107-110, 30 Stat. 750 (2001); Pub. L. 109 13, 119 Stat. 302 (2005); Pub. L. 107-252, 116 Stat. 1666 (2002).

[85] With the exceptions of the Internet Tax Non-Discrimination Act, Pub. L. 107-7, 115 Stat. 703 (2001), prohibiting local governments from taxing internet access.

2005, Bush signed the Lawful Commerce in Arms Act[86], which shielded gun manufacturers from some law suits and thereby preempted state common law in liability (McGarity 2008, 123). The FDA clarified a regulation arguing that its approval of drugs preempted liability and tort state common law in some instances (McGarity 2008, 4). In addition, the PREP Act[87] allowed the FDA to preempt state common law liability for drugs and medical devices in "public health emergencies" (McGarity 2008, 126). The direction was deregulatory since in none of the instances was regulation followed up with stricter federal standards (McGarity 2008, 4). Under the pressure of business arguing that they "didn't want to have to comply with 50 different sets of regulations," the Bush administration also halted the implementation of stricter vehicle emissions standards in California (Vock 2016; Graham 2010, 179). Similarly, the Office of the Comptroller of the Currency used its preemption power more broadly to stop certain lending laws to be applied to national banks (Conlan and Posner 2016, 294).

The tenure of Barack Obama is similar to the other Democratic President we looked at. Both were more were ideologically more inclined to embrace federal market authority and did not rely on explicit competitive federalism arguments. At the same time, the dominance of those arguments in American discourse shines through in many documents, making a single market project unlikely. As opposed to Republicans, both were more open to using federal market authority, in particular in response to business demands or complex public policy problems. Obama reversed centralizing tendencies of Bush, issuing a memo to take back all preemptions that were limiting state-level litigation in health, safety, and environmental matters, against the opposition of, among others, the chamber of commerce, who argued "Removing federal preemption forces employers to navigate a confusing, often contradictory patchwork quilt of 50 sets of laws and regulations" (cited in Rucker 2009). More generally, while Obama had a broad domestic policy agenda, including the stimulus package, health care reform, and climate change abatement, federal market authority did not gain much traction. While legislation "provided hundreds of billions of additional federal dollars to state and local governments

[86] Pub. 109-92, 119 Stat. 2095 (2005).

[87]. Pub. L. 109-148, 119 Stat. 2818 (2005).

and expanded the federal government's role in setting the direction of policy," in most cases states were given wide discretion in how or even whether to implement the policy, putting red and blue states on completely different trajectories (Conlan and Posner 2016, 282). Due to Republican capture of the House and state governments, Obama was forced to allow many opt-outs and accommodations, leading some scholars to speak of "variable speed federalism[88]" (Conlan and Posner 2016, 283). For instance, maybe based on entrenched supply-side thinking or just due to political considerations, many Republican states refused to accept funds from the Keynesian stimulus package (Conlan and Posner 2016, 887). The Affordable Care Act[89] set up a state-by-state system, as Republicans had supported in the 1990s, forgoing a national system with uniform standards. Together with a Supreme Court decision limiting "coercive federal mandates, the result has been an increasingly complex patchwork of state implementation of health care reform, shaped in large part by these partisan conflicts between the federal and state governments" (Conlan and Posner 2016, 290). Similarly, regulatory changes to the financial system, necessitated by the financial crisis, "Rolled back the field preemptions of the Bush era to return to the regime of concurrent jurisdiction of banking and consumer protection regulation" (Conlan and Posner 2016, 295).

Under Republican leadership, the trend of divergence between states will most likely continue, evidenced by a glance at current policy ideas. Paul Ryan, seen as the Republicans' current "ideas leader" and responsible for crafting a comprehensive conservative agenda, has reproduced the policy priorities of Reagan and the *Contract* in many policy documents (Ehrenfreund 2017; NR Editors 2015): "Mr. Ryan has been rolling out grand pronouncements in bound volumes with fancy covers and snappy names, but the main message never changed: America's 'path to prosperity' lies in tax cuts for the wealthy and corporations, and slashing social programs and regulations" (NYT Editorial Board 2017). Or as Paul Krugman describes it, "Mr. Ryan has become

[88] The stimulus package gave extremely flexible grant-in-aid to state and local governments. Even the Administration's "signature initiatives in health care reform, financial reform, and climate change policy were notable for accommodations to state diversity" (Conlan and Posner 2016, 284). Among other things, states were allowed to exceed federal minimum standards, there were opt-outs for reluctant states, opt-ins for keen states, and waivers were given generously.

[89] Pub. L. 111-148, 124 Stat. 119 (2010).

the Republican Party's poster child for new ideas thanks to his 'Roadmap for America's Future,' a plan for a major overhaul of federal spending and taxes" (Krugman 2010).

Indeed, a series of detailed policy programs released by Ryan since 2010, written as budget proposals, has been making the point that by reducing the "size of government," i.e. cutting spending, taxes, and regulation, America can be made "prosperous" (Ryan 2012, 2011). Issues of federal market authority, interstate barriers, or even federalism are not prominent in the documents (Ryan 2012, 2011).

As Speaker of the House, Ryan published *A Better Way*, inspired in scope by *Contract with America* as an electoral program for the 2016 elections. It repeats the familiar language and priorities of American neoliberals: Cutting taxes and spending, as well as deregulation (House Republicans 2016a). The regulatory chapter is a manifesto for deregulation. Regulatory costs are counted "The American people now spend $1.89 trillion every year just to comply with Washington's rules—approximately $15,000 per household," and regulations are mostly understood as burden for business, "Federal regulation particularly hurts domestic manufacturers and other businesses competing in an increasingly globalized marketplace" (House Republicans 2016a, 5f.). Two chapters detail how the "regulatory state" can be reduced (House Republicans 2016a, 2016d). Despite a few sentences on the importance of good regulation, in most instances the view is made clear that regulations are always the problem, for instance in the assertion that it was "too stringent" regulation causing the 2008 financial crisis (House Republicans 2016d, 41ff.). The logic of the political process mirrors what we would expect from competitive federalism: "Federal agencies have every incentive to regulate—and then overregulate because writing regulations justifies their livelihoods and budgets" and regulation always undermines competition "by favoring companies with the best connections over those with the best ideas" (House Republicans 2016d, 10; Ryan 2012, 28).

Federalism concerns do not seem to play as big of a role as in previous Republican documents. The sole focus is on reducing the size of government in general (House Republicans 2016d). However, in several instances it said that devolving power

to state or local governments is preferred[90]. Most interesting is one passage, the only passage in all reviewed documents in this chapter, that deliberately addresses interstate commerce: "Facilitating Interstate Commerce: In general, federal regulations should be a last resort and minimally intrusive; however there are instances where they make sense because they facilitate interstate commerce" (House Republicans 2016d, 15). Among the hundreds of bills proposed in *A Better Way*, two are listed under this heading. A bill to preempt states from adopting specific GMO food labeling requirements[91] and a bill to preempt states from regulating ballast-water discharges from maritime vessels[92] (Lempert 2016; Spangler 2017; House Republicans 2016d, 15). The two areas singled out, transportation and food labeling, have both seen significant business mobilization since the Reagan administration refused to regulate (see p. 101). So while it is not surprising that Republicans have supported some limited federal market authority here, as they have before, it is the first time they explicitly make the argument for federal market authority—"There should be a single, uniform, nationwide approach to safety regulation to provide regulatory certainty for businesses and facilitate the flow of interstate commerce"—despite the position that "Regulation does more harm than good" (House Republicans 2016d, 15, 30).

This new position is not necessarily acknowledging the market-enhancing effect of regulation. It falls into the category of 'overly restrictive regulation,' the one area where Republicans are willing to tolerate federal market authority. Here, the main goal is to stop GMO food from being labeled and shifting responsibility for maritime regulation from the more stringent EPA to the Coast Guard.[93] Being a minority among hundreds of pages of proposals, it still raises the question, whether with Republicans controlling

[90] On regulatory principles: "pursue and draw from local solutions" (House Republicans 2016d, 8); on health care "regulate plans at a more local level" (House Republicans 2016a, 14); on terrorism: "we should rely on local forces to defeat terrorists," (House Republicans 2016b, 9); on agency rule-making "an obligation that meaningful consultation with relevant state and local governments occur before a regulation" (House Republicans 2016c, 8); on welfare: "increase Local Control and Flexibility" (House Republicans 2016b, 18).

[91] Pub.L. 114-216, 114 STAT. 834 (2016).

[92] Introduced in House and Senate in 2017: S.168, H.R. 1154, 115 Cong. (2017).

[93] See S. Rept. 115-16, 115th Cong (2017).

Congress and the Presidency, they will be more likely to embrace federal market authority. In one sense, this is not surprising. In many of the cases here, Republicans have opportunistically voted for increases in federal power despite their competitive federalism stance. However, in this case, legislation might still fail due to resistance by states with significant waterways (Saiyid 2017). In another sense though, the main point is that competitive federalism creates an ideational obstacle against systematic mobilization around federal market authority. This seems unlikely to change, especially given the vehemence with which conservative think tanks defend the theory, as we will see in the next chapter.

III.d. Summary and Conclusion

In short then, reviewing writings and campaign documents by conservatives from Reagan to Ryan reveals that their brand of neoliberalism is specifically American. It combines great confidence in markets with a general critique of all government action, particularly federal regulation. This flows from and combines with a theory that conceptualizes government as principally flawed mechanism, which can only be disciplined through jurisdictional competition. It follows that the regulatory role of government is not examined (in terms of efficiency) but rejected. Markets are thought to follow naturally from the withdrawal of government from markets and from public affairs more generally.

This conceptualization of market suggests to prefer local over central power, expresses no concern for local protectionism, and involves no comprehensive assessment of market barriers. This is exactly what I found when reviewing the major policy priorities of Republican administrations and House speakers, who were self-declared free market advocates. Most of their thinking is focused on and around spending and taxation, driven by the idea that cutting both would lead to more market. Unlimited optimism in the power of markets also leads them to embrace deregulation, mostly conceptualized as reducing business costs, and getting government out of the way. Their theory also includes a strong commitment to decentralization, sometimes more rhetorically than practically—however, here the effects can more strongly be seen in what they have not done. While Republicans have not devolved significant powers to state governments,

they have also not pursued any significant preemption legislation in areas with interstate barriers. There are exceptions to this characterization; in a piecemeal fashion, federal market authority has been increased in some areas, usually either due to business mobilization, or to create socially conservative outcomes. However, this does not deny the overall pattern. A strong competitive federalism rhetoric prevents any systematic pro-market mobilization around federal market authority.

The next chapter will lend more credence to this argument by providing historical contextualization and theoretical elaboration of competitive federalism thinking. Based expert interviews at conservative think tank, I document the specific interlinking beliefs within competitive federalism and demonstrate how this conception of markets diffused from the libertarian strand of law and economics scholarship, i.e. the conservative legal movement, through think tanks into federal policy. Like federal policy-makers, scholars at think tanks regularly overlook how state and local jurisdictions undermine the single market, question the need for federal market authority, and even when seeing the necessity of federal regulation, often oppose it.

CHAPTER IV

ASYMMETRIC DIFFUSION OF ACADEMIC IDEAS INTO THE CONSERVATIVE AGENDA—THE THINK TANK LINK

The last chapter provided a proximate cause for the outcome, i.e. the broad hostility of American neoliberals to federal authority and thus their tendency to overlook interstate market barriers. As demonstrated, it does not seem to have occurred to most American conservatives that certain elements of their economic goals might have been furthered by strong and general federal rules binding sub-national levels of government to standards of open and non-discriminatory exchange. I located this proximate cause in the attitude of prominent Republican policy leaders and advisors. Through the filtering of ideas—competitive federalism in abstract theory, deeply American-conservative in content and motivation—they consistently interpreted federal authority as antithetical to their neoliberal economic agenda. Their negative view of government as ultimately serving special interests, suggested imagining markets in opposition to government activity, in particular in opposition to the most prominent government role of taxation and spending. This allowed for an agenda built around a fiscal project of cutting government spending and taxation to become the dominant ideational framework from the 1980s to today. This also led American conservatives to overlook arguments about how certain uses of federal authority could foster open markets—instead consolidating the view that markets are natural arenas that flourish with minimal central government regulation. If government was thought to be necessary, they preferred local power over central power, having no concerns for subnational protectionist policies and outcomes.

In some sense, the deep and historical causes of this specific amalgamation in American neoliberalism remain under the veil of complex multi-causality. The vast literature on American Conservatism is a testament to that[94]. For instance, one historical

[94] For an overview see (Gross, Medvetz, and Russell 2011). A few illustrative example for this literature include: the conservative movement is conceptualized as status competition and backlash (Lo 1982); as free-market coalition (Prasad 2006), held together by material interests or cultural resources and practices (Toplin 2006); as an intellectual movement (Thorne 1990); as deliberative fusionism (for instance Hart 2006) between an libertarian intellectual network (Mirowski and Plehwe 2009; Doherty 2007) and a

thread that led mid-century conservatives to oppose federal authority was the New Deal, when Franklin Delano Roosevelt created new forms of federal economic policy over substantial business opposition. Business' skepticism of federal authority was reinforced in the 1960s, in opposition to Lyndon Johnson's construction of the 'Great Society' agenda built around FDR's policy foundations.

Another historical thread that created principled antipathy to federal power among conservatives was the civil rights movement. As New Deal Democrats built a new political coalition that included Southern and urban African-Americans, Republicans moved into the South and became champions of 'states' rights' against federally-imposed desegregation. Fusing the different strands of conservatism, religious, traditional, far right, and market fundamentalism, was a deliberate project championed by many since the founding of the *National Review* by William Buckley in 1955 (Allister 2003). Historically contingent but importantly, anti-government populism and anti-communism could unite free-market advocates, for whom government intervention was inefficient, with religious conservatives, who feared the imposition of liberal policies like abortion rights, and with the far-right, who feared imposition of racial equality through the federal government (Allister 2003). However, according to Joseph Lowndes, it was only Reagan's articulation of these ideas that finally created a successful fusion, "seamlessly combining conservativism, racism, and anti-government populism into a new majoritarian discourse founding the Republican regime" (Lowndes 2008, 160). The alliance was held together by an anti-federal government sentiment—sourced from theoretical arguments by libertarians and conservatives but driven by pragmatic-strategic political considerations.

As Lowndes emphasizes, this movement came together around Reagan's agenda for several different reasons. To some degree, economic priorities were traded-off against other commitments—some of them might have preferred stronger federal authority against interstate barriers to commerce, but they ended up opposing federal authority

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neoconservative intellectual network (Ehrman 1996). More clearly within political science there are materialist/economic approaches (for instance W. C. Berman and Kutler 1998; M. Smith 2011), ideational (for instance Prasad 2006; Blyth 2002) and cultural (for instance Lowndes 2008), as well as institutional (for instance Pierson and Skocpol 2011), especially focusing on think tanks and related organizations (for instance Stahl 2016; Teles 2008).

rather broadly to achieve goals on social policy or race. However, by the time period addressed in this study, most of these actors seem to have convinced themselves that their opposition to federal authority was desirable for markets too; arguing that less federal power was directly good for markets, the economy, and their social policy priorities. Hence, this analysis, does not concern itself with the broad causes of the conservative movement, like for instance the role of race which has received much due attention in the literature (among others Schulman and Zelizer 2008; Rieder 1990; Edsall 2007; Lowndes 2008; Hohle 2015)—instead I focus on the economic ideas that simultaneously have enabled and were shaped by this alliance. For my purposes, it is important to note that these developments provided an opening for the hegemony of supply-siders and other neoliberals, and thereby for ideas of competitive federalism, as opposed to ordoliberal ideas, in the Republican Party and the national agenda. So, while this chapter hints at and acknowledges the broader context, it is more narrowly concerned with the lineage and current influence of the powerful conception of market ideas, I have called competitive federalism.

In this chapter, I show that conservative think tanks are an important conduit to explain the diffusion and maintenance of conceptions of competitive federalism within the neoliberal agenda. My analysis, based on interviews with scholars at the American Enterprise Institute (AEI), the Heritage Foundation (Heritage), and the CATO Institute (CATO), searches of their online archives, and secondary sources, emphasizes two crucial links: asymmetric adoption of ideas from academia and agenda setting. In the first part of this chapter, I demonstrate that the competitive federalism conception of markets as a specific interpretation of Hayek's neoliberalism was very influential in economics and political science research in the second half of the 20th century. However, the diffusion of these ideas into conservative think tanks was asymmetric. Within academia these ideas became more and more nuanced, subject to many limitations, exceptions, and revisions. However, within the conservative legal movement, and with the absorption of those scholars into think tanks there as well, the ideas became simplified. I will demonstrate that these scholars see the tenets of competitive federalism less as researchable propositions and more as unshakable axioms. As a result, conservative legal scholars at think tanks have embraced cuts to spending and taxes, deregulation, and

decentralization as an orthodoxy. They either do not see (ideational blinding), or do not think that there are any feasible remedies (ideational reluctance) to interstate barriers. Thus, federal market authority is consistently opposed as a means to generate openness and market dynamism. Instead, they see it as only necessary condition for competitive markets the withdrawal of government. While the broader developments within the conservative movement, as noted earlier, are also important historical conditions, we can draw a very clear intellectual line from Hayek through these academic scholarships to their eventual absorption into these agenda-setting (conservative) think tanks. Their idiosyncratic transformation of neoliberalism, connecting ideas about markets and (opposition to) federal government, are key to understanding the persistence of interstate barriers in the US.

It may be worth reiterating, I am not contradicting the broad literature on conservatism in the US. Instead, I am arguing that pointing at the connection between states' rights, federalism, and race is an insufficient explanation. It is competitive federalism that allowed conservatives to knit together their social reasons for opposition to federal authority with economic arguments in the same direction—as opposed to seeing them as a trade-off. Only because of their construction of an economic theory in which markets flourish in the absence of federal authority, were they able to believe so strongly in both neoliberal economics and the rights of conservative states to resist liberal social norms. Otherwise the might have been in conflict. Therefore, this chapter explores how competitive federalism came to make economic policy sense, by tracing the intellectual history of neoliberal thinking in the US. In other words, while race might have been necessary to make this agenda a viable political strategy, it leaves out how it became seen as a theoretically viable agenda among scholars. Without the latter, a conservative social policy for white Southerners combined with an embrace of federal market authority could have been equally plausible.

In the second part of this chapter, I demonstrate that these ideas are still dominant at conservative think tanks, which is important due to their generally acknowledged role as agenda-setters within Republican policy-making circles. I show that 'competitive federalism,' even today, distracts them from developing a comprehensive assessment of interstate barriers, and creates opposition to federal market authority; consistently, they

prefer local government even when it proliferates obstacles to competition. When possible, I give as evidence not only general statements by interviewees showing the absence of thinking about market barriers, but also provide their anti-federal market authority position in regard to the issues revealed by my construction case study: they either oppose (or ignore) uniform building codes, uniform licensing or mutual recognition, as well as outlawing discriminatory local procurement practices. In addition, I describe as specifically telling their general dislike of 'EU-style' regulations that have significantly fostered the single market. As I show, judicial activism is the only federal agent conservatives consider as potentially viable for reducing market barriers. However, this is internally controversial, leading to incoherent positions among scholars, sometimes opposing and sometimes supporting more court scrutiny in regard to state action. Overall, this sums up to a more complete picture of why there has been no mobilization around federal market authority.

IV.a. Historical Contextualization of Competitive Federalism

The role of conservative think tanks in the rise of the new Right in the US has been widely acknowledged (J. A. Smith 1991; Medvetz 2012; Ricci 1993; Rich 2004; Stahl 2016). "Many of the most visible expert voices today emanate from public policy think tanks. These think tanks have contributed to a transformation in the role of experts in American policy making […] their work often represents pre-formed points of view rather than even attempts at neutral, rational analysis" (Rich 2004, 4). The 'Southern Strategy' of the Republicans and their attempt to create a better defined ideology based on embracing free markets is connected with the rise of a new ideological conservative think tank that aggressively markets its research: "Avowing that ideas were the only weapons able to overturn the [liberal] establishment and working diligently to build an establishment of their own, conservatives founded and strengthened scores of institutions" (J. A. Smith 1991, 182). Conservative think tanks are part of a larger conservative organizational network, "primarily motivated by ideological principle" that includes the libertarian strand of the law and economics movement, as well as conservative public interest law firms (Teles 2008, 274).

To understand how conservative think tanks become substantial part of the American political arena, and crucial for the development of the 'Reagan Revolution,' they need to be historically contextualized. The first American think tanks emerged at the turn of the 20th century as means of progressives reformers to further the impact of (social science) on solving policy problems as politically neutrally as possible (Rich 2004). With the growth of government after the New Deal, there was "Enhanced institutional demand for independent ideas and experts, which think tanks were equipped to provide. The financial supporters of think tanks favored […] strict adherence to conventions of social science research" (Rich 2004, 43). However, in the 1970s a counter-revolution started and conservative think tanks with explicitly political missions proliferated driven by"(1) The political mobilization of business and corporations, (2) the political conversion and aggressive advocacy of neoconservative intellectuals, (3) the political mobilization of evangelical and fundamentalist Christians, and (4) the ascendance of neoclassical economic theory at universities and among key policy makers" (Rich 2004, 45). The most important of these new think tanks were the ascendancy of the older American Enterprise Institute[95], the founding of the Cato Institute[96] and Heritage Foundation[97], as well as numerous smaller conservative and libertarian think tanks on the state level. Surveys among Congressional staffers and capitol-journalists rate these three think tanks as some of the most influential ones in politics, especially among Republicans (Rich 2004, 84; Stahl 2016; D. S. Jones 2012, 162). Congressional staffers rely on their research, newspapers regularly cite them, scholars from these foundations often testify before Congress, and regularly get drafted into Republican administrations (Rich 2004, 98). Another political scientist, examining the rise of think tanks agrees: "Power in

[95] Founded as the American Enterprise Association in 1938 by a group of anti-New Deal, New York businessmen around Lewis H. Brown, specifically to fight price controls (Stahl 2016, 14). Renamed in 1961. Did not become influential until the 1970s under the leadership of William Baroody (D. S. Jones 2012, 155).

[96] Founded as the Charles Koch Foundation in 1974 (renamed CATO in 1976) by Ed Crane, Murray Rothbard, and Charles Koch with a more strictly 'libertarian' focus on promoting the ideas of Hayek and Friedman (D. S. Jones 2012, 165).

[97] Founded in 1973 by Paul Weyrich, Edwin Feulner, and Joseph Coors with fusionist goals and a specific focus on influencing Congress (D. S. Jones 2012, 164).

Washington cannot be measured precisely, yet think tanks surely have a good deal of it" (Ricci 1993, 2).

Starting in the 1970s, conservatives think tanks began employing many young scholars with PhDs or M.A.s directly out of university or more often law school, with the goal of making them into advocates (C. Holden 1981). There developed a revolving door between conservative think tanks, the conservative legal movement mobilized through institutions like the Olin Foundation, the Federalist Society, and openly libertarian law schools like the University of Chicago, George Mason University, or University of Virginia (Teles 2008). These new scholars, trained in law, but harnessing neoclassical economic theory, operated under the theory that their conservative bias[98] was a positive attribute that would 'balance out' the market place of ideas (Stahl 2016, 47; Teles 2008). Starting with Reagan, Republican policy-makers heavily relied on these new conservative scholarly networks, instead of asking some 'irrelevant academic' from a research university (E. Smith 2014). Prominent scholars from conservative think tanks would hold important federal offices and vice versa; for instance, Antonin Scalia, conservative Supreme Court judge appointed by Reagan, used to edit AEI's 'Regulation' papers; similarly, Reagan tapped many think tank scholars for executive offices, from the Federal Trade Commission to the Council Economic Advisors[99] (G. Easterbrook 1986). The Reagan administration hired the entire founding cadre of the Federalist Society (Teles 2008, 142).

Scholars of neoliberalism have long emphasized the conservative scholarship-policy-link, emphasizing the causal role economic theories like monetarism, public choice, or regulatory capture, have played in setting the conservative agenda (Blyth 2002;

[98] According to Jason Stahl, leaders at the older Hoover Institute and AEI, as well as the later founded Heritage and CATO described Brookings, Ford, and Academia as a "liberally biased intellectual monolith" (Stahl 2016, 52). According to a review of archival documents by Stahl, William Baroody at AEI among other created the idea of a "marketplace of ideas as a way to undermine the liberal technocratic consensus. Such a framework elevated values such as balance and openness to a higher plane than those of nonpartisanship, neutrality, and objectivity," explicitly pursuing a "conservative bias" (Stahl 2016, 47, 52). This is pretty clear in many think tank publications, for instance see Ed Feulner's essay, founder of Heritage, on "Winning the War of Ideas"(Feulner 1986). Expressed by a different author: "Heritage is quick to admit, however, that its purpose is advocacy rather than academic research" (J. A. Smith 1991, 205).

[99] See also previous chapter, p. 118.

Prasad 2006). Stahl observes, "AEI, Heritage, and other conservative think tanks recognized that the very idea of 'supply-side economics' was a new one that needed to be 'sold' to the public and policymakers well before a conservative was in the White House. […] Conservative think tanks were integral in selling this new product in the market place of ideas" (Stahl 2016, 96). Given that conservative and libertarian think tanks were integral to the shape of Reagan's policy agenda, we have to understand think tanks if we want to know why their agenda turned out so differently from market-building projects in other countries.

My analysis reveals that think tank attitudes are very similar to what I have described as the ideas of neoliberal policy-makers, albeit on more consciously theoretical foundation. Despite nuances, what they have in common is the goal to bring about more markets and individual liberty combined with antipathy to federal (market) authority. Their primary strategy is deregulation (less government activity altogether). If this fails, or a regulation is considered somehow necessary, their secondary strategy is decentralization—markets are thought to evolve naturally as response to less government, and only decentralized government is seen as tolerable. This is theoretically founded on two central beliefs:

(1) is the problem of government; my interviewees all believed that government and regulation always distort the market to favor small groups. They have elevated public choice-derived 'capture theory' to an axiom with universal applicability (Stigler 1971). In every case, they assume small groups (industry, bureaucrats, legislators) to be better able to influence regulation to their benefit. It follows that due to these universal forces (i.e. public choice assumptions) 'good' regulation is basically impossible—the only solution is reliance on market forces, even if the results are suboptimal (M. F. Cohen and Stigler 1971, 181). This means, private regulatory solutions, like industry standards or private certificates, are assumed to be always superior to government prescription. Thus "regulatory reform" becomes "abandonment" of regulation (Croley 2009, 22). Competition and regulation are seen as by definition antithetical[100]—except when it

[100] "Regulation displaces competition. Displacement is the purpose, indeed the definition, of regulation" (F. Easterbrook 1983, 23).

coincides with their second central belief, the disciplining effects of (jurisdictional) competition.

(2) Here they assume that competition among states is the only mechanism that can lead to policy that delivers broader benefits, or at least distorts the market less. In a modification of Tiebout's original theory (Tiebout 1956), they argue that jurisdictional competition will force states to govern well, i.e. provide public goods according to public preferences and regulate efficiently, because otherwise capital and labor will, 'vote with their feet' and 'exit' the jurisdiction (Hirschman and Hirschman 1970). In this view of competition, the central government appears as a 'cartel' in which competing regulators, at the behest of producers, collude to "reduce the number of potential competitors and dilute entrepreneurial incentives" (Bratton and McCahery 1997, 204).

While those two beliefs are not necessarily connected, they are in American conservative thinking. This combination precludes a comprehensive assessment of interstate barriers, or a federal single market building project. Several interpretive leaps can only be understood in reference to the ideational nature of the conservative research project at think tanks. For instance, it is not quite clear that 50 state governments will be less likely to be subject to special interest capture than the national government. In fact, one might imagine that on the federal level, mobilization is so costly, public scrutiny so high, expertise so much better, and mobilized interests so diverse, that legislators find it easier to follow the public interest at that level (R. T. Moore and Giovinazzo 2012; Esty 1996; Stewart 1977). However, my interviewees consistently rejected that reasoning, either repeating the axiom that central government will be flawed or that local competition 'just works.' Empirical evidence, questioning the formative influence of jurisdictional competition on policy, the superiority of decentralization, or the formative influence of 'capture,' is disregarded (Bratton and McCahery 1997; Esty and Geradin 2001; Bagley and Revesz 2006).

Another similar interpretive leap rejects the necessity of some federal regulation to maintain interstate commerce (i.e. prevent a trade war). In theory, all scholars acknowledge that some federal powers are necessary for the maintenance of a national market; for instance, nobody argues that states should be allowed to levy tariffs. However, in practical applications, believers in local competition will usually argue that

the case at hand does not meet the conditions for federal intervention (F. Easterbrook 1983; Epstein and Greve 2007). Instead, they either referred to (1), the outcomes of federal government intervention *will be worse*, for instance regarding occupational licensing, or (2), local competition *will work eventually*, for example regarding local procurement preferences. As ancillary, some suggested a stronger role for courts[101] to prevent this tendency, while also acknowledging that many conservative judges prefer local control even more than the conservative mainstream. Finally, some argued that certain interstate barriers could not possible exist, because if they did, powerful industry groups would have mobilized against it. For instance, when I explained to one interviewee the obstacles caused by the heterogeneity of standards, he replied, that firms would have done something about it, if it were 'really' a problem.

IV.a.1. The Link to States' Rights and Race

To understand why this strand of neoliberal thinking took hold in conservative scholarship, we have to pay attention to two factors. One is cultural resonance and its strategic employment. In terms of how movement frames have to resonate with pre-existing collective identities, it is easy to see why local control and decentralization would resonate more with Americans than federal market authority (Snow et al. 1986; Polletta and Jasper 2001). A whole strand of scholarship focuses on an anti-government culture among Americans, so it seems likely that neoliberals would emphasize the competition-part over the federal market authority-part, while developing their ideology (Hartz 1991; L. F. Goldstein 2001). To some degree, federalism arguments have always been "major weapons" in debates over American political development (Robertson 2012, 40). In addition, important social conservatives, like Frank Meyer or Russel Kirk, advocated decentralization for social policy reasons, creating possible commonalities with libertarians (J. H. Adler 2004; Russello 2004). Undoubtedly, anti-communism and paranoia over the Soviet Union, as well as the failure of 'embedded liberalism' to deal

[101] Judges are somehow thought as an exception to the capture thesis (implied here for instance Greve 2005a). Many scholars, maybe due to their background in law, treat legislators as always subject to 'capture' and judges as open to rational argument about how to organize the economy (for a good example, see F. Easterbrook 1983).

with the economic problems of the 1970s, created a fertile context for anti-government ideas (D. S. Jones 2012, 142; McGirr 2002).

More deliberately, some scholars argue, the 'Southern Strategy' of Republicans included the adoption of 'colorblind racism,' states' rights, and federalism arguments as a successful political mobilization strategy[102] (Lowndes 2008, 31, 51ff.; Hohle 2015; D. S. King and Smith 2005). Scholarship on 'racial orders,' shows that states' rights and federalism were one of the ways in which conservatives equivocated between rational, equitable policies for economic growth and playing on racial fears, especially of white Southerners (Carter 1996, 1f.; O'Reilly 1995, 350ff.; D. S. King and Smith 2005). Randolph Hohle, in his book on race and neoliberalism, argues that the whole of the American neoliberal project, cutting taxation, spending, and regulation, needs to be understood in relation to race:

> As desegregation became a political reality, southern whites abandoned their support for public life and welfare state political projects. This made austerity, tax cuts, and privatization meaningful in white political circles that [had previously] pushed for things like a progressive income tax and more money for public schools. […] The fusion and overlap between the segregationists and liberal business classes brought middle class whites to the side of pro-business neoliberal policy[103]. (Hohle 2015, 2)

[102] From the 1950s onwards, conservatives "Thought that the issue of states' rights, animated by desegregation, could exceed the boundaries of race and come to shape other political issues of the day that were important to northern conservatives, such as the rights of states to enact antisubersive legislation, and confront issues of price regulation, farm subsidies, and 'federal aid to—and jurisdiction over—education, housing and road-building.' These conservatives were willing to embrace the cause of massive resistance [to federal power] and make it part of the conservative agenda, bud segregationist southerners had to likewise extend their racial states' rights stand to all conservative ideas and abandon populist New Deal commitments" (Lowndes 2008, 53f.).

[103] While convincing within the cases studies, in respect to neoliberalism as a whole, locating race—specifically the framing of a white-private-good/ black-public-bad discourse—as the only cause seems exaggerated. Hohle tries to explain everything as expression of racism. Austerity: "The preferred method of maintaining white power became exercising white control over state budgets. Austerity freed whites from the economic burden of establishing racial equality" (Hohle 2015, 8). Privatization: public institutions were denounced as "wasteful and inefficient" because African-American became integrated" (Hohle 2015, 9). Regulation: "black-public makes regulations something more than what they actually are. They are not simply rules to protect the public; they are unfair rules that constrain good whites ability to run the economy" (Hohle 2015, 12). Taxation: "The black civil rights movement changed how whites viewed taxes, as whites no longer supported using white tax dollars to fund desegregated public amenities that whites no longer used" (Hohle 2015, 13).

However, what those scholars seem to get wrong is the specific theoretical shape of the American neoliberal project. Given the evidence I present, the claim that "neoliberalism does not see the market itself or rational economic behavior as purely naturel. Both are constructed […] and require political intervention and orchestration," seems to fit more clearly the ideology of European ordoliberals than American competitive federalists[104] (W. Brown 2003, 37f.).

Of course, there were reasons beyond race for conservatives to support states' rights. For example, for some it was simply the fact that seizing power in the states seemed more likely than in Congress (Robertson 2012, 149f.). Even more broadly, throughout American industrialization in the 19th century questions about federalism had always been central to political debates over how to create a national economy[105] (Robertson 2012, 74ff.). However, while in the 19th century arguments consciously talked about federal market authority and national markets, in the second half of the 20th century these arguments had vanished.

To be clear, I am not challenging the political salience of these arguments, but rather argue that without the economic argument described here, these ideas could not have become dominant among conservatives. To render other states' rights agendas (social, racial, …) consistent with neoliberal market thinking, it was important to construct economic arguments in which federal authority over markets was illegitimate even for purposes of removing many interstate barriers. Without those theories, one could have reasonably expected a different 'transformation of racial orders' leading to different alignments around federal market authority (D. S. King and Smith 2005).

[104] For similar statements about American Conservatives embracing the state to create markets see Soss, Fording, and Schram (2011), Dawson and Francis (2016), Lester (2015), and Hohle (2018).

[105] "Federalism […] allowed those who opposed government efforts to restrict market expansion to dig in behind states' rights and oppose the expansion of national power to mitigate the effects. Federalism in the United States tended to be "market-preserving": it limited the ability of American public officials to restrict business and to redistribute wealth from those who profited from capitalism to others" (Robertson 2012, 77).

IV.a.2. Competitive Federalism as Viable Theoretical Argument

The second factor, which falls within the realm of my analysis, is therefore the intellectual lineage of competitive federalism thinking and its axiomatic acceptance within think tanks. To understand this, we have to look at how Hayek's ideas were received in the US and how they were transformed within their adoption. As already mentioned, it was Friedman among others who interpreted Hayek in a way that elevated limiting the role of central government to the main principle and established this thinking at the University of Chicago[106]. He argued that while there might be need for government intervention due to market failure, in most cases this is a bad idea because politics in most cases leads to even worse results[107] (M. Friedman 1962, 164ff.). For example, in the case of natural monopolies he writes, "I reluctantly conclude that, if tolerable, private monopoly may be the least of the evils" (23). The implication for federal market authority is clear: "if government is to exercise power, better in the county than in the state, better in the state than in Washington" (3). Beyond central rules against explicit state discrimination, subunits should be sufficiently disciplined by interstate regulatory competition, not central mandates. For Friedman, there is a clear connection between free markets, i.e. "capitalism," and freedom more broadly (15ff.). It the former that creates and maintains the latter, government is an imposition on both (16f.). This is related to his view of markets as 'natural' order—competitive markets will evolve automatically when government intervention ceases (165).

This interpretation became dominant in much of American academia, mostly because neoliberal thought fused with the push to apply the parsimonious models of neoclassical economics to politics, law, and regulation (D. S. Jones 2012, 88). The "Chicago school of economic theory was perhaps the most influential group in terms of the development of neoliberal politics" in the 1950 and 1960s (D. S. Jones 2012, 90).

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[106] "At the heart of many of these developments in the postwar period was the figure of Milton Friedman, who, along with Hayek, became the most important neoliberal activist and theorist, as well as the leader of the Chicago school of economics" (D. S. Jones 2012, 88f.)

[107] Friedman was much more interested in government failure than market failure, often attributing bad developments, like the Great Depression, to government interventions distorting the market (M. Friedman 1962, 166f.; D. S. Jones 2012, 109). In his earlier, more Hayekian writings, he was much more open to the use of federal market authority (M. Friedman 1951).

While older scholars at Chicago, like Frank Knight, Jacob Viner, Lloyd Mints, and Henry Simons, had worked on pure economic theory within marginalism, the newer generation pursued an "aggressively pro-free-market research program," expanding free market analysis to everything from regulation to sex (D. S. Jones 2012, 91f.). George Stigler, also at Chicago, argued that regulatory agencies will eventually be captured by powerful industry interests (Stigler 1971). Positions like this undermined any faith one might have had in the federal government's ability to police subnational units. While William Riker, founder of the rational choice school in political science, lamented inefficient outcomes from sub-national competition, the dominant federalism perspective soon agreed on its beneficial effects (Riker 1964; P. E. Peterson 2012).

The Virginia School of Economics developed similar arguments by applying public choice theory to federalism. James Buchanan and Gordon Tullocks's "main political preoccupation was working out how to use constitutional mechanisms to limit [federal] state intervention, taxation, and spending" (D. S. Jones 2012, 130f.). The result of these 'fiscal federalism' models is that only jurisdictional competition can protect citizen from government exploitation and provide optimal bundles of public goods (Oates 2005; Tullock 1969): ''Total government intrusion into the economy should be smaller, ceteris paribus, the greater the extent to which taxes and expenditures are decentralized'' (Brennan and Buchanan 2006). The main mechanism behind this result are exit options—federalism gives citizens choices that discipline subnational government. Accordingly, welfare increases as mobile individuals choose among local offerings of public goods (Tiebout 1956). While these arguments where developed in respect to fiscal policy and local public goods, they were soon also applied to regulatory policy and standardization (Feld 2014).

Even in political science these theories were well received, maybe best known through Barry Weingast's model of "market-preserving federalism." He argues that markets do well if "Subnational authorities have primary authority over regulating the economy […]. As long as capital and labor are mobile, market-preserving federalism constrains the lower units in their attempts to place political limits on economic activity, because resources will move to other jurisdictions" (Weingast 1995, 5). This implies that markets appear naturally—little deliberate action in the center or in the states is

necessary—fitting with the broader image of the market as a naturalistic, default set of relationships.

Neoliberal thought, American style, could have remained a purely academic phenomenon, "Were it not for the growth of a network to spread its message. […] Think tanks acted as nodes that drew in developing neoliberal ideas from Hayek, Friedman, Buchanan" and wider academia, focusing on their specific policy implications (D. S. Jones 2012, 135). Looking at writings on competitive federalism among those conservatives, especially those coming from the conservative legal movement, and contrasting it with what economists and policy-makers, particularly in Europe, write contemporaneously, makes clear that it is much better understood as context-specific ideational product than social scientific truth. What had been lines of inquiry for academics, became the axioms reported above, with the mentioned problems and inconsistencies often ignored.

Conservative think tank scholars with prominent writings on regulation and federalism were to a large degree part of the libertarian strand of the law and economics movement (Teles 2008). In the 1970s, conservatives "Saw in law and economics a powerful critique of state intervention in the economy, and a device for gaining a foothold in the world of elite law schools" (Teles 2008, 2008; R. A. Posner 1973). Congruent with entrepreneurial politics in think tanks, the conservative movement also mobilized to transform the interpretation of the law, starting at the same place, the University of Chicago (Teles 2008, 91). Legal scholars like Richard Posner and Richard Epstein did not only apply the lessons from their economist colleagues, they also set out to capture law schools and judgeships with their thinking, mobilizing their networks

through conservative think tanks, the Federalist Society,[108] the Olin Foundation[109] and the Law and Economics Center[110].

However, soon there was a division within law and economics. Scholars at conservative law schools and thinks tanks kept a strong focus on their political priors, not wavering in their belief in the assumptions of a simple rational models of law and politics. Conservative "Proponents of law and economics [like Epstein, Easterbrook, or Posner] offer the market as a model for thinking about the law," and then conclude that these mathematical models are the only and accurate way to understand the workings of law and politics (Tushnet 1997, 47). "Chicago style law and economics, [is] not just more libertarian than what evolved at Harvard [and other schools, but is also] more of a 'lawyer's' version of the field, as opposed to the more economist-dominated Harvard variant" (Teles 2008, 205; R. A. Posner and Shavell 2006). Legal scholars, who remain indebted to Chicago style law and economics, found a permanent home in conservative think tanks and conservative law schools like George Mason University (Teles 2008, 207). Those scholars hold more closely the competitive federalism beliefs, often ignoring the nuances and contradictions accumulated by academic research, thereby making their neoliberal project one of decentralization and inattention to interstate barriers.

At the same time, with law and economics becoming mainstream, many legal scholars without conservative priors, became more nuanced, tracking the developments in economics more closely. Initially, mainstream scholars declared the libertarian law and economics project "dead on arrival," due to the "obvious problems" with "simple rational choice models" (M. Horwitz 1980, 905). In 1980, Morton Horwitz, professor of legal history at Harvard, summarized: "I have the strong feeling that the economic analysis of law has 'peaked out' as the latest fad in legal scholarship […]. Future legal historians will

[108] A conservative legal network founded in 1982 by law students 'disillusioned' with the liberal consensus, including Robert Bork, Edwin Meese, and Antonin Scalia—all scholars that would play important roles in the Reagan administration (Teles 2008, 141).

[109] Founded by John Olin in 1953, was central in the establishment of law and economics centers, the founding of the Federalist Society and Heritage, as well as the support of young legal scholars to embed conservative economic thinking in society (Miller 2005).

[110] Founded by Henry G. Manne 1974 to educate judges about law and economics (Teles 2008, 108).

need to exercise their imaginations to figure out why so many people could have taken most of this stuff so seriously" (905). He was wrong. Economic thinking about the law became mainstream but "it came to resemble disciplinary economics in its overall ideological coloration," "a far cry from law and economics' former-free market enthusiasm[111]" (Teles 2008, 182). Now, non-conservative legal scholars, like Daniel Esty at Yale or Steven Shavell at Harvard, use more complex models that lead to less certain conclusions, precluding grand claims like 'local competition works.' Another scholar of legal history at Harvard, Mark Tushnet concludes, "The better legal economists got as economists, the less clear the conservative spin of law and economics became" (Tushnet 2009, 447).

In the following few paragraphs, I will illustrate this division in the scholarship between those that became more nuanced those who stayed very conservative. The point of the presented critiques is not to show that public choice or capture theory is objectively wrong—it is to suggest that conservative inattention to interstate barriers does not arise from a social scientific consensus, but rather is better understood as an ideational phenomenon that ties together several theories that happened to stimulate their imagination.

In two book lengths reviews of the regulatory competition literature, Esty and Geradin as well as Geradin and McCahery write about competitive federalism as described by Frank Easterbrook[112], Michael Greve[113], and Richard Posner[114]:

> The theory originated in public economics with the publication of the Tiebout model in 1956, which, in turn, influenced its own field profoundly. Theoretical arbitrage to legal contexts occurred early in the history of law and economics. But, in contrast to regulatory competition's development in its

[111] To some degree, Teles writes, it is unclear to which degree libertarians "transformed law schools" or "elite law schools transformed law and economics" (Teles 2008, 182).

[112] Professor of Law at Chicago University. Appointed to US Court of Appeals for the seventh circuit by Reagan (for instance F. Easterbrook 1983).

[113] Professor of Law at George Mason University. Former John G. Searle Scholar and now Adjunct Scholar at AEI. Former Director of the AEI Federalism Project and Federalism Papers. Former Chairman of the Competitive Enterprise Institute (for instance Epstein and Greve 2007).

[114] Lecturer in Law at Chicago University. Appointed to US Court of Appeals for the seventh circuit by Reagan. Frequent contributor to AEI working paper series (for instance R. A. Posner 1973).

> home field, where it remained closely tied to the study of the production of public goods by state and local governments, lawyers in the United States have applied it across an expansive subject matter, from corporate law and banking to environmental law and trade law. (Geradin and McCahery 2004, 2; Esty and Geradin 2001)

It is no surprise that many of the AEI, CATO, and Heritage scholars, working on issues related to interstate barriers or at least federalism, are legal professionals associated with one of the conservative law schools. They not only unequivocally embrace the theory of competitive federalism, they also apply it to many areas that were not covered by the initial theoretical assumptions laid out in the Tiebout model (Esty and Geradin 2001, 2; Tiebout 1956). Tiebout applied his model to a limited set of public goods, i.e. things local governments 'produce' such as police and fire protection, primary education, roads, and sewers (Tiebout 1956). However, conservative legal scholars have expanded this reasoning to regulation in general[115]. For example, widely cited[116] among AEI scholars is Frank Easterbrook, *Antitrust and the Economics of Federalism* (F. Easterbrook 1983; Personal Interview, Greve 2017). The article argues that public finances and consumer 'regulatory products' like labor laws, health and safety standards, or contract law can be treated like local public goods (F. Easterbrook 1983). Competition will force product innovation and experimentation leading over time to efficient regulation that is welfare enhancing. Decentralization leads to an efficiency-enhancing race to the top.

In analogy to the private market, the scholars see federal market authority, or jurisdictional cooperation, as "Regulatory equivalent of price-fixing, retarding the competitive evolution of efficient law"[117] (Geradin and McCahery 2004, 7; F. Easterbrook 1983; Greve 2000b). Combined with the belief that regulation, especially at the central level, will lead to capture by interest groups, "There emerges a presumption in

[115] For more examples of legal scholars explicating the economic argument for federalism, considering reasons for federal market authority, but in the end not taking the latter seriously, see (Calabresi 1995; LeBoeuf 1994; Epstein 1992). Other scholars have observed this phenomenon too: "It is not uncommon for scholars to mention its serious difficulties and then proceed immediately to apply the model" (Bratton and McCahery 1997, 221).

[116] See Google Scholar Citation Index.

[117] This seems to imply that international trade agreements are unnecessary.

favor of locating regulatory authority at lower level units," even in cases where uniformity might be preferable, like with the existence of strong external effects (Geradin and McCahery 2004, 3; for instance Revesz 1995). While they seem to suggest that all these conclusions follow from Tiebout's model, this not quite true. It is much more the conclusion they arrive at by combining the idea of regulatory competition with a general antipathy to government, justified by public choice literature on regulatory capture (Stigler 1971). Given that they see government simply as a revenue maximizer, subject to all the kinds of irrationalities of choice pointed out by Kenneth Arrow, and ineffective electoral constraints, federal authority is to be avoided (Brennan and Buchanan 2006, 15ff.). Since federal laws will be subject to private rent seeking activity, but subnational laws will be subject to competition, increasing the regulatory authority of states will increase the efficiency of the equilibrium (Romano 1993, 48).

In reality, as many legal and economics scholars point out, the empirical evidence of the workings of jurisdictional competitions is mixed, and economic theory generally recognizes that often the necessary assumptions are simply not given[118]. It seem, conservative law and economics scholars have mostly ignored these problems due to their normative agenda (Bratton and McCahery 1997, 209). Business law experts William Bratton and Joseph McCahery argue that these arguments as stated by conservatives, "Materially mischaracterizes the theory actually articulated in economic literature. The restatement relies on an early generation of economic models, the robustness of which long has been questioned by advanced opinion in the field of public economics" (Bratton and McCahery 1997, 204).

This means much regulatory policy might not be suited for understanding via this theory, and competitive dynamics might lead to inefficient outcomes. Comparative federalism scholar Sbragia for example notes that "there is still no consensus regarding" whether "competitive federalism is 'market-preserving' (Sbragia 2008, 247). For instance, the axiomatic acceptance of this model ignores a vast literature on competitive

[118] "We argue that economic theory, in fact, supports neither the sequence of assertions [efficient results] nor the bottom-line presumption [mobility] in the theory outlined above. In doing so, we do not deny the existence of regulatory competition, however" (Esty and Geradin 2001, 3).

races to the bottom, albeit with mixed evidence[119] (D. Drezner 2006; D. Vogel 1995; Woods 2006; Carruthers and Lamoreaux 2016). More importantly, it ignores the complications of real life, where markets are imperfect and information asymmetric, where there are external effects and economies of scale, and where people refuse to 'vote with their feet.

For example, there often is no adequate information about the regulatory product. Given the 20,000 different building codes across US jurisdictions, it seems unlikely that citizens or even politicians are able to gauge the utility-maximizing level of regulation. Even if they wanted to, there is simply not enough information about the effects. Similarly, how can we expect regular citizens to judge the optimal level of occupational licensing? Even if they had the information necessary, the potential 'exit' option would be complicated by the fact of a myriad of preferences over other regulatory issues—a point that is side-stepped through assumptions in economic models.

Even the example that most of my interviewees cited as proof, corporate chartering, is highly controversial among economists, with some arguing that "The body of empirical research […] does not warrant that claim [of efficient results]" (Bebchuk, Cohen, and Ferrell 2002, 1777). Externalities, or non-internalized social benefits are also wider than just the standard pollution examples: just remember strategic behavior from trade theory—states might benefit their own jurisdiction by for example not enforcing anti-trust statutes or using public purchasing preferences.

The assumption of mobility is also problematic:

> The theory remits the losers to self-protection through relocation to a more satisfactory jurisdiction. But that suggestion may not solve the resulting problem of preference aggregation, given bundled regulatory products, information asymmetries, associational ties, cultural preferences, and the out-of-pocket costs of a move. Furthermore, if interest groups favoring pollution effectively organize themselves so as to capture regulators throughout the class of horizontally-situated jurisdictional alternatives, the list of clean air alternatives will dwindle. (Esty and Geradin 2001, 15)

[119] Carruthers and Lamoreaux's review shows that empirically neither races-to-the-top or bottom are very common (Carruthers and Lamoreaux 2016). Instead, the most common result is heterogeneity. Other authors do find evidence for inefficient outcomes from races-to-the-bottom for example in environmental and labor regulation (Woods 2006; D. Vogel 1995).

Presumably, economies of scales are also important. As in products, there might be natural legal monopolies, especially when standards require lots of technical knowledge and analysis. In this kind of situation, standards will be duplicated and poorer jurisdictions will produce suboptimal regulations due to budget constraints (Geradin and McCahery 2004, 14). Even minor technical differences among jurisdictions, for example in elevators, have huge financial implications for big companies because non-compliance is potentially costly (Hoffmann 2011).

For these reasons, and more, Tiebout modeling rarely leads to any stable equilibriums that are predictive in the real world (Bratton and McCahery 1997, 222). Early economic modeling suggested that, with a few exceptions, there is either no equilibrium outcome for the provision of local public goods, it may not be efficient, or not stable (Bewley 1981; Conley and Konishi 2002). Overall, empirically, there can be no general statement over whether competition produces efficient regulatory policy or whether cooperation and centralization undermine efficient results (Esty and Geradin 2001, 4). Or put differently, academic analysis "proceeds on a level of complexity that precludes global efficiency pronouncements about the location of regulatory advantage within the federal system" (Bratton and McCahery 1997, 205). If conservative scholars had taken these economics findings seriously, they might have concluded that due to "the instability attending Tiebout competition," a central government would need to perform many "stabilizing functions"—given the amount of imperfections, the list might be a "Pandora's Box" (Bratton and McCahery 1997, 230). For instance, in newer restatements of Tiebout-style models in tax competition, economists find strong benefits of coordination or federal market authority (Inman and Rubinfeld 1996, 313; J. Edwards and Keen 1996; OECD 1998).

Similar problems can be pointed out with the concept of regulatory capture, so widely accepted among conservatives.[120] We have already seen that "President Reagan's regulatory team latched onto public choice and capture theories" to defend their deregulatory agenda (Bagley and Revesz 2006, 1285). Christopher DeMuth, former President of AEI, and Douglas Ginsburg, appointed to the US Court of Appeal for the DC

[120] Three recent examples from think tank scholarship (DeLong 2011; Bessen 2016; Greszler 2017)

circuit by Reagan, are credited with popularizing the concept among conservative legal scholars, arguing that agencies "invariably" overregulate to benefit the best organized group (DeMuth and Ginsburg 1986, 1081). According to their public choice theory, the "logic and basic forces of regulation" are so flawed that the only option is to rely on markets instead of government—even if those market outcomes are imperfect (M. F. Cohen and Stigler 1971, 181). "This account holds sway over much [legal] scholarly discourse about public law institutions, and regulatory bodies in particular," writes Stephen Croley, Political Scientist and professor of law at the University of Michigan (Croley 2009, 26).

The 'villain' in these stories is always pro-regulatory interests like the Sierra Club or consumer advocacy groups[121]; however given 'the logic of collective action' invoked, it would seem equally (or more) likely that regulatory agencies would be captured by concentrated industries that benefit from less regulation (M. Olson and Olson 1965). As corollary, advocates offer that firms are lobbying for said regulation because it actually gives them undue competitive advantages (Cutler and Johnson 1975). There is many reasons to doubt this as a general rule—industries might have heterogeneous interests for one, but more importantly, actual case studies of regulatory rule-making usually show a multitude of factors influencing outcomes, much more complicated than simple 'rent-seeking' (Daniel Carpenter 2010, 40ff.; Mesquita and Stephenson 2007; Wood 1994; Wilson 1980; Derthick and Quirk 1985; D. Vogel 1995). Studies of interest groups suggest that they often pursue (even if disingenuously) broad public goals that benefit more than their membership, or different interest groups from the same industry pursue different policies—both contradicting the predictions of public choice theory (Croley 2009, 39).

Similar questions can be asked of the claim, that if not captured, regulation is designed to enrich the regulator (Daniel Carpenter 2010, 44f.; Levinson 2005; Wilson 1991). For instance, Croley's in-depth study of regulatory processes at the FDA, EPA,

[121] These groups should technically not mobilize at all, since they ask for public not member-specific benefits. In fact, regulatory decisions driven by public sentiment, be it reducing tobacco consumption, spam calls, or air pollution, cannot convincingly be said to create regulatory rents for special interests (Croley 2009, 242).

and US Forest Service concludes outcomes are much more shaped by the institutional structuring of the administrative process and the fact that regulators pursue "general-interest regulatory principles" (Croley 2009, 101). According to him "the cynical view of regulation" by conservatives, can only be upheld because they that "show far too little attention to the actual processes through which administrative agencies regulate" (Croley 2009, 4).

From an international perspective, the conservative consensus against federal market authority is even more curious and can only be understood as the ideational process described in this dissertation. Looking at the EU or the WTO, suggests that, at least in some areas, the world has moved on to seeing the benefits of regulatory harmonization or at least debating the benefits of federal market authority (WTO 2017; Barton 2006). Harmonization has generally been considered an important goal of global trade policy by scholars (Simmons 2001; D. W. Drezner 2005; De Ville and Siles-Brügge 2015). The European Union considers it as one of its main purposes and its benefits are one of the main argument used by economists to argue for regulatory cooperation between the US and the EU in TTIP (Parker and Alemanno 2014; European Commission 2013). The WTO considers many instances of regulatory heterogeneity to be non-tariff barriers: "The push for harmonization in trade originated in the early days of the General Agreement on Tariffs and Trade and its inquiry into non-tariff barriers. The result was the Technical Barriers to Trade Agreement in 1995, which asked countries to harmonize their standards with those that were internationally agreed upon, where available" (Faubert and Wood 2016). Economists studying the European Union or World Trade find many advantages of using some kind of federal market authority, or at least inter-governmental cooperation to achieve similar standards: "Regulatory divergence distorts the market, raising production costs, encouraging price discrimination across markets, and limiting the available import varieties" (Freund and Oliver 2015, 1; D. W. Drezner 2005; D. Roberts 1999; Sawyer, Kerr, and Hobbs 2008; Bloomfield et al. 2015).

There is a long line of scholarship criticizing the unquestioned assumptions of conservative law and economics scholars, but given the positions of think tank scholars revealed here, one might think those did not exist (Dibadj 2006, 2004; Leff 1974; Oppenheimer and Mercuro 2015; Rizzo 1980; Mattei 1998; M. Horwitz 1980). These are

not only leftist, or critical legal studies writers, but also mainstream economists. Tushnet explains, "Even when law and economics took hold, economics itself was using more complicated models (and mathematics) than the legal economists favored by conservative foundations were" (Tushnet 2009, 451). Comparative law expert Ugo Mattei writes that conservative legal scholars borrowed "broad theoretical categories" from economists and imported "simplified legal notions that economists have not re-discussed since Adam Smith […] into legal scholarship" resulting in rather "simplistic and unrealistic" models (Mattei 1998, 57). More broadly, law and economics uses rational choice theory to explain 'good' legal arrangements—the conservative scholars discussed here have not taken seriously common problems of rationality assumptions and findings of behavioral economics. Jacob Jacoby, expert in consumer behavior at NYU writes in a review of law and economics scholarship:

> Virtually without exception, those familiar with the extensive scholarly empirical literature on (individual) consumer behavior would conclude that, as proposed by those contemporary economists and legal theoreticians who espouse it [referring to Posner 1973], Rational Choice Theory is a simplistic theory having little correspondence with the real world of (individual) consumer behavior. [By relying on untestable or already-contradicted models, law and economics scholars] are like drunks who look for their car keys under the street lamp because the light is better. (Jacoby 2000, 1ff.)

The preceding illustrations do not proof that conservative scholars are wrong—I am not expert enough to pronounce the final word on regulatory theory—but they do show that their claims are on much less secure footing than they make it appear. This suggests, that their opposition to federal market authority reflects an ideational development, a mental filtering of existing evidence, *not* a scholarly consensus[122]. Competitive federalism is best understood as an amalgamation of neo-liberal thinking and general attitudes mistrusting federal government. This conceptualization became historically salient and can probably only be understood within the broader rise of the New Right. What is important for us here, is that whatever its origins, this new thinking

[122] This is of course congruent with Stahl's earlier cited argument that think tanks value unified, coherent messaging over debate and evidence (Stahl 2016).

offers a set of arguments that lead these thinkers to avoid considering the potentials of using central authority for neoliberal goals.

Pointing out the inconsistencies in evidence, does not suggest that this process is necessarily conscious. As will be demonstrated in turn, my interview partners seemed to wholeheartedly believe that jurisdictional competition will lead to optimal policy and that the EU's approach to harmonization is misguided. The next section will provide more contemporary interview evidence for this prevalent view among think tank scholars. It shows, as implied by interviewees themselves, that their opposition to central authority is much more driven by their mixing of antipathy to government with neoliberalism than by economic evidence. If the latter were true, we would see the EU or the WTO pursue broadly similar policies to the US. Overall, these ideas preclude them from a comprehensive assessment of the state of the US single market—instead it shifts their attention in piecemeal fashions to 'egregious instances of overregulation.'

IV.b. Conservative Think Tanks Today—Disregarding Federal Market Authority

Positions at conservative think tanks today are outgrowths of this intellectual history. Focusing on their current agenda provides another piece in the puzzle of understanding the non-mobilization around federal market authority. As mentioned earlier, AEI, CATO, and Heritage were selected for their importance in the conservative movement, and because they span the spectrum from (self-described) strictly libertarian to more traditionally conservative (Rich 2004, 84; Stahl 2016; D. S. Jones 2012, 162). My research strategy was to identify federalism and regulation-experts at all three institutions and recruit them to be interviewed. Around 30 people were contacted. In the end, I was able to conduct seven phone interviews in November 2017. I already introduced Michael Greve, whose views are important due to his central role in the law and economics literature and the editing of the AEI federalism papers.[123] I was able to speak with two people directly at AEI. Stan Veuger, a resident scholar at the think tank, works on public finance and political economy. His views were specifically insightful due to his background of being from and studying economics in Europe. This allowed

[123] See Note 113.

him to compare transatlantic market thinking for me. Stephen P. Miller, also resident scholar at AEI, holds a law degree, and studies health care as well as regulatory competition. At Heritage, I was only able to speak to one scholar: Alden Abbott is the Deputy Director of Heritage's Edwin Meese III Center for Legal and Judicial Studies, holds degrees in law and economics, lectures at George Mason University, and publishes specifically on anti-trust and regulation. To understand the work at CATO, I spoke to Ilya Somin. He is professor of law at George Mason University. While he is only an 'adjunct fellow' at CATO, he ensured me that he would be able to describe 'the scene' at the institute. He was specifically important to speak to due to his book, *Democracy and Political Ignorance: Why Smaller Government Is Smarter*, in which he connects arguments about decentralization with arguments about regulatory capture (Somin 2013). I was also able to speak with Randal O'Toole, a senior fellow at CATO, who works on environmental and transportation issues, with a specific focus on the failures of government regulation. In addition, I conducted an email interview with Peter VanDoren, Senior Fellow and editor of CATO's *Regulation* Journal. Since I was not able to procure more interviews, I complemented my analysis with data from the think tank's online archives, often reaching back to the 1970s and 1980s.[124]

The line of questioning pursued here was designed to highlight whether a comprehensive market-building agenda was ever developed at the think tanks. Since this was not the case, I focused in on specific interstate barriers and their solutions. While people at all these institutions have written on some of these issues, like occupational licensing, they do not frame them in terms of interstate barriers, but rather as 'overregulation.' They do not enable or justify mobilization around market authority. Broadly, the reasons given fall into the two axioms and corollaries reported earlier— (1) belief in persistent government failure and (2) jurisdictional competition. Through detailed interviews regarding these processes, I was able to piece together how they imagine the relationship between markets and authority, i.e. as competitive federalism. Asking about the historical context, yielded self-reflection that among other things

[124] When important for context, authors of referenced documents are introduced in passing.

pointed at the law and economics connection, as well as the background of opposition to the New Deal and civil rights.

IV.b.1. The Flawed Nature of Government and the Promise of Inter-Jurisdictional Competition

The reasons why conservatives, I interviewed, barely considered interstate barriers and consistently opposed federal market authority is not because they did not understand the argument for it. In my interviews they considered counter-arguments carefully. However, they still did not comprehensively review interstate barriers instead focusing solely on the reduction of regulation—not the creation of competitive markets. This can clearly be linked to the fusion of neoliberal thinking (the primacy of markets) with distrust of government. The latter belief stems from the idea that all politics serves special interests—founded on theories imported from the conservative legal movement (R. A. Posner 1973). The belief system has four important parts that I consider here:

The first is the problem of capture, which is thought to be worse at the federal level of government. While federal legislation may overcome local parochialism, conservative scholars hold that federal level politics is even worse, because it would be cartel nobody can escape: "[Federal politics] is often an attempt by certain states [or businesses] to lock themselves into a federally sponsored cartel" (Personal Interview, Greve 2017; Personal Interview, Abbott 2017). The only way to "uncapture the economy is to limit government" (Somin 2018). In addition, "Interest groups and coalitions are naturally drawn to central government where the net returns on investments in lobbying are highest" (Greve 2003). This view of politics, is pretty clearly adopted from the old public choice models described earlier:

> Left unconstrained, normal politics is a coalition of producers against consumers. Producers ask the state for market privileges in a game that I think of as a prisoners' dilemma game. […] You are correct that the collective action required to resist the defection has public good characteristics and therefore libertarians face a dilemma because one of the "solutions" to the equilibrium they oppose is to have strong central institutions that prohibit what they oppose. (Personal Interview, VanDoren 2017)

The second part is the belief in the power of markets to tame the 'bad' tendencies of politics, specifically through jurisdictional competition, or as they describe it, competitive federalism. Somin explained that he prefers 'foot voting' over 'ballot box voting' for all those public choice reasons; in particular he emphasizes that that the general public is too uninformed for democratic government (Personal Interview, Somin 2017; Somin 2013). Jurisdictional competition is the only means that can protect the rationally uniformed public from special-interest politics. 'Foot voting,' i.e. "choosing the state or locality in which to live" based on "information about superior economic conditions, public policies, or other advantages in another jurisdiction" can only be achieved by maximizing subsidiarity" to create "competition between jurisdictions and thereby increases the likelihood that government will be more representative of the interests and ideas of its members" (Somin 2013, 121f.). Somin acknowledge that "Some people understandably fear that restricting federal power might open the door to oppressive state and local policies," however, he argues, "Those functions [federal market authority] do not require anything approaching the sweeping authority currently wielded by Washington. […] Competition and experimentation by states and localities would offer more opportunities for people to better their lot by voting with their feet" (Somin 2017).

The *AEI Federalism Project Papers* describe it detail why the optimal allocation of government powers favors the states: "Real, competitive federalism is not about "states' rights" or bureaucratic "devolution" to a lower level of government where other interest groups hold sway. Real federalism does not seek to empower states; rather, it seeks to discipline governments by forcing them to compete for citizens' business." (Greve 2000a). Or put differently: "Although federalism's virtues are often described as those of decentralization, laboratories of democracy, and closeness of public officials to citizens, the greatest advantage lies in the potential for competitive supply of government policy" (DeMuth 1994). The *AEI Federalism Project* also creates the closest link to the conservative legal movement. Lots of scholars related to Chicago or George Mason University have visited at AEI in various positions, and AEI has financed or published their book projects (Greve 2000a; F. Easterbrook 1983; Ribstein and O'Hara 2009; R. A. Posner 1973; Teles 2008; Epstein and Greve 2007; Romano 1993).

Together those arguments suggest that scholars imagine markets as natural, existing where government does not. Government has to just get out of the way. Somin for instance, suggests that even property rights exist naturally, and are unrelated to government (Somin 2010).

The third part, important for understanding this belief system, is the confidence with which it is presented, despite the empirical problems discussed earlier. Conservatives present their theory of jurisdictional competition as unequivocally supported:

> Social scientists have explicated the many advantages of federalist competition. Theorists in the tradition of Friedrich A. Hayek emphasize that competition fosters the disclosure of information (we find out what works) and institutional learning, as states will adopt successful experiments. Other economists stress the so-called 'Tiebout effect.' Given a choice, citizens will sort themselves into a jurisdiction that supplies the best mix of public goods and services at the best price. Because individual preferences vary greatly, a choice among many differing regimes gives more people more of what they want (relative to a central regime that must accommodate a much wider range of preferences). Public choice theorists have proffered a third, especially potent rationale—discipline in government. The business of politics, they argue, is the transfer of wealth from unorganized groups with small stakes (taxpayers) to concentrated interests with much higher stakes. Federalism provides a defense and remedy for this ill by giving the losers an opportunity to vote with their feet. (Greve 2005b)

Many more instances of this can be found. VanDoren explained that it is 'generally accepted, that "Left unconstrained normal politics is a coalition of producers against consumers" (Personal Interview, VanDoren 2017). O'Toole responded to evidence of jurisdictional competition not working with the statement, "Over time states will adapt" (Personal Interview, O'Toole 2017). DeMuth showcases how competition 'has proven' to work in all areas of society (DeMuth 2004). This plays out in many policy issues—take health care for instance—while widely acknowledged that subject to all kinds of market failures, economists at all three think tanks are confident that "Competition works—even in health care" (Perry 2007; G.-M. Turner 2007; Cannon 2009).

The fourth important part to understand is that, while this axiomatic version of competition theory still sometimes implies support for federal market authority,

practically conservatives are unwilling to support federal action. Interviewees proved to think in quite nuanced ways about the issues, Miller explained, "The nature of the market, demand and supply, and the nature of the product, for example, will tell you where it should be regulated"—however for every example of interstate barriers I made, he tended to side with state competition, even when it was leading to obvious protectionist results (T. Personal Interview, Miller 2017). To get to this point, scholars either invoked the first belief, the flawed nature of government to not embrace federal market authority or pointed at the movement politics within the bigger conservative movement, to explain why other scholars did not take the argument for some federal power seriously.

Veuger was to some degree as puzzled about this as I am, explaining that in his perception, the people that understood the importance of harmonization for markets were either from Europe (like he is) or studied international trade:

> This is a big trade-off in all of trade policy. On the one hand you want to maintain local political power over a certain set of regulations and on the other hand, those regulations automatically become non-tariff barriers […]. I don't think anyone on the right has come up with a good answer to when should federalism triumph and when should harmonized trade rules triumph. I think interestingly, a lot of libertarians have much stronger beliefs on this when it comes to international trade, than when it comes to US trade. And they are more comfortable with product market deregulation set by treaties than by Congressional action. I don't know why that is. (Personal Interview Veuger 2017)

Greve took the position that using federal market authority was problematic, even when theoretically necessary:

> There might be areas in which complete federal preemption is more useful. If Congress could restore itself, it would be useful to extend the preemption that we now have for generic manufacturers to patent manufacturers, you know, that's a very useful thing to do. So, it's not that Congress can't do anything, but it would have to do it by sort of ordering rules with respect to, you know what, what is a federal monopoly effectively and then you know block states from regulating on top. And there are lots of areas where it could do that. […] Competitive federalism does not always lead to the lowering of market barriers. […] I could draw up a list of stuff that would be useful [on the optimal allocation of powers between state and federal government]. But would I then want to cram that through Congress? The answer is absolutely

> not. Because, I mean, what might come out of that is, you know, would be worse than what you have now. (Personal Interview, Greve 2017)

This argument was similarly made by scholars at CATO:

> [Do conservatives support federal preemption in some instances?] It varies to some extent, because the political right does recognize on the one hand that sometimes these state standards can be a problem, but on the other hand they are very concerned about giving the federal government more power in these areas. And if a state enacts a bad standard, then it is just that for a particular state. But if the federal government enacts a bad standard, that harms everybody throughout the whole country. (Personal Interview, Somin 2017)

Here we see the working-together of beliefs in inter-jurisdictional competition with capture and related theories. VanDoren confirmed this:

> There are two basic strategies to manage subnational protectionism. The first is to create federal institutions that can overrule sub national democratic decisions i.e. either the courts or insulated bureaucracies. The second, and economists' answer to almost all policy questions as Albert O. Hirschman [1970] so famously said, is to allow free movement of labor and capital to allow "exit" to discipline the mischief. You are correct that we seem to use "exit" rather than national intervention as a policy strategy. We don't use federal institutions in part because of the cultural DNA I mentioned earlier. (Personal Interview, VanDoren 2017)

This aforementioned "cultural DNA" is the assumption that "strong central institutions (i.e. monopolies) make errors that are difficult to remedy" and more broadly, a skepticism toward the possibility of good government (Personal Interview, VanDoren 2017). "The worry is that the national rules will be stricter than the least strict rule in a state" following the idea that only less regulation leads to good outcomes (Personal Interview Veuger 2017). As O'Toole puts it, "That is why conservatives in Congress want to deregulate, they know that they cannot make good rules for the country. It is much better to let states compete" (Personal Interview, O'Toole 2017). This also implies opposing typical ordoliberal strategies of trying to insulate against protectionist pressures: "Libertarians at CATO always want all regulation at the lowest level possible. We don't trust them, so insulating them like the European Commission or Courts is not that good of an idea" (Personal Interview, O'Toole 2017). So, while reasons for federal market authority are acknowledged, skepticism of government usually leads conservatives to prefer the local solution, even if it is suboptimal.

However, it is not only the strong belief of scholars like Greve and Co, in public choice theories, that leads to those results. Conservative policy makers have additional reasons to be skeptical of arguments for federal market authority. According to Veuger, "Once you generate a national instrument, it will get used too much, is what Republicans learned from the New Deal" (Personal Interview Veuger 2017). Similarly, Miller related the fact to the broader historical context:

> If you look at what drives these things on a larger scale, it has to do with the states being resistors on other types of issues, like civil rights, that tended to color [conservatives'] attitudes of whether it was a good thing for states to have a bigger hand in policy or whether we need it to be Washington centered. And because of a lot of the narrative our 20th century political history is caught up not only in economic issues but also the issues of North vs. South, and civil rights, all of that tended to color how people align and affiliate themselves politically, depending on which issues they see as most salient, they see the issue of state vs. federal. And so, you are somewhat fighting against that longer standing narrative in history in terms of saying 'it is a good thing for states to do different things' as opposed to 'we need to clean that up on the federal level.' And some of our politics reflects that from time to time. (T. Personal Interview, Miller 2017)

In addition, arguments for federal market authority seem to get lost easily:

> The translation of think tank work into real politics is often imperfect — what is a complex theory of federalism, may become state's rights advocacy in Congress. I mean, yes, for the simple reason that this kind of stuff we are now talking about this is just hard to explain. Especially because the immediate sort of conservative impulse is to say, well, what about states' rights. And what about local autonomy and, you know, all the rest of it. And then you have to explain why that is a dumb argument, and by the time you have to explain something you have already lost. (Personal Interview, Greve 2017; also: T. Personal Interview, Miller 2017; Personal Interview, Abbott 2017).

Miller elaborated that the jurisdictional competition model, is an "academic idea" that is used politically in "simplified, bastardized forms" (T. Personal Interview, Miller 2017). This can also be interpreted more strategically: "Ultimately, the federalism argument is used mostly as a rhetorical device to justify outcomes that are generated by local control over the ones that would be generated by nation-wide control. People just don't pay as much attention to local product and service market regulation or occupational licensing" (Personal Interview Veuger 2017).

Abbott conveyed the sense that there were lots of ideas floating around about reducing interstate barriers, but they were held back by more traditional conservative institutions (Personal Interview, Abbott 2017). While AEI has published the theoretical arguments by legal scholars for federalism, it seems Heritage represents more the traditional conservative, 'emotional' argument for local control. This makes sense since Heritage sees itself as a 'big tent' think tank that bridges the gap between libertarian and traditional conservative scholars (J. A. Smith 1991, 279). According to the latter strand of conservatism, decentralization is always better, because "Politics [is] a zero-sum battle for liberty between the federal government and the rest of the country (individuals, the states, etc.). Most [Republican] Members of Congress identify as conservative and generally talk and think in terms of less government, and more freedom" (Azerrad 2017).[125] Heritage seems to at times support the view of Yuval Levin, an editor of the National Review and conservative intellectual, arguing that, local communities, not government institutions, should regulate society: "A decentralized, 'modernized politics of subsidiarity' that would push decision-making 'as close to the level of the interpersonal community as reasonably possible' thereby empowering civil society's mediating institutions to address local problems (Levin in Azerrad 2016). Similarly, some social conservatives argue that "character and virtue" is "lodged more specifically in the state and local governments" (W. Campbell 1988) or that in conservative vision "The decisions most directly affecting the lives of citizens are made locally and voluntarily" (Kirk 1987).

Greve is confident that conservative will stop making arguments for states' rights for traditional reasons and replace them with jurisdictional competition arguments:

> The view of states' rights as an end in itself "is breaking up. I mean that used to be the conventional view of the matter. But there are people who have begun to rethink this. It is my sense is that over the past, let's say 15 years, this states' rights stuff has really been in decline, and people have begun to rethink this sort of at more basic and fundamental level. I mean, it's true at an academic level. There is lots of people that swirl around Scalia law school and Chicago law school that have written about this. Frank Easterbrook's piece [1983] is now several decades old. (Personal Interview, Greve 2017)

[125] David Azzerrad is the Director of Heritage's Kenneth Simon Center for Principles and Politics.

But as we have seen, it is unclear whether that would change much. While the capture theory easily implies that local government will tend toward state protectionism and fragmentation, that part is mostly ignored. In practice then, this fourth factor lead to a situation where every theoretical argument for federal market authority is immediately relativized: “Even in instances in which a uniform solution seems sensible, it is often best to allow that solution to emerge gradually, under conditions of competition” (Greve 2000a). This can be explained by the historically created (what interviewees say about post-New Deal politics), but is contemporarily justified by the axiomatic reading of public choice theory), the attitude that government is always problematic: “The numerous efforts to ‘harmonize’ the domestic policies of nation states—in taxation, labor standards, environmental standards, and price regulation—are for the most part efforts to form policy cartels in response to the increasing mobility of commerce and finance; they should be resisted” (DeMuth 1994).

The incentive for think tanks is to sell an unambiguous ideational product, not to achieving balanced research (Stahl 2016). That is why other findings, like for instance the benefits of cooperative federalism, are categorically rejected: “The difficult task of revitalizing a real, competitive federalism—even in the face of the political attractions of its evil cooperative namesake—will occupy the AEI Federalism Project and future Outlooks” (Greve 2001). Similarly, it explains that conservatives imply that competition can lead to both, policy diversity and uniformity: “Tax competition is a good thing because it keeps the rates low. But that is carried over to lots of product market and labor market regulations. There is no reason to think that there is some steady-state equilibrium where everybody will have the same regulations, even though it is regularly implied” (Personal Interview Veuger 2017). Another example, pointed out by Somin, is property rights. Conservatives have long opposed the use of eminent domain for ‘public interests’ but have argued at the same time, that jurisdictional competition should prevent local government from exercising that power (Been 1991; Cole 2007; Fischel 1995; Serkin 2007). Interestingly, Somin argues that judicial activism is necessary here, because the competitive forces will not be strong enough, citing evidence — like limited factor mobility — that would theoretically apply to all arguments about jurisdictional competition, even though it is not (Somin 2015, 221ff.).

Conservative legal scholars have produced a vast amount of scholarship to prove that jurisdictional competition works, much of which has already been cited here, but to outside legal observers the acceptance of arguments appears "mostly axiomatic" (Lipsett 2008, 643). Greve's *Real Federalism* is emblematic for the genre (Greve 1999). One of the most popular examples is corporate law[126]: "The closest thing to policy nirvana in American law is corporation law" where state competition has led to "a race to the optimum" (DeMuth 1994). In a recent book, Larry Ribstein, professor of law at Chicago and George Mason University, as well as scholar at the AEI, argues that while 'feet voting' might not always work, this can be remedied by creating a law market in which all contracting parties can chose the state law they prefer (Ribstein and O'Hara 2009). This is based on the assumption that the normal political process leads to bad laws, even though it becomes clear that by bad laws they just mean 'overregulation'(Ribstein and O'Hara 2009, 26). While they admit that jurisdictional competition might sometimes be harmful they argue that "As a general policy matter, we believe that long-term consensus is better achieved through state judicial, constitutional, and legislative evolution than by federal constitutional determination" (Ribstein and O'Hara 2009, 171). Similar arguments are repeated over and over again by conservative scholars, especially in the law profession (F. Easterbrook 1983, 2013; Romano 1993; Greve 2000b; Epstein and Loyola 2014). The only cases, it seems, when conservatives actually support federal market authority is when is can be harnessed for deregulation, for instance, to reduce tort liability in the states, or to stop state Attorney Generals from suing under the Clean Air Act or suing the FCC to enforce anti-trust laws (Greve 2004).

In the following five sections, I will illustrate the practical effects of this thinking about markets: Interviewees consider the EU as a "system of massive and intrusive regulation," do not systematically analyze interstate barriers, support local government action despite protectionist results, describe harmonized standards unnecessary or impossible, and oppose (or articulate incoherent views on) judicial activism.

[126] For contradictory evidence, see Bebchuk et al. (2002).

IV.b.2. Making Contrasts to an Undesirable EU

First, I consider think tanks' positions regarding the EU. This demonstrates that they have a simplistic understanding of regulatory authority that does not consider federal rules important for national market competition to occur. Despite the wide-spread recognition of the neoliberal impetus of European institutions (for example: Parsons 2007), American conservatives like to decry it as some kind of mixture between socialist overregulation and a centralizer's dream. This is maybe best epitomized by the *National Review*'s editorial position on 'Brexit': "Britons should leave the European Union," in which they among other things write "the EU is a lawless organization as well as an undemocratic one" (NR Editors 2016). By lawless, they mean that there is absolutely no democratic accountability among European institutions, a statement that is more telling for its prejudice than its accuracy. They disregard all of the market promoting policies of the EU, calling it "A system of massive and intrusive regulation" (NR Editors 2016). Veuger suggested to me that conservatives' attitudes toward the EU are the best way of understanding the difference between European and American neoliberalism, a difference that can only be found in the axioms of competitive federalism:

> The best case study of this is actually how sympathetic most American Conservatives were to Brexit. Most of the economic arguments for Brexit are the opposite of what you were saying [harmonization creates markets], they were all about there is too much regulation coming from Europe, even though this was all service and product market regulation and harmonization. That is something you should like if you want to realize gains from trade. That is a perfect example of where people's sympathies lie. (Personal Interview Veuger 2017).

Dalibor Rohac, a research fellow at AEI, has been writing for a decade about centralized power in the EU as problematic for the free market—which clashes with the widely-held view among European scholars that those 'centralized regulations' are making the EU a 'neoliberal project' (Drahokoupil and Horn 2008, 22; for instance: Scharpf 1996). However, in 2016 he became one of the few American conservatives to change his mind: "Most worryingly, a preoccupation with sovereignty has led some conservatives to embrace agendas and political leaders [Brexit] directly inimical to free markets and limited government" (Rohac 2016). In the meantime, other thinkers at AEI

continue to miss how central power can contribute to economic freedom. Peter J. Wallison, Senior Fellow at AEI and former Counsel to Reagan writes:

> Britain will be the big winner of Brexit. […] when finally free of EU controls, Britain will also liberalize its trade policies. […] The success of Britain's policies in producing economic growth, new employment, and expanding trade will induce other EU members to break with Brussels and the euro to join the growing free trade area (Wallison 2016b).

Similarly, AEI adjunct scholar Flavio Felice dreams of "dismantling European bureaucracy" (Felice 2016).

In all this writing, the competitive federalism theory shines through in the sense that all central regulation is described as necessarily protectionist and undermining competition. The EU is recognized as a harmful cartel as is the federal government in the US: "One can view the actions of the EU government as being an attempt to form a cartel to harmonize policies across member states, and standing in the way of, rather than advancing, competition" as two other scholars at AEI put it (Hubbard and Hassett 2016). The only logical conclusion for another AEI staff member is, "The UK should bid adieu to the EU" (Bolton 2016). Matt Mayer makes the parallels between "the general failure of the federal government" in the US and the European Union more explicit: "Europe's member states sit in a very similar position as U.S. states did in the mid-1930s. The European Union, like the federal government after the New Deal, is just starting its ascent" (Mayer 2016). And according to Mayer, the federal government mostly just causes problems. Overall, I obtained 391 results searching for articles on Brexit in the AEI web archives (AEI 2017). Within those, only one scholar, Rohac, has consistently (in the last 2 years) taken pro-EU positions.

Document at Heritage repeat the same arguments. Abbott writes, "Brexit will free the UK economy from one-size-fits-all supervisory regulatory frameworks in such areas as the environment, broadband policy, labor, food and consumer products, among others" (Abbott 2017). The actual neoliberal impetus of those regulations is never acknowledged because the belief that central government is bad is so engrained. Nile Gardiner, Director of the Thatcher Center for Freedom at Heritage explains, "The EU has evolved into a decaying, overregulated, bureaucratic and fundamentally undemocratic entity. It is a monument to supra-nationalism and big government, increasingly trampling upon the

power of nation states" (Gardiner 2016). If evidence is needed that conservative scholars ignore empirical evidence to support their theory of capture and jurisdictional competition, it can be seen in how they treat the EU, without regard for reality. The President and Founder of the Heritage Foundation writes, that the EU has "become a bureaucratic monstrosity, unaccountable to national parliaments, imposing a heavy thumb on the regulatory scale of its 28 members" (Feulner 2016). I could not find a single Heritage scholar publicly arguing against Brexit, or as they themselves put it "Heritage experts advocated for Brexit from the very beginning" (Heritage Foundation 2017a).

Scholars at Cato also overwhelmingly supported Brexit, as a search of their archives reveals. Again, in synch with the American perspective on regulation, they do not see the need for centralized market maintenance: "The British people always wanted a common market in Europe, not a common government" (Hannan 2017). In this quote, Daniel Hannan, contributor at CATO, implies that free markets evolve in the absence of government. Ryan Bourne, in charge of 'Public Understanding of Economics at Cato' writes, "Libertarians in particular should have been concerned with the ever-growing concentrating power at a higher EU level, and its commitment to high levels of harmonized regulation under unresponsive government" (Bourne 2017). Central government is always seen as the problem not a potential solution, harmonization is not seen as necessary for single markets, "As I have explained, the EU is not only failing to address Europe's problems, it exacerbates them" (Tupy 2016).

Interestingly, American conservative thinkers attribute any free-market deviations to the existence of the European institutions, while European neoliberals usually think that the insulated EU institutions are an improvement over national-level government. While there was some debate among British neoliberals, many argued against 'Brexit.' For instance, a libertarian scholar at the London-based Adam Smith Institute writes:

> For decades the EU has acted as a check on that kind of state overreach [British domestic policy]: stopping the Scottish government from establishing a prohibitionist price floor on alcohol, forcing member states to open up state-dominated markets to private competition, and barring European states from subsidizing or otherwise protecting their native industries from foreign rivals. (Bowman 2017)

An author at another British free-market think tank, the Institute of Economic Affairs, suggests, “Hayek would have voted to remain” (Zuluaga 2016). In Germany, neoliberals similarly praise the EU for overcoming market-distortions caused by national governments. The Friedrich-Naumann Foundation, a German free-market think tank opined that the EU would bring Britain much closer to libertarian ideals than ‘Brexit’ (FNST Editors 2016). Similar sentiments were echoed at the French free-market think tank Generation Libre, and the Italian Instituto Bruno Leoni (Koenig 2016; Sileoni 2015).

IV.b.3. Refusing to Consider Interstate Barriers as a General Problem

Turning to US internal market barriers, a search of all three foundation’s web archives showed that they have never thought about them comprehensively. They do not post any assessments on the state of the internal market, or review interstate barriers across a range of subjects. They do not consider obstacles to internal trade a general problem. General policy positions and reports, for instance on federalism, are only focused on overregulation or federal overreach, not interstate barriers. When a specific barrier to mobility is mentioned, like licensing restrictions for instance, it is not embedded into a larger market building agenda; it is always in framed deregulatory terms. In addition, no statements generally advocating federal preemption or more state cooperation could be found.

This is confirmed by personal interviews: “There are specific people that work on all the issues. But the kind of broader EU style regulation and harmonization is just not something people think about or push much. I agree with you that this is counterproductive, but people are kind of caught up in their own rhetoric about federalism” (Personal Interview Veuger 2017). Veuger told me that while ‘bad’ harmonized standards can be better than heterogeneous standards, “typically it is the deregulatory impulse that drives policy” among conservatives (Personal Interview Veuger 2017). Similarly, in response to my examples of a wide range of interstate barriers and the question of what could be done about them, Greve explained:

> My sense is that nobody thinks about it at that level of abstraction. They might sound like they're doing it, but that's just to support whatever policy they want at the moment. There isn't in the entire government an agency that thinks through this and coordinates things, for all general levels. That is very

> different in the EU, where every single policy item they have on deck, starting in 1960s, was always built to give life to an ever-closer union. We just don't think like that because we were already an integrated country. And so, people think about this on a on the level of policy by policy, or at least policy sector about policy sector. (Personal Interview, Greve 2017)

Most generally, Abbott told me, Heritage does not have a comprehensive approach to interstate barriers "because we have to address federalism concerns" (Personal Interview, Abbott 2017). He added, "To some degree, they [conservatives] are undermining themselves with putting too much emphasis on state autonomy." Federal market authority is often opposed—"The idea of having uniform regulation" is more important in the EU, because of "the history of German ordo liberalism, that influenced European constitutional theory on that" (Personal Interview, Abbott 2017). The attitude at Heritage is mostly that regulation is "federal" and "bad" (B. Lindsey 1993). Heritage opposes harmonization: "That [harmonized standards] is problematic. As Heritage has previously observed, harmonization is likely to be driven in practice by international commissions and to harmonize up to higher levels of regulation" (Riley 2015). It is no surprise then that Heritage scholars saw TTIP very skeptically (Abbott 2014; Bromund 2015). In terms of their theory of markets and federalism, they seem to agree that most federal regulation is harmful, even in cases where state competition might have negative consequences[127] (Gaziano 2011; W. Beach 1998; Engdahl 2011; Thierer 1999).

VanDoren explained to me, "Libertarians in general, and Cato in particular, oppose the economic favoritism and protectionism you describe"—but the only mechanism they favor to preclude is it deregulation on all levels of government (Personal Interview, VanDoren 2017). Indeed, CATO scholars have analyzed local regulations much more comprehensively than scholars at AEI or Heritage. However, they have not done so comprehensively or as a coordinated effort to reduce interstate barriers. Somin elaborated:

> There is a debate in the US on the question of whether there should be unified standards for different kinds of regulations—interestingly, it is more commonly the Left that argues for that. The Right is much more worried about overregulation on the federal level. But some business groups like the

[127] Except in the case of taxing online activity (Thierer 1997).

> U.S. Chamber of Commerce[128] argue that for broad preemption of regulation, so states cannot regulate on top of that. (Personal Interview, Somin 2017).

CATO's approach is one of fighting 'overregulation' on all fronts, without ever conceptualizing it as interstate barriers (CATO 2017a; C. Edwards and CATO 2017). Their general perspective does not come from a will to create competitive markets but a principled opposition to government, i.e. "downsizing the federal government;" this means they would never endorse federal market authority (CATO 2017a). This can be specifically seen in comparison to the EU:

> The EU commission is to a large degree insulated from political pressures and voters and that has some advantages and disadvantages. But one advantage is that the EC can spend lots of its time focusing on these technical issues that are hard to understand—that sometimes that means they can improve what goes on in those issues and break down barriers to market competition but that also means that they can do a lot of stuff that I think is pretty questionable. Whereas the Republican Party has to some degree to satisfy voters, many of whom know nothing about those technical issues, so they can't just spend their time focusing on these sorts of questions. Obviously the second differences are that it is much harder to get legislation through Congress. […] I certainly would not want to replicate the Commission in the US. Beyond constitutional problems, I think there would be lots of other problems with that. And I would not want to federal government to regulate more than it currently does. I would cut the enormous growth in federal authority to regulate since the 1930s. (Personal Interview, Somin 2017)

Similarly, AEI scholars tend to oppose federal market authority, with a few exceptions. Searching the AEI archives for some comprehensive view on interstate barriers or federal market authority, does not produce much at all. Of the few articles that can be found, only a few call for federal preemption to reduce barriers. One example is taxation and another some limited cases of local telecommunication restrictions (Viard 2012, 2007; Brownwyn 2017). However, most conservatives oppose a system that would actually avoid interstate taxation barriers and externalities, like a VAT: "You see that on

[128] For instance, in transportation and product labeling (see previous chapter). Generally, the lobbying of the Chamber of Commerce is fragmented and issue-focused. For instance arguing for more federal preemption as protection against local liability law suits (Rickard 2009), endorsing a preemption that creates an exception from local insurance regulation for certain self-insured companies (U.S. Chamber of Commerce 2008), or attempting to prevent local regulation of self-driving cars (U.S. Chamber of Commerce 2017).

the tax side too. Lots of people on the right don't like a value added tax because they are afraid it would be too easy to raise it" (Personal Interview Veuger 2017).

Even in areas where one might expect consensus on federal action due to external effects there is none because federal rules are seen as always anti-competitive: "Non-competitive states will go to Congress or some regulatory agency and push to suppress competition and raise their rivals' costs. That's what the entire Clean Power Plan was about. Attempts of certain states to lock themselves into federally sponsor cartel. That is the reason why after all you have to be skeptical of federal legislation" (Personal Interview, Greve 2017). If AEI scholars do take general views, they usually argue for less regulation and more decentralized federalism (Ponnuru and Salam 2015). They paint national administration as the main problem for economic growth. As one AEI publication puts it:

> Modern conservatism is closely linked to decentralization. Free markets are by definition decentralized markets. Also important to modern conservatism is the decentralization of government itself, allowing decisions to be made close to the communities they affect, while also encouraging policy competition and experimentation. Both these forms of decentralization, however, are now increasingly challenged by federal administrative agencies, which are a growing force for the suppression of diversity among individuals, businesses, and state and local governments. (Wallison 2016a)

IV.b.4. Local Government Action is Preferred, not Problematized

A pattern of anti-government sentiments (capture) and the promise of jurisdictional competition trumping arguments for federal market authority can be observed in a variety of issue related to protectionist local government action. I will consider, local subsidies, local procurement preferences, and the heterogeneity in building codes across jurisdictions.

In the EU, state and local subsidies to business are considered protectionist, in need of explicit justification to and approval by the EU Commission. In the US, conservatives might consider these subsidies inefficient, but they do not frame them as protectionism in need of federal regulation. I could not find any publication at AEI or Heritage that would address the issue systematically. For instance, Heritage has only published arguments against specific subsidies that conservatives tend to dislike, like for

solar power, health care, or agriculture (Heritage Foundation 2017b; Frydenlund 2001; Kreutzer 2012; DeMint 2015). Miller, at AEI, explained the rational, "this is just spending money unwisely" but "jurisdictional competition" will limit this kind of behavior (T. Personal Interview, Miller 2017). While AEI scholars have regularly criticized foreign business subsidies as inefficient and distortionary, they never supported a federal rule against state and local subsidies (Perry 2008; Pethokoukis 2014b). Equally important, they do not ever use the frame of interstate barriers, but address this issue as one where businesses they dislike receive subsidies, like public transportation or electric cars (P. Cooper 2017; Perry 2010, 2013). In a recent law review article, two AEI scholars argue for a stricter application of the dormant commerce clause against some discriminatory taxes and subsidies[129], but concede that "subsidies for economic activity conducted within a state, including credits for new investment, research spending, hiring state residents, and construction or improvement of business facilities […] are permissible" (Lirette and Viard 2016, 533).

On the topic of state and local procurement preferences, I could find not publications by AEI or Heritage. This resulted in Veuger's comment, "If you find out [why conservatives are not critical of local procurement preferences], I'd be happy to know" (Personal Interview Veuger 2017).

In terms of heterogeneous building codes, AEI scholars have rarely paid attention to, except in a few articles that denounce too stringent codes as 'overregulation;' I could not find any publications by Heritage mentioning the issue (Perry 2011; Hess 2008). In none of the articles did they discuss these things in terms of market barriers, or even actual solutions. Mostly they are quick to assume, that if those things really were barriers, they would not exist:

> So, what you are talking about, building codes, licensing, inspection that is traditionally been seen as much more a locally and regionally directed

[129] The authors criticize the Supreme Court's current jurisprudence, for being incoherent and too lenient on allowing local protectionism. Instead, they propose a new accounting test, called Commerce Neutrality Framework that can be used to calculate whether a tax or subsidy distorts commerce. Looking at private transaction intra and interstate, the test requires "combined treatment of inbound and outbound transactions at least as favorable as their treatment of intrastate transactions" (Lirette and Viard 2016, 467). In practice this means that certain subsidies will be allowed and others not. However, incentives to hire in-state residents, as common in public works contracts, would be permissible.

> approach. But if they go too far, and local regulations actually become barriers, they will lose out in the broader competition—I can't give you some absolutist standard on that—sometimes it depends on the issue you are talking about—but in construction, if the market becomes more dominated by large national businesses it will become more standardized. (T. Personal Interview, Miller 2017).

Similarly, Abbott offered the fact that conservative law-makers "are concerned about political opposition along the lines of, 'You are inhibiting our legitimate state regulatory activity from being carried out.' It just creates lots of potential political problems. That is my inclination" (Personal Interview, Abbott 2017). However, neither convincingly explain why think tanks would not put in on their agenda—it seems more likely that is just escapes their view since there exists no comprehensive thinking about single markets.

The treatment at AEI and Heritage contrasts with CATO publications. To be fair, CATO scholars have probably written about every imaginable government regulation, and 'denounced' it as 'overregulation.' However, given their opposition to central market authority, there is not much that can be done about local protectionism:

> Yes this [state subsidies and procurement preferences] is a huge problem, cities competing over Amazon, cities building stadiums for Basketball teams. That's not good for the market. But I don't trust the government to make one national rule against it. That does never work. The EU might have a rule against it, but European states don't follow it, like Spain subsidizing light rail or being bailed out. With trains you can similarly see that government regulations and subsidies are always bad. So the best strategy is to get rid of them. (Personal Interview, O'Toole 2017)

Beyond his opposition to public transportation, for which O'Toole is known, he conveyed the sense in the interview that many CATO scholars consider local subsidies a problem, but not one that should be addressed by the federal government. Instead he offered the mechanism of jurisdictional competition and reducing the scope of government in general as possible solutions.

CATO scholars have also analyzed problems that are caused by the heterogeneity of building codes. However, what sometimes sounds like critiques of non-uniform standards, is usually a complaint of too stringent regulation: "There has been little use of manufactured housing in New York City, however, partially because of extremely rigorous local code standards, which out-of-state housing plants may not meet, and

partially because of organized labor and political and bureaucratic stumbling blocks" (C. Moore 1990, 62). They also have criticized differences in general, but again from a perspective of too strict not different codes: "Since New York's code is arguably even more Byzantine [than New Jersey's], its effect on costs is undoubtedly greater" (C. Moore 1990, 57). As expected, in none of the reports is federal market authority ever considered as a solution; instead they opt for local efforts to repeal as much regulation as possible (CATO 2017a). In particular, there is a presumption that local competition will eventually produce good results—or must have already done so: "Also, non-harmonized standards can be a problem, but I don't think it is as big of a problem as people say it is because states have incentives to have standards that are not too weird or unusual, especially small states" (Personal Interview, Somin 2017).

This is compounded by concerns over 'federal overreach': "Different standards are definitely a problem, but if we let the federal government have a uniform rule, what if it's a bad rule. I much rather have the option of not working in a state, than being forced to. And over time states will adapt. I mean there are private institutions that promulgate building codes. That is much better than getting the feds involved" (Personal Interview, O'Toole 2017). Again, the implication is jurisdictional competition and markets will adapt without federal market authority. This notion is repeated in several CATO papers. In addition, the predictive leap is made that capture is much more likely at the central level. Accordingly, a trend towards more uniform buildings codes is "concerning," because on higher levels of government, they "may be subject to political interferences by manufacturers and trade associations" (Dehring and Halek 2014, 45; Bandow 1997; Firey 2017).

In sum, in most cases when discriminatory barriers between states are noticed, they are always interpreted as the necessary consequence of interest group politics, to be prevented on the local level (D. Coates and Humphreys 2000; Ikenson 2012; Hufbauer and Moran 2015). If this does not work, the only considered remedy is judicial oversight by courts—to be discussed later—but that remains controversial within conservative circles.

IV.b.5. Uniform Licensing Standards are Considered Impossible

Scholars at all three think tanks have been very prolific in opposing occupational licensing. However, they have solely focused on the issue as one of regulatory capture and on cases with the least plausible public health justification like 'hair braiding' (Perry 2012; Winneset 2017; Goodnow 2015). In none of the think tanks have scholars addressed mobility restrictions through firm licensing laws, an issue that frequently came up in my interview with construction companies.

CATO has spearheaded the movement against occupational licensing, by encouraging local political changes and supporting legal challenges through amicus briefs (I. Shapiro 2017; I. Shapiro and McDonald 2017; I. Shapiro, Engstrom, and Colomba 2015; Svorny 2017; Neily 2017). However, their belief in interstate competition is so strong that federal action is not an option discussed. In most, cases, they see it not as a case of interstate barriers, but as a standard case of overregulation: "There has been a big push from CATO and places like that to get rid of those regulations. But what they are making is not really a federalist or interstate commerce argument—they just don't like the occupational licensing rules" (Personal Interview Veuger 2017). O'Toole explains, "Yes, it [licensing] is a huge barrier. But I would not want to get federal government or courts involved. You just got to educate people on the local level and push for changes in laws. Now you see lots of state adopting legislation that reduces licensing. The local competition approach works[130]" (Personal Interview, O'Toole 2017). Libertarian scholars do not see the market enhancing effect of some regulations, even in areas where Heritage and AEI hesitate to say 'overregulation.' For instance, they prefer to reduce interstate barriers to telemedicine by stopping to license physicians altogether: "A significant barrier to telemedicine is the requirement that physicians obtain licenses from each state in which their current or potential patients are, or may be, located. The best option is to eliminate government licensing of medical professionals altogether" (Svorny 2017, 1).

However, some libertarians have played with the idea of "mutual recognition of occupational licenses" through a state compact, not federal action—suggested as a

[130] This seems to contradict the general notion that licensing is increasing (Kleiner 2013), but it illustrates how strongly 'competition' has captured those scholars' attention.

"possibility" in the 800-page CATO manual for policy-makers (CATO 2017b, 67). But this has never been generally accepted in libertarian circles[131] and has never been put on the political agenda by any of the three think tanks (Personal Interview, O'Toole 2017). Somin adds,

> "But Congress has never even become close to doing it [discussing a mutual recognition law]. I think because the interest groups that benefit from the status quo are very powerful. They have a lot of influence on Capitol Hill—lawyer, doctors, dentists, professionals, and they have a lot of influence in the Republican and Democratic party, maybe that could be overcome if ordinary voters realized that that is a problem and forced Congress to change, but most ordinary voter have no idea that that is a big problem. (Personal Interview, Somin 2017)

Given that according to my interviews, many big national corporations and professional associations support uniform standards and licensing, the failure seems to stem more from the anti-government worldview of policy-makers than interest groups pressures.

Heritage and AEI have also pushed the issue of 'excessive' occupational licensing (Abbott 2016; Larkin 2016; Sherk 2016; Furth 2016; Allen and Daniels 2013; Pethokoukis 2016). In none of their articles did I find this category of regulation described in terms of interstate barriers. In accordance with their antipathy to federal government, solutions always focus on calling on state legislatures and cities to reduce licensing. The problem is singularly framed in terms of public choice theory: "Incumbent firms favor licensing because it prevents competition by new entrants that would drive down prices […]. The licensing requirement generates economic rents for incumbents (supra-competitive profits) and political rents for politicians (campaign contributions, book sales, voter-turnout efforts, etc.)" (Larkin 2016). In this view, all regulation is bad and the only reasonable action is to "repeal licensing" (Abbott 2016).

Scholars at AEI and Heritage generally reject the view that a national rule could provide a more level playing field and more competition, independently of the specifics of that rule. This can be easily seen by the fact that when they acknowledge the

[131] The only two references to this in the online archive is the Policy Manual and the article on tele-medicine (CATO 2017a).

legitimacy of some licensing, like for EMTs or optometrists, they do not argue for a national license that would break down state barriers (Sherk 2014). Greve was clear in saying that a national patchwork of rules for him is preferable over states coordinating in some generalized reciprocity agreement: "That's what they tried when they formed the interstate nurse licensing compact. And lo and behold, the most regulated state, I mean, the most pro regulation states rules. […] And then you achieved the opposite of what you wanted to do (Personal Interview, Greve 2017).

This is of course related to the fact that they see all political processes as flawed, especially on the federal level: "Trying to have uniform licensing standards is impossible […]. There is no political will by Congress—it is all public choice and rent seeking. The beneficiaries of occupational licensing would be combining their lobbying efforts" (Abbott 2017). For conservatives generally then, most regulations are "licensing cartels" to be eliminated, not tools that could be harnessed to increase competition and efficiency (Personal Interview, Greve 2017).

It is clear that individual thinkers have more nuanced opinions about those issues. Abbott and Greve both told me that a general mutual recognition scheme is congruent with conservative principles and that they would support it—however, due to their worry about too stringent federal regulation, they do not want the federal government involved with it, or at least are hesitant about it (Abbott 2017). As with Greve and Somin's position on judicial activism (see below), my interviewees made clear that they did have some misgivings about the principled rejection of federal market authority by conservatives. At the same time, they provided arguments against it, objected to most of my examples for 'good' uses of federal authority, or deemed justifications for federal action theoretically sound, but practically undesirable. Overall, this left an impression of incoherence; federal authority might be theoretically acknowledged but not practically advocated.

For that reason, neither at Heritage nor AEI is there general agenda to promote a general mutual recognition regime. Similarly, if attention is paid to national solutions, they are for specific professions, not regarding the system generally. Other considerations seem to always trump arguments for federal market authority, like federalism and the flawed nature of politics. There is no single public statement in which AEI and Heritage

scholars or the FTC endorse mutual recognition as a principle for licensing (Heritage Foundation 2017b; FTC 2017; AEI 2017). The only place where they mention this is the so-called ALLOW Act, a law that would create mutual recognition of licenses for spouses of military service members (Larkin 2017). This case seems to avoid the 'political risks' of federal preemption by focusing on one specifically 'deserving population' (Personal Interview, Abbott 2017; Skocpol 1992).

In all three think tanks litigation against occupational licensing is supported. Abbott explains, "The substantive due process and equal protection clause of the constitution" are good avenues to use to restrict occupational licensing, but "Those arguments have not been widely accepted" (Personal Interview, Abbott 2017). Apparently, "There is some talk [in conservative circles] about the FTC perhaps to be more aggressive, to redirect resources, to bring more of these anti-trust cases" (Personal Interview, Abbott 2017). One example, is North Carolina State Board of Dental Examiners v. FTC[132], in which the Supreme Court ruled that only directly supervised regulatory agencies are covered by the state action doctrine, that allows states to act in protectionist manners (Larkin 2015). However, this, and other action are restricted to anti-trust considerations, not more general questions of discriminatory treatment of out-of-state firms and professionals. Similarly, the newly created 'economic liberty task force' of the FTC focusses among other things on reducing excessive licensing; but does not pursue federal policy change or a mutual recognition scheme—mostly litigation and local experimentation[133] (FTC 2017, 2014). Of course, as will be explained below, the legal strategy is difficult because since the New Deal, "Conservative justices have been ambivalent about the dormant commerce clause in particular" and reigning into state action in general (Abbott 2017).

[132] 135 S. Ct. 1101 (2015).

[133] Unfortunately, they did not reply to any of my interview requests.

IV.b.6. Incoherence in and Opposition to Strengthening Judicial Action against Interstate Barriers

The question to which degree jurisdictional competition needs to be supplemented by strong courts to curb protectionist behavior is controversial among conservatives. Greve, for example, argues that the Supreme Court could act much more like the ECJ by taking the dormant commerce clause, privileges and immunities clause as well as anti-trust laws much more seriously (Greve 2002b; Personal Interview, Greve 2017). However:

> In the wake of the New Deal, we [conservative legal scholars] thought it was a great idea to give states something meaningful to do. And what that meant was to ramp up protectionist barriers and you know give advantages to their own industries and so forth. And that mode of thinking is so deeply ingrained in a lot of conservatives, who obsess about state powers. So, the general idea is that, you know, once the federal government got all these new powers on the Commerce Clause, […] the idea came up that we should at least allow the states to regulate and protect themselves on top of whatever the feds say to my mind, that's an idiotic idea but there you have it. And you see a lot of that. I mean, if you look at the jurisprudence and the literature that comes from conservatives on the Dormant Commerce clause or federal preemption, it reflects those impulses. (Personal Interview, Greve 2017)

Miller concurred, explaining that the conservative legal movement partially entrapped themselves into abetting state protectionism because their originalism—thought as an argument against the New Deal expansion of the commerce power—implied to some abandoning attempts to reign into state regulation through courts or through federal preemption (Will 1995; T. Personal Interview, Miller 2017). And indeed, conservatives at AEI remain divided on whether the appointment of Neil Gorsuch, who is supportive of deferring to legislators and states, to the Supreme Court, is a step in the right direction or not (Ponnuru 2017b, 2017a; Thomson 2007; Wilkinson 2001). Ramesh Ponnoru, a visiting follow at AEI writes that "these libertarians counsel judicial 'engagement' instead of restraint but 'real' conservatives, like Gorsuch do not" (Ponnuru 2017a). Similarly, Harvie Wilkinson, appointed to the United States Court of Appeals for the Fourth Circuit, in a lecture at AEI, praises the Supreme Court for "ceding authority to state and local governments" (Wilkinson 2001)

A more libertarian vision is described by some think tank publications and several books by Epstein and Greve (Kendall 2004, 51; Epstein and Greve 2007; Greve 1999, 2000a). These writings describe already familiar arguments about the benefits of jurisdictional competition (Greve 1999, chapt. 1). To this, they add an "activist judiciary," because limiting the authority of federal and state governments can only be achieved by the courts: "What Greve means by 'real' federalism is protection from regulation of almost any sort," through strong dormant commerce clause (and related constitutional articles) jurisprudence (Kendall 2004, 32). This is clearly expressed when Greve salutes the Rehnquist court for advancing more limited federal powers under the banner of states' rights, but criticizes that it did not limit state action equally due to skepticism of the dormant commerce clause (Greve 2002a). Greve wants to return to pre-New Deal times (the Lochner court) where the Supreme court[134] laid stricter scrutiny on economic regulation (Greve 2005a).

This view is elaborated on in the *AEI Federalism Project Papers,* which broadly criticize the Supreme Court's reading of preemption powers, including conservative justices, as both giving Congress too much power for regulation, and giving states too much power to regulate. The "presumption against preemption[135]" created "concurrent powers" which "cut in only one direction: stricter regulation" (Epstein and Greve 2007). According to Greve, "cooperation does not work" and "cooperative federalism requires government growth" creating a "pro-regulatory bias" (Greve 2000b; Epstein and Greve 2007, 310). These scholars argue that under concurrent powers, the state with the strictest regulation will win out because firms will always follow the strictest standard[136] (Epstein and Greve 2007). Instead they argue, legislation should be exclusively federal or state—the important question of course being which is which. Theoretically, this suggests an endorsement of federal market authority: "In the context of network regulation, from

[134] United States v. Carolene Products, 304 U.S. 144 (1938).

[135] If preemption is not 'clearly' intended by Congress, states can treat any federal regulation as minimum floor. In addition, preemption is constructed as narrowly as possible, as opposed to a complete field preemption of a legislative field; before the New Deal courts did not allow concurrent legislation. The latter was thought to compensate for increasing federal powers (see Epstein and Greve 2007, chapt. 1).

[136] It is unclear how this is different from a situation without a federal minimum standard.

interstate airline transport to communication, we are inclined to support exclusive national regulation. Conversely, we favor exclusive state or local regulation where effects are purely local and where active state competition seems plausible" (Epstein and Greve 2007, 312).

Of course, "Federal preemption is only a second-best approach for Greve because it requires an exercise of federal power"—but can sometimes not be avoided since conservative justices are skeptical of the return to the Lochner era argument (Kendall 2004, 48; see Epstein and Greve 2007, 337). If possible, Greve suggests to turn around the exception of state governments from anti-trust and dormant commerce clause considerations, i.e. the market participant and parker doctrine that "immunized state-sponsored cartels from challenges under antitrust and constitutional law" (Greve 2005a). A cynical interpretation is that the principle behind those two points is this: "States should be free to act only if they are shedding regulations" (Kendall 2004, 37; see Epstein and Greve 2007, 310f.). In any case, the theoretical endorsement of preemption appears slightly disingenuous here, because for all practical purposes, the superiority of competition over federal intervention is advocated (see the specific areas discussed in this chapter). In most cases, federal rules are seen as unnecessary and federal agencies are described as "captured" (Epstein and Greve 2007, 19). For instance, occupational licensing is seen as warranting court scrutiny not uniform rules, despite its obvious interstate commerce implications. At the same time, the main line of attack behind the argument for preemption is concerns with state product liability law and the use of imminent domain in the states (Epstein and Greve 2007, 323f.; see also: Somin 2015).

Some libertarians at CATO hold the same position. Somin explained: "We should use the privileges and immunities clause of the 14th amendment to strike down local licensing laws. The Institute for Justice, has done that. They are doing it under the due process clause of the 14th amendment due to current jurisprudence. […] So what I would do is I would strengthen constitutional rules to prevent states from erecting trade barriers, enforced by the courts" (Personal Interview, Somin 2017). In his book on eminent domain, Somin denounces conservative scholars for believing that jurisdictional competition without strong judicial enforcement is stable (Somin 2015, 221). However, other libertarians disagree: "Obviously, there is some disagreement on these issues

among conservative thinkers. In my view there is no conflict in the constitution, breaking down trade barriers was one of the main reasons why the constitution was created in the first place" (Personal Interview, Somin 2017). But, Somin explained, beyond the technical reason—the dormant commerce clause it not explicitly contained in the constitution—there is a "broader attitudinal reason," specifically the fact that "Most conservatives, until recently, were just very suspicion of the Courts in general, since they associated strong judicial review with the political Left, and with the Left doing things they did not like such as imposing the right to abortion etc." (Personal Interview, Somin 2017).

Greve concurred with Somin—historically conservatives have associated growth of central government, judicial activism, and liberal policies as part of the same package—but he said, his position is slowly becoming more accepted (Personal Interview, Greve 2017). The critique of stronger jurisprudence against interstate barriers is driven by the fact that judges are considered 'undemocratic.' O'Toole argued that he would not want to endow "unelected justices with that kind of power" (Personal Interview, O'Toole 2017). More broadly it can be related to originalism as a way of understanding the constitution. "Originalism was the conservative legal movement's foundational commitment" because it allowed cogent arguments against "judicial activism" and the "expansion of federal power" (Greve 2011, 244). Conservative scholars found soon that there is "little or no support" that the framers believed that the Supreme Court could invalidate state laws, creating market-barriers, under the dormant commerce clause (Fallon 2002, 461). Instead they decided, there is no such thing as a dormant commerce clause, preferring to defer to the states' democratic institutions. This attitude is mirrored in the federalist revival of the Rehnquist court. The "federalism five (Rehnquist, O'Connor, Scalia, Kennedy, and Thomas)" were quick to limit federal authority, but did not apply the same scrutiny to state activity (Pryor 2001, 361). While definitely not a conservative mainstream opinion Justice Thomas opined, "The negative Commerce Clause has no basis in the Constitution and has proved unworkable in practice" (550 U.S. 330, 2007) and Justice Scalia called it "a judicial fraud" (575 U.S. 13-485, 2015).

Scholars at Heritage have taken up this rejection of strong dormant commerce clause jurisprudence, maybe because they are more traditionally conservative, even in

cases where state competition might has obvious negative consequences[137] (Gaziano 2011; W. Beach 1998; Engdahl 2011; Thierer 1999). Todd Gaziano, founding director of Heritage's legal center, and educated at the University of Chicago law school argues, that "The commerce clause was written to prevent the states from enacting protectionist tariffs that would restrict trade 'among' or between the states, and that it should not be applied to state action that has 'indirect or incidental' effects to interstate commerce (Gaziano 2011). Doing so, he refers to Bork's argument that "commerce does not include manufacturing, agriculture, labor, or industry," implying a more narrow reading that only in few instance might mean more federal market authority (Bork and Troy 2001b, 885). Heritage's Constitutional Guide for Lawmakers seems to suggest a slightly negative view of judicial activism to rule in discriminatory state behavior (Forte 2011). Overall, courts are seen very skeptically at Heritage. A senior fellow lament, "Over time, the Supreme Court has grabbed power by declaring that 'the federal judiciary is supreme in the exposition of the law of the Constitution.' The Supreme Court has even gone so far as to declare that its decisions that interpret the Constitution are the supreme law of the land" (Alt 2012). Due to these reasons, conservatives remain conflicted over the role of courts, while self-declared libertarians are more likely to support strong jurisprudence (Personal Interview, Abbott 2017; Personal Interview, Somin 2017).

Overall, discussions of the dormant commerce clause are the only area where significant attention has been paid to the issue of interstate barriers. While this has not been a major issue item on the conservative agenda, scholars around Greve have spent considerable resources on creating a legal movement towards limiting discriminatory state action. As we have seen, this movement has been received controversially among conservatives. Its impetus has been deregulatory, recognizing legitimate interests in regulation rarely, spending always more time on explaining the importance of competition, while passing over important arguments for federal preemption in a few sentences. In slightly exaggerated form, conservatives think it is more reasonable to strike down all state medial licensing laws than to push for a national license to increase

[137] Except in the case of taxing online activity (Thierer 1997).

mobility. While it seems like the latter might be a good political strategy, it does not fit into their image of how markets work.

IV.c. Summary and Conclusion

This chapter has shown how conservative scholars have adopted several theories from economics, without assessing and taking seriously the limitations of said theories, widely known within the field of economics. In doing so, they weave together several strands of scholarship into competitive federalism, a set of beliefs that views the creation of markets as a natural product of the absence of central government. To maintain this view, scholars make several interpretive leaps that are not necessarily supported by empirical evidence but are understandable as an ideational product of antipathy to government and the strategic politics within the conservative movement. In this chapter, I have traced these beliefs to contradictions within Hayek's writings and to an enthusiastic reception within the American academy of one possible interpretation of those writings, especially epitomized by the works of Milton Friedman. From there, competitive federalism beliefs diffused into the libertarian law and economics movement, conservative think tanks, and eventually into conservative politics. Through this process it became more of an axiomatic orthodoxy than a scholarly proposition. While several historical conditions explain the resonance of this set of beliefs—Post-New-Deal Democratic majorities and the Southern Strategy of Republicans including the adoption of 'colorblind racism,' states' rights, and federalism arguments as a successful political mobilization strategy—the specific economic policy of Republicans was only made plausible through this historical process of mixing several ideas about markets in this contingent way. As a result of competitive federalism, the agenda of Republicans has been shaped around a project to cut spending and taxation, to deregulate, and to decentralize. This is reflected in presidential and congressional politics as we have seen in the last chapter, and in current research, positions, and advocacy of conservative think tanks as we have seen in this chapter. Specifically, conservative think tanks do not develop a comprehensive review of potential interstate barriers, dismissing the role of federal market authority for the creation and maintenance of single markets. This could

be seen in their opposition, and generally negative view of the EU as a central regulator, a general reluctance to acknowledge or will to remedy local protectionist policy, as well as a dismissal of potentially market-widening effects of harmonization and standardization, for instance in occupational licensing. Even when conservative scholars see the detrimental effects of local competition, for instance local business subsidies, they are paralyzed to act since central rules are opposed, and stricter jurisdictional scrutiny remains controversial. In the end, this chapter demonstrates how an ideational construct takes on causal power that cannot simply be explained by its 'objective truth.'

The last two chapters have provided macro-evidence and a historical explanation for the inattention of American neoliberals to interstate barriers and opposition to federal market authority. The next chapters will complement this analysis with a focus on a narrower subject—the construction industry. We will see evidence for the continued existence of interstate market barriers. Exploring the politics around those barriers, based on interviews with various stake-holders, will demonstrate how in addition to competitive federalism specific institutional structures inhibit any mobilization around federal market authority, resulting in a maintenance of, or in some cases the creation of second-best solutions to a fragmented national market.

CHAPTER V

INTERSTATE BARRIERS IN THE CONSTRUCTION INDUSTRY

The last chapters have demonstrated an overall pattern of inattention to interstate barriers at the level of federal agenda setting and policy making that can be accounted for by the dominance of competitive federalism thinking. This chapter illustrates the continued relevance of interstate barriers today through an in-depth study of the construction sector. Through examination of the politics among jurisdictions, firms, and interest groups, I show here and explain in the next chapter how non-mobilization around federal market authority leads to the maintenance and proliferation of interstate barriers for construction services. The theoretical account I offer taps into ideational and institutional elements.

As discussed in the methods section of this dissertation, the construction sector was chosen for several theoretical reasons: It covers several interesting areas from barriers to service and labor mobility to more traditional government protectionism through public procurement preferences. There is a significant number of big firms in the construction sector, which would benefit from more federal market authority. This lets us ascertain whether they are thwarted by countervailing interests, institutional structures, or sets of ideas (see Table 6, p. 318). In some instances, the explanation can be read directly from the interviews. For instance, many firms directly referenced the inaction of their trade groups due to their decentralized organization. In other cases, interpretational steps are necessary. For instance, local regulators clearly believe that heterogeneous regulations are no obstacle for interstate mobility. While this clearly contradicts structural explanations, some interpretation is needed to see whether this might fit within the competitive federalism framework.

What happens in the construction industry is also substantively important since it is often seen as the backbone of the economy. As *the Economist* reports, "Construction holds the dubious honor of having the lowest productivity gains of any industry" and firms have failed to efficiently consolidate (Economist 2017). Explaining why this $1.7 trillion industry has not generated more demands for federal market authority is an important question in itself. Furthermore, findings on construction might be roughly

similar to outcomes in other sectors. If I can ascertain the specific mechanisms that maintain market barriers in construction, it becomes more plausible that similar logics are at work in other sectors that face barriers of similar nature like retail banking or alcoholic beverages as well as professional services and public purchasing more generally.

Finally, the regulatory outcome in construction is typical for the US-EU comparison, illustrating the overall puzzle (Gerring and Seawright 2007). In the EU, member-states are constrained from discriminating against out-of-state companies and professional licenses, while US states regularly do so. In terms of public purchasing, the EU displays central market authority by providing an overall framework for competition, while in the US there is no overall nation-wide or even state-wide system for procurement. It terms of building codes and standards, the EU relies on its authority to promote Europe-wide rules through so-called Euro-codes and its associated European Standardization Organizations, while the US relies on private competing standards that are erratically adopted and amended by the states.

In addition, in the EU construction has generated land-mark free movement cases like Laval[138] and Rüffert[139] and centralized legislation like the Service Directive[140] or the Lift Directive[141], while in the US construction has received relatively little Commerce Clause attention except in the case of public procurement, where courts have explicitly allowed discriminating against out-of-state companies. On industry expert in the US observes,

> Construction remains one of the most fragmented, least efficient, and poorly understood segments of our economy […]. Adding to this fragmentation is

[138] Case C-341/05, Laval un Partneri Ltd, 2007 E.C.R.7 I-11767. Concerning a Latvian company renovating Swedish schools, paying their workers according to Latvian not Swedish law. The ECJ ruled that in accordance with the Posted Workers Directive, 96/71 [1997] OJ. L. 18/1, Laval could not be forced to sign a collective bargaining agreement with a Swedish Union. However, this was partly reversed in the Rome I Regulation, 593/2008 [2008] OJ. L. 177.6, that allows no derogations from some mandatory labor protections of the host country.

[139] Case C-346/06, Dirk Rüffert v Land Niedersachsen, 2008 E.C.R I-01989. Ruling that attaching requirements to adhere to local collective bargaining agreements in public procurement contracts is discriminatory. However, Case C-115/14, RegioPost GmbH & Co KG v Stadt Landau, [2016] OJ. L. 16/6, clarifies that requiring adherence to regional minimum wages laws is permissible.

[140] 03/123 [2006] OJ. L. 326/36. See discussion below, CHAPTER V.b.

[141] 95/16 [1995] OJ. L. 213/1. See discussion below, CHAPTER V.d.

> the fact that construction is overseen by over 44,000 jurisdictions at the state and local government level, which regulate building design, construction, and renovation through a confusing, diverse, and at times, conflicting array of codes, standards, rules, regulations, and procedures. For these reasons, economies of scale […] achieved by other industries […] have not been achieved in the US construction industry. (Wible 2006, 288)

The next section summarizes my process of data-collection and analysis, specifically how interview evidence was obtained and processed. Meta-justification of my methods can be found in the theory chapter (CHAPTER II.d.1, p. 62). Taken together, this fulfills the transparency guidelines for qualitative research (Elman and Kapiszewski 2014). The following three sections give plenty of evidence of the relevance of interstate barriers in the construction sector. In each case, I motivate the comparison with an illustration of the European system, emphasizing the point that the US case cannot simply be explained by referencing technical requirements and material conditions. Subsequently, after considering the literature on each of these areas in American political economy, I have a look at the evidence of interstate barriers. I pull together publicly available documents and the perception of firms to describe interstate barriers caused by occupational licensing and firm requirements, local procurement preferences, as well as building codes. Overall, I present sufficient evidence to support the claim that there are significant interstate barriers for the circulation of construction services and that EU rules are much more liberal because it has used its central market authority in stark contrast to the US federal government. After summarizing the position of firms, the subsequent chapter considers different explanations. I analyze different actors in turn—national trade associations, local trade associations, state/local law-makers and regulators, as well as their national cooperative institutions—showing that decentralization and separation of powers prevents them from mobilizing for federal market authority and from creating uniform standards across sectors. At the same time, in many instances it becomes clear that given a different ideational context, many actors could be mobilized for federal market authority.

V.a. Research Strategy

The first step in this case study is to characterize the outcome. This means describing the absence of federal market authority, i.e. the degree of existing local and

state legislation, its use in potentially market distorting ways, and its impact on actual firm mobility in the construction sector. Thus, the dependent variable is the persistence of interstate barriers and the lack of mobilization around them, operationalized as perceptions reported by nationally and regionally operating construction firms, their industry trade groups, as well as state- and national regulators. This is the focus of this chapter.

The second step in this case study is to explain the outcome by investigating the policy positions of key actors in regards to goals and methods of reducing interstate barriers. This is operationalized by observing the demands and experiences of firms, the policy position of construction industry groups and stake-holders, as well as the positions of state- and national regulators. This is the focus of the next chapter.

Since the amount of potentially discriminatory regulation, especially through heterogeneous laws and informal practices, is vast, I rely on semi-structured interviews to ascertain what barriers are significant to firms in the construction sector. I obtained a long list of regulations perceived by firms as barriers to mobility reaching from varying tax treatment in states and cities to uneven interpretation of environmental laws. The three issues named the most—professional and firm licensing, public procurement decisions, building codes and inspections—build the backbone of this study and were focused on in the interviews. For each of the three areas, I rely on secondary sources to characterize the broad outcome. However, the real extent and effect of local regulation can only be ascertained through interviews with construction firm and interest groups. I rely above all on their self-reported perception to describe the impact of interstate barriers. In many instances 'non-discriminatory' regulatory heterogeneity has the same effect as direct interstate barriers. In this case, interviews can deliver insights no other method can provide.

The goal of the interviews was to ascertain the extent to which jurisdictional differences act as non-tariff barriers. First, I asked about the existence of significant legal barriers to mobility between states and cities for construction businesses. I focused on the perceived impact of licensing, building codes, and public procurement preferences, but all other mentioned obstacles were noted as well. Second, I asked about whether these differences caused significant costs and difficulties to moving across state lines, as well

as whether they advantaged certain firms over others. Third, given the overall perception of significant barriers to interstate commerce, the goal was to understand what firms saw as the cause of these obstacles and whether they advocated for any changes. Fourth, given an expressed interest of the firms in reducing the national fragmentation, the last line of questioning tried to understand what kind of attempts of change had been made and what had prevented them from being successful. Especially for the last two areas of questioning, evidence from industry associations and lobbying groups, as well as state regulators and their national associations was crucial. For these groups, I asked more specifically about their policies regarding out-of-state persons/entities and their justification, as well as their positions towards potential changes toward a more nationally unified system of regulating different aspects of the construction industry.

Entities to interview where chosen systematically to address the theoretical expectations of different theories (see Table 6, p. 318). Table 3 summarizes the conducted interviews.

The first set of interviews was conducted with retail contractors. They are a good subset to study, because they operate across multiple or the majority of states, even though as medium-sized enterprise they are more challenged by the costs of regulatory compliance and licensing. Retail contractors work mostly for national chains that build similar stores across the country, ranging from McDonalds, to Target, Motel 6, or clothing boutiques in shopping malls. Usually they will have a national client and travel with them across the country. As one firm representative explained to me, “Our business primarily is retail construction, so we work for a handful of clients and we go wherever they go. Wherever they want to build, we go” (Personal Interview, Shrader 2017).

For this research, I obtained a list of all 83 members of the Retail Contractor Association, a professional association that brings together most of the national construction companies with a focus on retail (RCA 2017). The 83 companies were contacted via email in Spring 2016, no response was followed up with another email, and a phone call later on. Companies were invited to participate in a phone interview, or to answer my questionnaire via email. 17 Presidents, Vice-President, and Project Managers agreed to interviews, resulting in seven phone and ten email interviews ranging from five

to 40 minutes. The company size varied from Warwick Construction, with an annual revenue of $246 million (rank 246) and work across all 50 states for clients like H&M or Jack in the Box, to smaller companies like Hays Construction Company, whose annual revenue is only about $10 million and works in about 11 states.

Targeted	**Interviewed**
Retail Contractors: Members of RCA	17; 7 phone, 10 email
Home and Apartment Developers: TOP 100 list	7; 2 phone, 5 email
Commercial Contractors: TOP 400 List	22; 6 phone, 16 email
Specialty Contractors: TOP 100 List	4; 1 phone, 3 email
Design & Architecture: TOP 300 List	23; 10 phone, 13 email
Small Local Firms: Portland, OR; Vancouver, WA	None obtained[142]
Construction users: National Chains and CURT	1 phone
Industry Groups and Professional Associations: - RCA - AGC in Cluster I - ABC in Cluster I - AIA in Cluster I - Fiatech - Solibri - CIRT - PHCCAs in Cluster I - MCAAs in Cluster I - UAs in Cluster II	 - 1 phone - 2 phone - 2 phone - 2 phone - 2 phone - 1 phone - None - None - None - None
Licensing Agencies: - Architect: NCARB, Cluster I - Engineer: NCEES, Cluster I - Contractor: NASCLA, Cluster I, Cluster II - Plumber: Cluster II	 - 3 phone - 2 phone - 4 phone - 6 phone
Building Officials: - ICC - IAPMO - CSI - Cluster I, Cluster II - Snowball	 - 1 phone - None - 1 phone - 8 email - 2 phone
State Legislators - Colorado: House/Senate Business Committee	 - 3 phone

Table 3: Interviews Conducted by Author

[142] After speaking with nationally operating construction firms, it would be important to contrast their position with small, local firms, as a kind of control group. Unfortunately, a survey I sent out to a list of all general contractors in Portland, OR and Vancouver, WA in Spring 2018 was exclusively answered by big firms with interstate operations. Further research needs to utilize a different method of contact.

The second set of interviews focused on big commercial contractors. These were specifically suggested by retail contractors as crucial to understanding the impact of public procurement policies. A similar procedure was followed. I obtained a list of the biggest 400 commercial contractors in terms of revenue (ENR 2016), ranging from $132 million (The Sollitt Construction Company) to $28 billion (Bechtel). I first contacted them via email and followed up with phone calls. Unfortunately, in most cases it was not possible to reach more than their customer service hotline, which usually turned out to be futile. I conducted a total of 22—six phone, and 16 email—interviews in Spring 2017. Seventeen firms declined to be interviewed due to only doing work in one state. The companies interviewed reached in size from Manhattan Construction Company (rank 47, $1.2 billion annual revenue) to T.N. Ward Corporation (rank 376, $143 million annual revenue). They were working in between 50 and two states, averaging a presence in 22 state-markets.

The third set of interviews targeted home and apartment developers. They had been suggested by several interviewees as particularly affected by differences in building codes and local interpretations due to their focus on building many standardized homes in different locations. I followed a similar procedure. I obtained a list of the largest 100 US home builders in terms of revenue (Builder 2017), ranging from $11 billion (D. R. Horton) to $0.095 billion (Tilson Home Corp.). I first contacted them via email and followed up with phone calls. Again, in most case it was not possible to reach more than their customer service hotline. In Spring 2017, I was able to conduct 2 short phone interviews and to receive 5 email responses. The companies interviewed were operating in between 20 and 30 states. However, home developers are mostly regional, operating in an average of 4 states in the TOP 100, with 51% only being in one state. Many firms declined to be interviewed for that exact reason.

The fourth set of interviews targeted specialty contractors, i.e. plumbing, heating, cooling, and pipe-fitting businesses. They were suggested because most general contractors provide some basic services beyond construction management but sub-contract most of their work. One reason, as many told me, is that construction is inherently local. People on the ground are needed and it is not feasible to ship a whole workforce around the country. However, in the interviews with retail and commercial

contractors it became clear that licensing and procurement rules incentivize the use of local sub-contractors by making it more complicated and expensive for general contractors to bring their own subcontractors to a new city or state. As one company explained, “The mechanical contractors, and plumbers, and electricians are less likely to be national because they need local licenses. The only companies that are national are doing something that is so specialized that there won’t be local people. National companies are only competitive if they have some specialty” (Personal Interview, Shrader 2017).

I approached national specialty contractors to see how they were affected by market fragmentation. To this end, I obtained a list of the 100 largest (in terms of revenue) plumbing, heating, cooling, and pipe fitting contractors, reaching from $1 billion to $4 million in annual revenue (PHC 2012). I first contacted them via email and followed up with phone-calls. I received 9 responses saying that the company was only operating in one state. I was able to conduct two short phone interviews with national plumbing companies and two short email interviews with national HVAC contractors in Spring 2017.

The next logical subset to speak to, especially for a better insight into building codes and public procurement barriers, were Design, Architecture, and Engineering firms. I focused specifically on architecture firms—many of them act as construction managers giving insights into all steps of the construction process. Like the rest of the construction industry, architecture firms are mostly small enterprises. There is around 20,800 architecture firms in the US with an average of 5 architects with 26% of firms consisting of one architect only (Design Intelligence 2016; K. Baker 2012). While 88% of firms have only one office, architectural work is relatively specialized resulting in much cross-jurisdictional work; most architects hold licenses in at least two different states (Design Intelligence 2016; K. Baker 2012).

I followed a similar procedure. I obtained a list of the 300 largest architecture firms, reaching from $7 million to $1.2 billion in annual revenue (Architectural Record 2017). I first contacted them via email and followed up with phone-calls. In Spring 2017, I conducted ten phone interviews and 13 email interviews. The firms interviewed reached from the largest architectural firm, Gensler, to one of the smallest ones, Marshall Craft

Associates. On average, the firms interviewed were active in 29 states, employing between 4500 architects and 45 architects.

In total, 73 nationally-operating firms were interviewed.

The seventh set of interviews targeted the users of construction, specifically big companies with interests in building similar structures in different jurisdictions. In Spring 2017, I contacted national chains like CVS Pharmacies, Target, Hilton, Kaiser Permanente and Walmart via email, and later phone. Unfortunately, I was only able to speak with one person at one of these companies—however, this interview turned out to be crucial since this person was able to explain how their, and similarly-situated companies, approached dealing with jurisdictional differences. I also contacted the Construction User Round Table (CURT), but was unable to conduct an interview. As with other organizations, assessment of their position will be based on their website.

The eighth set of interviews targeted industry associations on the national level as well as their local chapters in my state cluster, California, Oregon, and Washington. Successful interviews were conducted with the following interest groups in Spring 2016 and Springe 2017: RCA (Retail Contractors Association), AGC (American General Contractors), AGC Oregon, ABC (Associated Builders and Contractors), ABC Oregon, AIA (American Institute of Architects), and AIA Oregon. In addition, I was able to obtain interviews with two industry consortiums and think tanks, Fiatech and Solibri. I was unable to conduct interviews with the following industry associations, and evidence for those will solely be based on publicly available documents: AGC California and Washington, ABC California and Washington, AIA California and Washington, CIRT (Construction Industry Roundtable), PHCCA (Plumbing Heating Cooling Contractors Association) National as well as California, Oregon, Washington, MCAA (Mechanical Contractors Association of America) National as well as California, Oregon, Washington. I also contacted plumbers' unions in my two state clusters, but none were willing to comment.

The ninth set of interviews targeted regulators of the construction industry, specifically state or city licensing agencies as well as their national associations. Successful interviews were conducted with the following licensing agencies in Spring 2016 and 2017: NCARB (National Council of Architectural Registration Boards) and

architect licensing agencies in Oregon and California; NCEES (National Council of Examiners for Engineering and Surveying) and the engineer licensing agency in California; NASCLA (National Association of State Contractors Licensing Agencies) and contractor licensing agencies in Oregon, Rhode Island, and California; and plumbers licensing agencies in Main, Connecticut, New Hampshire, New Jersey, Massachusetts, and Albany, New York. The following agencies declined to be interviewed for this dissertation: Architect licensing agency in Washington, engineering licensing agencies in Oregon and Washington, contractor licensing agencies in Maine, Massachusetts, New Hampshire, Connecticut, Pennsylvania, and New York City, as well as plumber licensing agencies in Rhode Island, Pennsylvania, New York City.

The ninth set of interviews targeted building officials. I successfully conducted interviews with ICC (International Code Council) and CSI (Construction Specification Institute). Unfortunately, other code development organizations were not willing to grant interviews. In February 2018, I conducted interviews with officials at the Connecticut Building Officials Association, the Maine Building Officials Inspectors Association, the New Hampshire Building Officials Association, the Massachusetts Building Commissioner & Inspectors Association, the Texas Building Officials League, the Building Safety Association of Vermont, as well as the Washington Association of Building Officials Association.

Lastly, I targeted state legislators on business and labor affairs committee to ascertain why the described interstate barriers do not come on the political agenda. Specifically, I was able to speak with three legislators in Colorado, which was pointed out by many interviewees as very difficult jurisdiction. Future Research needs to target others state with these characteristics like for instance California, Florida, or Hawaii.

The evidence from the interviews follows in the next three sections. Each section starts with a short consideration of EU rules on the issue at hand. This sets up the puzzle since the EU has in every case, despite similar structural conditions and much more national differences, created much more liberal rules exercising central market authority. I then consider the literature on each of these areas in American Political economy, showing how their attention has been shaped by competitive federalism, and mostly glanced over issue of interstate barriers. Subsequently, I present evidence of the existence

of interstate barriers and their effects. Each time, I first present evidence for interstate barriers learned from publicly available document and contrast it with the perceptions of firms and interest groups. In each case, this demonstrates two things: (1) the American inattention to interstate barriers is mirrored in the dearth of information on their existence—nobody has even compiled relevant information. (2) While basic research gives some indications for the existence of interstate barriers, interview evidence shows that they are much more wide-spread and dramatic than the publicly available documents suggest.

V.b. Occupational Licensing and Firm Registration

The service regime generally and occupational licensing regulations specifically, is symptomatic for the puzzle addressed by this dissertation. To appreciate the amount of interstate barriers existent and the absence of mobilization around federal market authority in the US, we can first consider the European approach. This demonstrates just how much more service mobility is feasible in the US, countering arguments by regulators that the US is too large or diverse to establish a federal framework for licensing. The US case appears to be unusual (or vice-versa) because EU member states allow much more mobility for professionals, despite the fact that qualification requirements vary much more widely there than in the US. The EU has adopted a single set of coherent rules for exchange in the services, including rules that encourage cross-border competition, while the US has not in any way. As a result, interstate barriers to the provision of services proliferate in the United States.

For instance, European officials usually argue that it is "primarily the heterogeneity of national service regulations, rather than the intensity of national regulations, that hampers bilateral trade and investment" (Santagostino 2017, 69). In contrast, conservative politicians in the US usually consider the intensity of regulation, not their heterogeneity a problem (see CHAPTER IV.b). Even further, the EU considers double burdens as potential trade barriers. For example, asking a professional to demonstrate skills (for instance through a test), that have already been demonstrated to an authority in another country, might be considered discriminatory (European Commission 2018d; De Witte 2007, 14).

As Hoffmann demonstrates in his study of barbers and cosmetologists, in the EU it is usually assumed that if someone can provide a service safely in one country, they will be able to do so in another country as well (Hoffmann 2011, 250ff.). For instance, a former Director General at the European Commission argues:

> If you take regulation of the professions, doctors, kinesiotherapists, was pretty easy, because in a way the massive argument was, what do you expect, are the German citizens different from the French citizens across the border to the point that they need an expertise to be dealt with? So, you end up with the sole argument that we want to be sure that the people are well-trained; okay that's pretty easy. There is no other reason for discrimination. (cited in Hoffmann 2011, 265)

The general approach of the EU is based on the treaty guarantees of the freedom of establishment (Article 49 TFEU) and the freedom to provide services in any territory (Article 56 TFEU), which generally imply that labor mobility and services are regulated like other commodities, by mutual recognition and the home country principle[143]. This means, except under specific circumstance, entry of a good or service cannot be denied if it is legally produced and marketed in its home country. Mobility for the cross-border movement of services is slightly more complicated as described in the Service Directive[144] and the Qualification Directive[145]. Mobility for European firms can also fall under these directives but more commonly is subject to other regulations that establish some minimum standards for corporate structures and regulates when whose laws apply. When trying to expand a business to another state, a firm can rely on a single point of contact that must process the completely online-application within 3 days for a maximum of €100 (European Commission 2018d).

The EU differentiates between temporary and permanent provision of cross-borders services. Temporary provision of services, which might be rendering services remotely, or work for a single project in another country, is generally allowed, and typically only requires notifying the local authority (European Commission 2018d).

[143] [2010] OJ. L. C326/13.

[144] 03/123 [2006] OJ. L. 326/36.

[145] 05/36 [2005] OJ. L. 255/22.

For the permanent establishment of professionals, the EU has a regime based around mutual recognition that regulates what has to be automatically accepted and what kind of measures are allowed to be taken when qualifications are not deemed equivalent (European Commission 2018d). For example, a doctor from the Netherlands has to be granted a license to practice in Germany automatically. A German lawyer can practice under his German title in France, and after three years adopt the French equivalent. If a profession does not fall under mutual recognition, the qualification directive still establishes general principles for the application process like a single point of contact, maximum amount of fees to be paid, and the structure of potential aptitude tests. The burden of proof is reversed when compared to the US case. If a qualification is not recognized, the licensing authority has to provide evidence why an exception to the rule of free establishment is necessary. Additional requirements imposed by a state have to be judged proportionate by the European Commission making it hard to use trivial difference for discrimination (Commission 2015b). This tilts the balance toward more integration, despite the fact that actual differences between national regulations can be quite significant because the process is streamlined and under close scrutiny by the Commission. For instance, an EU official of the Directorate that approves such derogations and with knowledge of the US rules, explained: "It would be very difficult for member states to justify that this is proportionate. It's quite difficult to say that [a professional], who is coming, had only 1200 hours instead of 1500 or 1800 and will create problems. This is hard to justify" (cited in Hoffmann 2011, 214).

The EU service regime is also notable to the degree which it does not conform to the expectation of conventional theories. "While business in Europe was largely supportive of the Commission's proposals [for service liberalization], it did not strongly mobilize in favor of it" (Hoffmann 2011, 233). Another author observers,

> It is striking that the European services business did not come up with its own estimates or empirical studies. With a proposal so crucial for the sector and so controversial in many circles, one would have expected the deep expertise of business to be brought in. The reason is likely to be the fragmentation of the EU services business over numerous sectors, sub-sectors and highly specialized activities, without any umbrella organization capable of devising a powerful, well-researched response. (M. Chang, Hanf, and Pelkmans 2010, 106)

This is an important observation. US firms similarly articulate a diffuse interest in reducing interstate barriers. However, without an actor to bundle and mobilize these interest, no changes are initiated. It is not surprising than that experts attribute service liberalization in the EU to the existence of an actor with an ordoliberal ideology and the goal to promote the single market (Hoffmann 2011, 271ff.). As one author puts it, this "formed a distinct example of Commission entrepreneurship, since it [service liberalization] has been advocated neither by the other EU institutions nor by major interest groups. It was the Commission's own invention" (De Witte 2007, 9). To understand how interstate barriers through licensing in the US are maintained, we therefore have to look at both, institutional structures and the absence of a federal market building agenda.

In the US, meanwhile—as we will see in detail below—states regularly deny entry to licensed professionals from other states, just based on their origin. Regulators do not consider heterogeneity per se to be a market barrier, and redundant licensing requirement are not considered a double burden as they are in the EU. Arguments against mutual recognition by American officials due to geographic differences and safety hazards seem hollow compared to the EU with more heterogeneity and more mutual recognition. In particular, the European Commission scrutinizes those arguments, while in the US there is no federal agent that monitors the system. For instance, an US state licensing board can easily require retraining for a plumber journeyman with a hundred less hours of training, citing safety concerns or no reason at all. This leads to a situation where even small differences in training can be used as a reason for denying entry: "Oregon believes that a minimum standard has to be assured and other states are not doing it […]. For instance, in Idaho and Washington they only register contractors." Accordingly, a member of the Oregon contractor licensing agency explained, out-of-state licensed contractors have to go through the same licensing process as completely unlicensed Oregon firms (Personal Interview, Denno 2016).

Also consider the distinction between temporary and permanent service provision in the EU, where the former is always generally legal. This already goes much further than in the US, where the rendering of cross-border services without obtaining a local license, is generally prohibited. As we will see, in many cases US companies are not even

allowed to compete for construction projects before becoming established as a licensed engineer/architect/contractor in said jurisdiction. Allowing the temporary provision of services increases mobility immensely, because it allows even small companies to test out a new market without needing to learn and comply with a whole different set of regulations. In the US, every state regulates out-of-state businesses differently, there is no single framework or point of contact established, and licensing agencies sometimes have specific requirements for professional firms.

V.b.1. Licensing in the US Literature

Occupational licensing for individuals has received significant attention within the economics profession in the US. Firm licensing and registration practices for firms have not. Most of the research mirrors the ideas we have encountered in conservative think tanks: occupational licensing is mostly analyzed as a phenomenon of regulatory capture and monopoly rents, not as one of interstate barriers. This is not surprising since most research on occupational licensing is closely related to the Chicago School of Economics and Milton Friedman:

> The overthrow of the medieval guild system was an indispensable early step in the rise of freedom in the Western world. It was a sign of the triumph of liberal ideas, and widely recognized as such, that by the mid-nineteenth century, in Britain, the United States, and to a lesser extent on the continent of Europe, men could pursue whatever trade or occupation they wished without the by-your-leave of any governmental or quasi-governmental authority. In more recent decades, there has been a retrogression, an increasing tendency for particular occupations to be restricted to individuals licensed to practice them by the state. (M. Friedman 1962, 137)

Most research on licensing, including the work of Morris Kleiner—the most prolific scholar on the issue, coming from the University of Minnesota—regularly cites Friedman and Stigler when discussing the effects of occupational licensing (Kleiner 2013, 2005). Licensing is portrayed from the perspective of only two theories: either it is a plot by practitioners to limit competition and increase prices, or it is a legitimate government intervention to solve problems of market failure, specifically asymmetric information.

According to standard economic models, licensing raises prices for services-rendered by restricting entry into a profession (Kleiner 2005, 44f.). Assuming that the demand curve is downward sloping, this increase will partly be reallocated in form of wages to the service provider and partly to demand reduction or substitution. This results in dead-weight loss, which some economists estimate to be around $35-$42 billion annually in the US (Hamermesh 1993; Kleiner 2005). It is assumed that it follows from this theory that the profession itself lobbies for licensure, capturing state regulators, to realize these benefits (Kleiner 2013, 210).

Economic models provide one alternative to this perspective: several market failures might justify government intervention to create the necessary conditions for competition (Benham and Benham 1975). One might see licensing as a mechanism to encourage skill formation, dealing with time-inconsistent incentives. In this view, these regulations guarantee higher wages and thereby make the investment in years of education incentive-compatible. More generally, one can think of licensing as solving problems of asymmetric information. Consumers can often not judge the quality of a product so a non-market mechanism is needed to communicate that information. From the consumer's point of view, who might only rarely buy a specific professional service, it would not be rational to expend much resources into researching the best service provider or join a group that certifies such service provider. In this case, it would make sense for the state to regulate a profession. However, especially conservatives object to this rationale by pointing out that licensing outlaws the market for low quality services, thereby benefiting the well-off while outpricing the poorer segments (C. Shapiro 1986).

Given these two theories, most research has focused on just three variables, labor supply, wages, and some measure of service quality—with the first two being seen as vindicating the capture perspective, and the latter being evidence for the public interest perspective (Kleiner 2005, chap. 3-5; for an overview of current research: White House 2015). To some degree, empirical findings are inconsistent. Studies find increased wages for skilled professions like doctors, lawyers and dentists, but no or smaller effects for lower skill professions like cosmetology and barbers as well as nurses and teachers (Kleiner 2005, 73). The most sophisticated approach that tries to make sense of these findings can be found in *Stages of Occupational Regulation* (Kleiner 2013). This model

relies on capture tendencies over time derived from Stigler as well as Olson's ideas about the effects of collective action problems over time (Stigler 1971; M. Olson 2000). Accordingly, in the initial stage of becoming licensed, there are limited effects on wages and supply in a profession. This is true for interior designers or childcare services that have started to become licensed in the 2000s. In the next stage, when stricter requirements like insurance are added, as for mortgage brokers, there is a positive impact on wages. Professions that have been regulated for longer, like electricians and plumbers, show a stronger correlation between licensing and wages, for instances giving electricians a 12% wage premium. Finally, universally and historically regulated professions like dentists an lawyers reap the biggest gains in terms of wages (Kleiner 2013, chap. 7).

Findings on service quality vary even more, probably due to the fact that the measures are often either very rare events (workplace deaths) or causally distant (public health outcomes). For instance, separate studies find that licensing dentists improves outcomes (Holen 1978), has no effect at all (Carroll and Gaston 1983), or worsens public health (Kleiner and Kudrle 2000). Kleiner summarizes in a literature review: "There is little to show that occupational regulation has a major effect on the quality of service received by consumers or on the demand for the service other than through potential price effects" (Kleiner 2005, 56). However, in the same paragraph he mentions that it was "questionable" whether any of the studies actually captured causality, and in later studies he finds that licensing plumbers and electricians actually does prevent workplace accidents (Kleiner 2013, Chap. 5).

For this dissertation, it is not important to assess which side in these debates is correct, or even if there is one homogenous causal model that can explain wage and quality effects of licensing. For our purpose it is important to note what the literature does not do, i.e. analyze the issue from a perspective of interstate barriers and actually investigate the politics behind the creation and maintenance of those barriers.

While many authors mention the detrimental effect of licensing on interstate mobility in passing, their actual research is mostly focused on price and quality effects. Searching various databases, I could only identify 12 empirical papers that explore the effect of occupational licensing on interstate mobility (Holen 1978; Ladinsky 1967; Shepard 1978; Pratt 1980; Mulholland and Young 2016; Kleiner, Gay, and Greene 1982;

Arbury et al. 2015; Roback 1943; Pashigian 1979; Stange 2014; Tenn 2001; J. Johnson and Kleiner 2017). Of those, 11 found a negative effect. However, none discuss the politics behind or causes of these restrictions. It follows, that I could not find much in terms of solutions. Most authors leave it at suggesting more reciprocity or less regulation in general. None discuss the different mechanisms that could be used, i.e. how states could overcome their collective action problems and cooperate in licensing or how the federal government could intervene to create more interstate mobility. Moreover, research on occupational licensing is dominated by scholars from conservative think tanks that want to see it abolished, not reformed, focusing solely licensing as a phenomenon of regulatory capture (Larkin 2016; Pethokoukis 2014a; Dick Carpenter et al. 2012; Brannon and Albright 2017).

Related is the fact that most studies only operate within the two economic theories discussed, and solely use econometric models. Reviewing dozens of papers on licensing, described as the "major studies" in the field by Kleiner as well as a recent White House report, I could only identify a few that would actually investigate alternative theories or the politics of licensing (Kleiner 2005, 60; White House 2015, 58). Most studies implicitly assume that since professionals benefit from licensing in terms of wages, they are the cause via capture of the regulators, using simple functionalism. However, this connection is rarely ever scrutinized empirically. Scholarship coming from conservative think tanks uses public choice theories axiomatically without considering alternatives (Larkin 2016; Pethokoukis 2014a; Dick Carpenter et al. 2012; Brannon and Albright 2017).

Of course, there are many alternative theories that might lead to different findings or a different interpretation of the evidence. But realistically, not even the assumptions of the two main theories are thoroughly tested. For instance, finding increased wages with licensing might only be incidental or due to higher necessary but unobserved skills of professionals. Having spoken with actual licensing boards, often consisting of part-time volunteers, the assumption that they easily calculate and achieve the optimal labor supply for rent extraction is questionable. While there are a few studies that try to provide evidence for the capture theory, none of them go beyond correlating some macro-variables to the strictness of licensing (B. D. Peterson, Pandya, and Leblang 2014;

Kleiner 2005; Graddy 1991). The kind of evidence I would like to see, especially investigations of the motives and ideas of political actors, is non-existent.

Similarly, alternative explanations are never considered. For instance, licensing has been conceptualized as identity-creating club that represent certain values which, by having licensing, are communicated to prospective professionals as well as consumers (Frank 1988, 65). In this sense, licensing "promotes positive aspects of their work experience, disseminates information about how to do the job better, require job-specific training, promote ethical, standards, or devise methods of adjudicating disputes between consumers and producers (Kleiner 2005, 43; Hirschman and Hirschman 1970). This argument has been specifically made in describing the institutionalization of the medical field (Starr 2008). In a related way, sociologists have conceptualized licensing as a structuring and institutionalization process that allows broad access to an occupation, thereby creating a more public market (Redbird 2017; Zhou 1993). Accordingly, without public licensing arrangements entry into professions might be limited by "network connections and the right demographic make-up" of a person as well as general socio-economic barriers (Redbird 2017, 618).

Unfortunately, no economist has investigated these theories, especially not with detailed case studies that would show how different political actors interact to create the current licensing regime. There is some statistical evidence that private capture and public interest theories of licensing are limited in their explanatory power. Xueguang Zhou shows that licensing is better conceptualized as part of a wider institutionalization process that conforms with society's expectation of organization and legitimates the knowledge of the profession (Zhou 1993). In this sense, professionals lobby for licensing arrangements because that is what delineates them as professionals. In a more recent contribution that relies on a dataset spanning 30 years and 300 occupations, sociologist Beth Redbird finds no evidence of occupational licensing increasing wages, challenging Kleiner's extensive research directly (Redbird 2017). Instead she finds that licensure actually increases supply of professionals by creating a codified mechanism of entry into a profession and legitimizing its practitioners independently of socio-economic background (Redbird 2017, 619).

In sum, the literature on occupational licensing provides ample evidence for potential market barriers. However, being highly influenced by competitive federalism, scholars have rarely investigated the rules and regulations as market-barriers and have not inquired into the politics of creating and maintaining them. Because of that, they have not investigated other aspects of licensing and registration that creates barriers, like for instance registration requirements for firms.

V.b.2. Licensing as Interstate Barriers for Construction Services

Professional licensing is widespread in the US, as many studies attest. However, they do not look at it from the perspective of market barriers. As Figures 1 and 2 demonstrate, States license between 41 professions and 6% of the workforce in Mississippi and 177 professions and 30.4% of the workforce in California, with an average of 94 (Adam B. Summers 2009). There are over 2000 professions in the US that require licenses, certificates, or registrations (Kleiner 2005). If registration requirements are added, over 40% of the labor force requires some kind of state or local government approval before being allowed to offer a service (Kleiner 2013). Generally, licensing has become more stringent over time and with a few exceptions, there has not been any significant changes in terms of mutual recognition of licenses between states (Kleiner, 2005, 112). The astonishing part is not that professions are regulated, but the big variety between states, which impedes the mobility of workers and services. Due to a lack of research, the specific differences between states' licensing regimes, and their impact on professionals, firms, and service provision is often unclear. This will be remedied by the evidence from my interviews with construction companies.

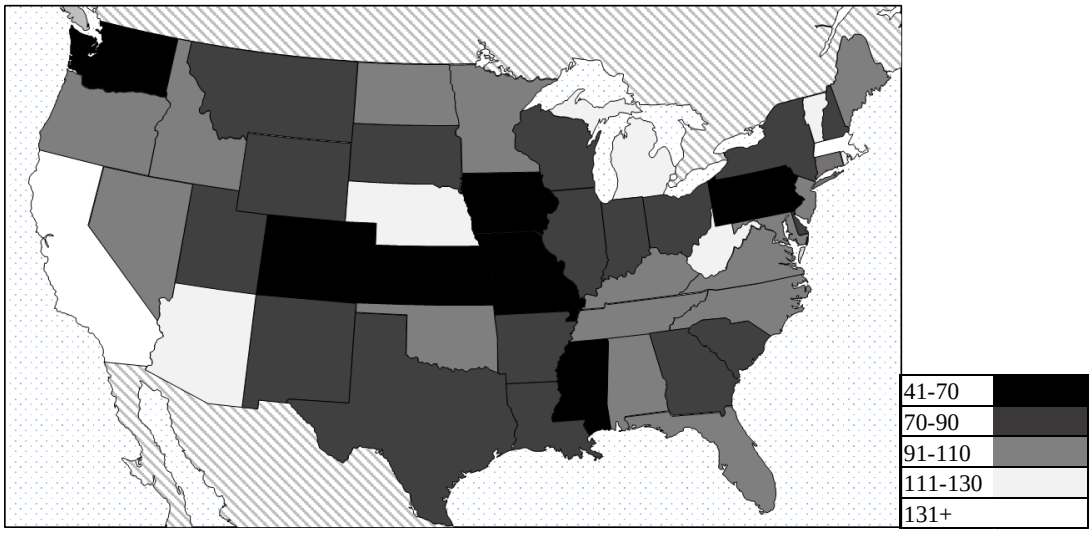

Figure 1: Number of Licensed Professions, Based on Summers (2009)

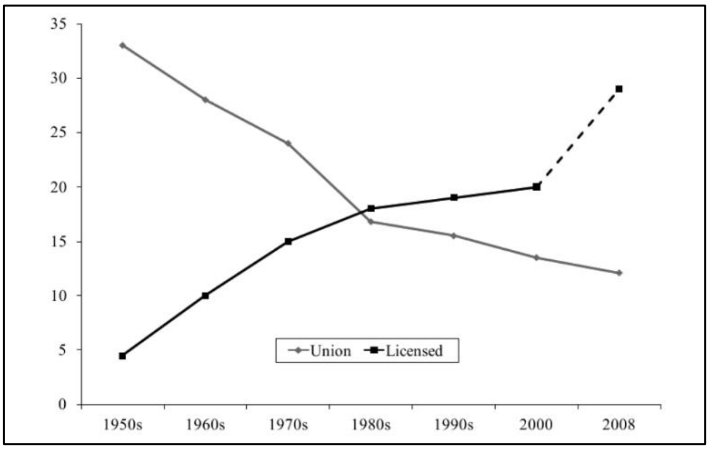

Figure 2: Increase of Licensed, Decrease of Unionized Workers, Based on Kleiner (2013, 8)

The firms interviewed all reported to be affected by licensing arrangements, specifically licenses for architects, engineers, contractors, plumbers, various licenses for their subcontractors, as well as licensing and related regulations for architecture and engineering firms. Out of 68 companies answering the question, 61 reported that various jurisdictional differences in the issuance and handling of licenses significantly impeded their cross-national mobility, reaching from redundant bureaucracy and unnecessary costs, over costly delays, to the decision to decline suitable project or to not compete in certain jurisdictions at all. Five firms described significant costs associated with licensing differences, but did not want to call it a barrier due to it being "a normal business expense" (Personal Interview, Webcor 2017). Two firms rejected the perspective of costs and barriers altogether, arguing that "local control is important for safety" and not an issue that should be discussed in the terms I proposed (Personal Interview, Crowder 2017).

Regulations for contractors vary quite significantly across the country (HomeAdvisor 2016). There are only six states, Texas for instance, that do not require any license or registration for general contractors. Six states require a simple registration, 27 states require a contractor's license. The remaining 11 states let counties and municipalities regulate contractors, meaning that there are different licensing requirements for each jurisdiction. For instance, in Kansas most counties have their own licensing agency with different requirements. Similarly, in Colorado regulations differ city by city. For instance, Denver has a complicated process to become licensed while the neighboring Castle Rock only requires the filling out of a registration. This is seen as especially burdensome for firms, as one interviewee explained, "Municipality licensing requirements can be onerous, time consuming, expensive ,and lengthy (Personal Interview, Metropolitan 2017). Another firm added, "City licenses are problematic for national companies as they require the license holder to be present at all inspections [which is infeasible when managing several work sites]. Boston, MA; most cities in CO; and San Marcus, TX are a few examples (Personal Interview, Warwick 2017).

In every state or municipality, the scope of the license (what can you do) and the requirement of a license (who needs it) is different (HomeAdvisor 2016). For instance, some states have a very inclusive license, while others require special licenses for many

tasks like digging wells, building dry walls, or working on a roof. Similarly, some require a license for any work exceeding $500 (California), while others set the limit much higher, for instance Delaware with $50,000. Even others require licenses only for small home improvement projects while commercial contractors only need to register as a business (Maryland). To complicate things, requirements of states and cities are not publicly available in one place, and in some cases have to be found out by actually calling the agency in question or communicating via fax (Personal Interview, Rosser 2017).

While this patchwork might be made workable through mutual recognition rules like in the EU, this is not the case in the US. General contractors are not allowed to temporarily or permanently operate in another state without first acquiring the local license—in some cases they cannot even submit bids for projects without holding jurisdiction-specific licenses first. Doing so is quite difficult, since there is no general system that manages the recognition or translation of out of state licenses. While many US states have entered into reciprocity agreements, these agreements vary from state to state and from profession to profession and are not universally applied. States enter 'bilateral' reciprocity agreements with other states, waiving some requirements for applicants from said state. Within the US context, reciprocal recognition does not mean that service providers can simply enter a jurisdiction. Instead, it only means that a firm will face a somewhat expedited or simplified licensing process. A system of automatic recognition for temporary service provision, like in the EU, does not exist, creating a confusing patchwork.

In addition, many states reciprocate only with immediately adjacent states or not at all because they are "very passionate about their laws and regulations," as a representative of NASCLA told me; for instance "Washington only reciprocates with Idaho and Oregon" (Personal Interview, Wilberscheid 2017). In other states, the regulatory boards would like to cooperate more with other agencies, but state laws do not allow for that[146] (Personal Interview, Wilberscheid 2017). In addition, those reciprocity

[146] This is usually not an outright prohibition, but budgets lack line items for participation in cooperative efforts with other states. However, some states prohibit it outright. For instance California

agreements are not widely known or publicly posted and can often only be ascertained by calling an agency about a specific case. Even professionals in the field are often not sure which state has reciprocity and which state does not (see also Hoffmann 2011, 220).

However, reciprocity is not to be confused with something like mutual recognition. A firm will still have to go through an application process that might include a background check, payment of a fee (usually between $100-$600), and a state law exam, which depending on the state may only be offered in certain locations and on certain days. Most licenses need to be renewed every two or so years and require state-specific continuing education, meaning that renewal of licenses might be more difficult in some states than others. One representative described the complication of different continued education requirements in different locations as prohibitive for market entry to some firms (Personal Interview, Hays 2017)

The National Association of State Contactors Licensing Agencies (NASCLA) brings together different regulators to exchange information and encourage reciprocity. However, NASCLA has only 40 members, with some cities and states choosing not to participate in this process (Personal Interview, Wilberscheid 2017). For instance, a representative of NASCLA told me that "Ohio does not allow its regulatory agency staff to travel out of state[147], and participate in NASCLA meetings and conferences (Personal Interview, Wilberscheid 2017). Being an agent of state regulators, NASCLA's main activity is to provide a forum for networking and the exchange of information between the states; while their mission is to promote uniformity this is thought to be achieved without usurping any of the state regulatory authority or activities (Personal Interview, Wilberscheid 2017). NASCLA is not independent enough to put any significant pressure on states to change their behavior (Personal Interview, Wilberscheid 2017). Besides information exchange, the main tool to promote uniformity is NASCLA-produced national exam. However, the exam is only accepted by 13 states, and state-specific exams and applications are still required (NASCLA 2017). When asked about the reasoning behind this, I was told some states

prohibits travel for official business for all its employees to AL, KA, MS, NC, SD, TN, and TX (CA Attorney General 2016).

[147] Ohio does not give any funding for out of state travel to cooperate or network with other states.

> Are just really passionate about their examination. They feel like other states standards are inferior and they are not willing to budge on it. So, they will say we accept the NASCLA exam as the trade portion, but you will still have to take our business exam. Or they may have personal vendettas with another state. They have had issues for several years with another state, so now they just don't want to do it. That might change. Some states suddenly join when [their agency] gets a new executive director. (Personal Interview, Wilberscheid 2017)

While these different requirements might be surmountable, especially for big firms with big budgets, the complications are quite significant when operating across more than two or three states. Imagine keeping track of all the differences in what can be practiced with a license, different renewal cycles and fees, different continuing education requirements as well as renewal procedures for expired licenses. Of course, all of this has to happen before a firm can start working on a project. Delays are not uncommon because part-time boards will often only meet irregularly to approve new licenses, and part-time staff does not pick up the phone (Personal Interview, Wolverine 2017). One firm explained, "Recently due to ownership changes, we were trying to get licenses transferred or modified—this has been horrible. Many times waiting for over a week for a return call and 2 weeks for a return email" (Personal Interview, Martin 2017). Another firm reported having passed on projects, in Oregon, Colorado, Washington, and California because their licensing requirements had been too burdensome for out-of-state companies (Personal Interview, William 2017). A president of an Mid-West based company told me that getting licensed in Oregon was infeasible for him, because their mandatory knowledge test was only offered at specific times in specific in-state testing locations[148] (Personal Interview, Construction I 2017).

The majority of my interviewees emphasized the degree to which time required to fulfill local requirements had caused significant costs or the loss of a contract. One firm explained, "We have passed on multiple projects in the past 12 months due to not currently holding needed jurisdictional licenses. In all cases, these are licenses we were capable of procuring but simply did not have the time to procure them to meet project

[148] Oregon has since moved to an online test.

requirements" (Personal Interview, Construction IV 2017). Many firms named at least one state they had not expanded to because of regulatory complications they faced.

Nationally operating firms spend quite a bit of resources on this, as one person explained, "We have 4 or 5 full time attorneys that make sure we remain compliant, as well as division managers at the local level who are responsible for understanding all the local rules and regulations" (Personal Interview, Crossland 2017). A representative of Gray Construction similarly reported, "We have 2 people dedicated to monitoring and maintaining these licenses" (Personal Interview, Gray 2017). In terms of costs, I was told that it was "very costly, both in dollars and time spent" or put differently, "So they are collecting $400 a year. I have 40 licenses across the US. That's $5000-$8000 to just maintain my licenses" (Personal Interview, Construction II 2017; Personal Interview, NTS 2016).

While fees might not seem that high, given the number of licenses a firm needs, they might become significant. A representative of a Colorado firm explained, "There is a cost to tracking everything; between the municipalities and counties, we have 100 licenses in Colorado—that does not seem like an efficient way to handle licensing. And everybody wants their $100 a year licensing fee, so part of it is just revenue generation" (Personal Interview, Haselden 2017). It is important to note here though, that most licensing agencies are revenue neutral and have accounts separate from state budgets[149]. Thus, these revenues are not generally part of the justification for this regulatory structure. Instead, they simply pay for the costs of the fragmented regulatory structure itself.

Only four of 68 companies affected by contractor licensing did not describe it as a significant barrier to crossing jurisdictional borders. No firm opposed the concept of licenses in general, they just opined that the current structure of state and local differences was incredibly costly and inefficient. At the same time, many firms just saw it as a cost that would be passed on to clients, especially because there is nothing they could immediately do about it: "We spend around $100,000 a year on maintaining all the licenses, it's just the cost of doing business, it's just part of our overhead" (Personal

[149] See for instance the budges of the Oregon and California Contractor Boards (CAB 2010; CCB 2016).

Interview, Triad 2017). Another representative explained, “It’s is very costly for us, but we work with a lot of large companies, so if they want us to build there, we spend the money, to keep that relationship, it just becomes part of the project costs” (Personal Interview, Hays 2017).

Another complication reported was the specific requirements of contractor licensing, sometimes allowing only individuals or companies to hold certain license: “Another issue is that states require different legal structures for some activities. Some states prohibit the design and construction being done by the same company. So we have special-use companies setup to perform the design—but operationally, it makes no difference” (Personal Interview, Austin 2017). Another company reported, “From time to time, we have to procure either licenses at a corporate level and/or have individuals complete testing and license procurement for what is essentially redundant purposes“ (Personal Interview, Construction II 2017). For instance, “Denver requires the superintendent to be the license holder, that's not very effective, that's very hard for us because we work all over, we may or may not have a superintendent available who may or may not have a license” (Personal Interview, Fulcrum 2017).

In related fashion, some states will only issue licenses to residents of states: “We failed to expand to Hawaii because it required the managing employee to be an actual resident of HI” (Personal Interview, Warwick 2017). Another construction manager told me, he had been denied a license due to “lack of experience” despite holding license in most other states (Personal Interview, Fulcrum 2017).

The interviews made it clear that in all those ways local contractor licensing is not only unnecessarily costly but also discourages companies from working in multiple areas, thereby reducing market competition. While some firms explicitly reported disadvantages vis-à-vis local firms, especially for medium sized companies, others normalized it as an inefficiency but in the end only a cost to be passed on to clients—they had never considered the implications of mutual recognition regimes like in the EU, because they see the status quo as an unchangeable reality (Personal Interview, Shrader 2017; Personal Interview, Rectenwald 2017). Some put it very clearly that “There is that imaginary border called state line that has some real barriers to entry” or that it was “quite a deterrent,” especially in states “where you have to acquire a license before bidding on

projects" (Personal Interview, Fortis 2017; Personal Interview, Construction IV 2017; Personal Interview, Murphy 2017).

The majority of firms described jurisdictional differences as a disadvantage for firms wanting to be mobile. Others though argued that because everybody was treated the same, differences in rules could not be properly called barriers: "There are obviously significant costs associated with understanding and dealing with these issues. I don't perceive a competitive advantage or disadvantage because everyone is subject to the same rules" (Personal Interview, Haselden 2017). This is a curious view, which I mostly encountered by licensing boards I interviewed. Because firms are so used to the current reality, they do not view the double burden for out-of-state companies as discriminatory—it is assumed to be an unavoidable fact. Of course, given the discourse of competitive federalism, they do not have a concept of how barriers could be overcome. One firm, despite complaining about the inefficiency of jurisdictional differences, explained that they were just necessary because "Local owners need to make certain that they are able to procure work in a manner that will deliver quality, competitive, safe projects" (Personal Interview, Crowder 2017). Another one, despite criticizing jurisdictional differences, did not see the double burden: "The licensing laws are the same for everyone that wants to open a construction business in that state so I don't see any undue advantages" (Personal Interview, Martin 2017). It seemed clear in my interviews that political ideology played a role in these perceptions. The few companies that did not report any interstate barriers would also argue that only local regulation is good and the federal government would always create flawed regulation (Personal Interview, Austin 2017). Another firm explained, "I'm in favor of state rights and licensing. It is expensive and time consuming as most states require continuing education to keep your license active. However, each state should have their own requirements because they all have different issues" (Personal Interview, Warwick 2017).

Some industries have been shaped to accommodate the jurisdictional heterogeneity. Nationally-operating real estate developers are set up as a system of local subsidiaries to match local rules for the reason of avoiding delays and complications with jurisdictional differences (Personal Interview, Hovanian 2017; Personal Interview, Alliance 2017). Six of seven home-builders interviewed explicitly related their company

structure to problems with jurisdictional differences. A representative of Alliance Residential, a company operating in 19 states, explained:

> As you alluded, the complexities with licensing and local codes create major challenges to outfits working across multiple markets […]. We work through regional offices in order to become experts in our given markets. Our regional offices have individual(s) licensed as general contractors in each state they service […]. I'm pretty sure the vast majority of all single and multifamily builders are setup this way. (Personal Interview, Alliance 2017)

Given these complexities, it is not surprising that 50% of the 100 biggest real estate developers in the US only operate in one state or even only a few counties (Builder 2017). The only dissenting voice came from the 64th biggest home-building company, operating in two states. Their view was clearly colored by a general antipathy towards central government: "I don't want to do it [licensing] on the state level either. Keep it on the local level, where there are people that live in the community that have to respond to real problems and solve them […]. The last thing we need is a national board trying to do anything. Once you get a national anything, I have never seen that work out well" (Personal Interview, Green Brick 2017).

Another barriers for general contractors is created by the fact that trades they subcontract with—like plumbers or electricians—are even more nationally fragmented in their regulation. Often, a firm cannot bring their regular subcontractor across borders because they lack, and sometimes cannot acquire new licenses due to differences in licensing scopes (Personal Interview, Rusco 2017). One firm explained,

> The sub-trades perform differently in different areas, for example the painters do all the dry wall sanding whereas in CA it's done by the drywall subcontractor, or in CA we have a separate company to do all the flashing and sheet metal work, whereas in other places the roofer does that. That's an area where if we go into a new area we have some problems […]. We need a lot of different subcontractors in different states for that reason. (Personal Interview, Fulcrum 2017)

The effects are pretty significant. The 8th biggest home developer told me the fact that they were forced to only rely on local subcontractors, which "clearly reduces competition" (B. C. Personal Interview, Taylor 2017). Another retail contractor explained:

> This highly limits competition, for example, I can't bring my electricians with me, because they need a separate license and it becomes too costly for me. It forces me to use local subcontractors. Which for the local contractors, they like that […]. When we are operating out of state, we are subcontracting over 90% of the work […]. When things are busy, this becomes very difficult, because I can't find workers to do my work. (Personal Interview, Wolverine 2017)

The relative rarity of national subcontractors was specifically attributed to this legal situation: "The mechanical and plumbers and electricians are less likely to be national because they need local licenses. The only companies that are national are doing something that is so specialized that there won't be local people. National companies are only competitive if they have some specialty" (Personal Interview, Shrader 2017).

Plumbing firms and their regulation though plumbing boards is a good illustration of this phenomenon. Licensing for plumbing is even more fragmented then for general contractors: eight states locally license plumbers, while 42 have state-wide licenses[150]. However, requirements and scopes vary much more significantly than for general contractors. States vary on whether they license apprentice plumbers, journeyman plumbers, master plumbers, or of all of them. Even other states just license plumbers as specialty contractors. Jurisdictional mobility is complicated by the fact that all states have different apprenticeship programs with different educational requirements. For instance, a lobbyist for ABC told me, "We don't have apprenticeship reciprocity between Washington and Oregon, for instance on the electrical side. So, if they are full journeyman, they can come in and get licensed. But if they are apprentices—you can basically not bring labor across the state border, it a big issue" (S. Personal Interview, Miller 2017). The other way around it is even more difficult "If I go through an apprenticeship in Oregon, it will not meet the standards of Washington to get a license" (S. Personal Interview, Miller 2017).

In most cases, a state will only recognize the training of another state after individual scrutiny by the licensing agency for that specific person. Reciprocity agreements are very rare, and if existent usually only cover one or two neighboring states. For instance, Hawaii only issues plumbing licenses to persons having completed courses

[150] Websites of state and city plumbing boards.

at Hawaii Community College. Louisiana requires an out-of-state master plumber to first sit for a journeyman exam in Louisiana and acquire a journeyman license, to be able to apply for the master level exam. Delaware deems the education of seven states as not sufficiently similar, requiring professionals from those states to have seven years of work experience before being allowed to sit for its exam. For other states, acceptance of out-of-state licenses depends on individual board petitions. Similarly, Massachusetts only considers for licensure professionals from out-of-state if they have at least four years of work experience.

In many other states, requirements are unclear, because their websites are incomplete and there is no national organization that is trying to bring together plumber licensing agencies—apparently, "Plumbing boards do not talk to each other about mobility" (Personal Interview, Kilb 2017). According to regulating agencies, "Code books and their adoption process varies from state to state and region to region," which makes "uniform licensing requirements impossible" (Personal Interview, Cyr 2017). A representative from the Maine plumbing board told me, with an out-out-state license, "You might qualify to sit for our exam, but we would have to peruse your individual application" (Personal Interview, Caroll 2017). A representative from the New Jersey plumbing board told me there was nothing they could do for me as a plumber from Pennsylvania, because they were not working together with cities that issue licenses (Personal Interview Baccile 2017). Similarly, a representative of the plumbing board in Albany, NY explained that they could not offer reciprocal licensing to plumbers from the neighboring Troy, NY, because Troy's standards were not sufficient (Personal Interview, Mage 2017). Different requirements can be very opaque. Most states do not post on their websites how to obtain a license quickly when coming from out-of-state. Some states go even farther. For instance, applications for an Arkansas plumbing license can only be obtained in person.

For plumbers and electricians, an industry publication writes,

> Where to find the laws? […] There is no general guide to find out what licensing requirements and restrictions exist throughout the states. In some places, licensing is through a county court clerk, State Revenue Commission, the Department of Public Health, or in a rare act of clarity, a Contractor Licensing Board. For nonresident contractors, there may be excise taxes or

> bonding requirements. For residential construction, there may be a fund which requires a contribution. Where asbestos may be encountered, a different set of rules applies. (Electrical Contractor 2000).

Roto-Rooter, one the few national plumbing companies, explained to me, "Municipal, county and state laws regulating plumbing repairs vary considerably and each of our 600+ locations throughout the U.S. must comply with all jurisdictional regulating authorities. It can be challenging at times but the situation is what it is, so we do what we have to in order to conduct business effectively." The company pointed out that the problem was not that "markets require all plumbing repairs, no matter how minor, to be completed only by a licensed plumber," but that they were not able to transfer their employees across borders "to adapt to local changes in demand" (Personal Interview, Roto-Rooter 2017).

Another plumbing company operating in the North-East told me that licensing was the biggest obstacle to operating across several states that were all within a small radius (Personal Interview, Gem 2017). In many cases, their employees had to go back to school and take new exams to be able transfer their licenses. For instance, "If you are holding a CT license you can test in RI because it is ICC [same plumbing code], but they will impose a waiting period. But in MA you have to do the whole apprenticeship thing all over again" (Personal Interview, Gem 2017). The reason is that MA issues its plumbing license together with a gas fitting license, so individuals that only hold a plumbing license from another state cannot be licensed there at all. In addition, their plumbing codes are different requiring another exam. Another issue for the companies is the varying ratios between apprentices and journeyman on a job—due to those, work teams and revenue number have to be adjusted for every jurisdiction.

A Vice-President of one of the few national electrical contractors explained:

> We have 14 separate state licenses, and I can probably spend two to four days a month prepping for tests, completing take-home exams, and obtaining continuing education credits […]. I've been taking tests since 1984 for the company, and I've also accumulated over 46 *municipal* electrical contractor licenses in Texas alone over the years so we could do work in those areas. And each year they had to be renewed. (cited in Zind 2006)

Another nationally operating electrical contractor pointed out that while the knowledge required for electrical licenses was mostly the same across the country, states

still required taking exams in person and state-specific continuing education: “It can be an expensive proposition for a company like us to send people to the different states, spend several days there, and take continuing education classes. The complexity of complying with licensing requirements affects all of us in the contracting industry” (cited in Zind 2006). To deal with that exact problem, there are national companies that try to “customize a [continuing education] program for you that meets your requirements [in as many states as possible] for the best price” (Holt 2018b). However, many states will not accept those courses (Holt 2018a).

At the other end of the construction process, design companies are affected by engineer and architect licensure[151]. At a first glance, it seems like these longer established professions have already overcome problems with jurisdictional differences in licensing. Licensing boards explained that rules were nationally standardized, “Reciprocity is easy, the system is very similar across jurisdictions […] there are no problems, […] I have not heard any complaints from firms” (Personal Interview, Brown 2016). A representative of the National Council of Examiners for Engineering and Surveying (NCEES), a private association bringing together engineering regulators, explained, “The examination process is standardized and developed in accordance with national testing standards. Each state accepts the results of the national examinations and no further tests are required in order for an individual to obtain a PE license. There are some nuances among the states about certain things such as degrees that are deemed to be acceptable” (Personal Interview, Carter 2016). Similarly, a representative of NCARB, the association of all state architecture boards told me that through the certificate they offered, mobility for architects was “very easy” (Personal Interview, NCARB 2016).

A deeper examination shows that things are much more complicated. First of all, the NCARB certificate is not a national license. Architects are prohibited from providing any service, advertising their service, or bidding for a project, before acquiring a state-specific license. Mobility is also not cheap. To become licensed in another state, an architect will have to pay to acquire ($1100) and maintain their whole career ($225 annually) the NCARB certificate. In addition, they will have to pay application and

[151] The licensure system for both is relatively similar, so I only describe the details for architects.

maintenance fees in every state (between $100-500). The process is also not fast. While the NCARB certificate is transferred to another state electronically, in 14 states a board vote is required, and boards might only meet every other month (Personal Interview, NCARB 2016). Nineteen states will have some additional requirement, like for instance a local jurisprudence exam (Personal Interview, NCARB 2016). California and Alaska require a whole other exam relating to earthquakes and permafrost respectively. In addition, continuing education requirements will vary from state to state. After listing all those issues, the representative of NCARB admitted, "The system will remain burdensome for those people that are in the 30 or 40 jurisdictions" and is inefficient and redundant, but there was nothing they could do about it (Personal Interview, NCARB 2016).

Of 23 architecture firms, 20 explained that licensing rules created significant barriers to mobility. In terms of time required and costs, most big firms judged the effects as disadvantageous compared to local firms. One firm explained, "Licensing is the biggest issue for us, we have 750 professionals and they all need the appropriate engineering and architecture licensing. There is good reasons for licensure, and NCARB has made things easier, but it is a pain and a cost to keep track of all of those requirements" (Personal Interview, Architecture I 2017).

There are many complications that are not obvious from interviews with licensing boards. Optimally, an architect would be able to gain licensure through reciprocity, after being hired for a project. However, this is rarely possible. As many firms explained, "Some states are very stringent about this, you cannot even talk to a client if you are not licensed in that state. Sometimes it takes 3-4 months to get licensed as a business in a state, and in the meantime your client is waiting *or not*" (Personal Interview, Hord 2017). While the NCARB certificate theoretically simplifies things, specific requirements make mobility still costly:

> I just was registered in the state of Tennessee, I asked NCARB to send my packet, it took them about 2 weeks to send my packet there, Tennessee sent me an email with a one-page form, and I put my credit card number in for $150 and I was registered. CA is not that easy. Texas you have to go and get a background check and show up in person, give them a picture and a thumb print. CA you have to take an additional seismic test and an oral exam. Michigan, I just had to send $200. (Personal Interview, Rosser 2017).

Mobility is definitely costly, when adding up fees, time, extra testing, and continuing education. California was often pointed out as the most complicated:

> CA and AL have their own testing, there is a lot of costs involved. Maybe a couple thousand dollars to get yourself ready for the test, if you factor in the time and the cost of the materials and test taking. I have 6 licenses that I maintain. They all require continuing education, you have to report regularly, and there are costs for the NCARB file. It's a lot of paperwork and keeping up with all of that takes a lot of time. (Personal Interview, Hacker 2017)

Another representative estimated that maintain all his licenses cost about $10,000 a year (Personal Interview, Sink 2017). For that exact reason, many medium sized companies cannot afford maintaining multiple licenses and are thereby excluded from competing in those markets (Personal Interview, Dekker 2017). Many also pointed out specific continuing education requirements as problematic, "Additionally, most states now require continuing education on an annual basis in order to maintain your license in their state. In many cases the jurisdiction will has specific continuing education units they require, which perhaps no other state requires. So those unique courses add to the cost as well as the inconvenience of keeping your license active in numerous states" (Personal Interview, Dekker 2017).

Due to these complications, most big firms have a person whose only job it is to monitor licenses. However, as with other firms, they just accept that things are that way: "We see licensing restrictions just a part of doing business. It is not necessarily a barrier for us" (Personal Interview, Olson 2017). A legal counsel at SGA Design explained:

> And so even if you wanted to move quickly it is just impossible to do in a lot of places because of the amount of work that goes into it. And so that takes a pretty big chunk of my daily activity, and I am constantly needing information from the managers all over the country. It is a big burden internally. This is a cost that we eat in order to comply with all of that stuff. And then the cost to maintain licenses in 50 states for 7 different companies that I have to use, we got 3000-5000$ a year times that many registrations it is a significant cost. (Personal Interview, SGA 2017)

SGA, as many other firms, brought up the issue of firm registration, which is not addressed by NCARB at all. While general contractors only need to register with the secretary of state in a jurisdiction to be allowed to operate, all states impose some specific requirements for architecture and engineering firms. Usually this regulates who can own

a company, who needs a license, and what the name can be. Due to these regulations, firms might have to set-up different entities for different states. A representative of Lothrop Associates explained:

> But firms like Lothrop Associates LLP need to have a business license to practice in most other states. Each state has difference requirements for professional firms like architects or engineers that make things difficult. For example, New Jersey requires that all Partners of an LLP be licensed to practice in New Jersey. But other states only require that one partner be licensed to practice in that state. And there are many other variations too. Most states recognize LLPs or LLC or PLLCs. However, New York State also has a DPC which permits a professional firm to have up to 25 percent ownership by non-professionals. Many firms have converted to this type of firm to allow key people like marketing directors or CFO's to have ownership in the business. But it is unclear if this entity will be accepted in other states. Many firms have therefore created multiple firm entities to work in different states. This is a tremendous burden requiring multiple legal entities, multiple tax returns and other duplicate efforts. (Lothrop Associates).

These different requirements make it very hard for firms to work in multiple states because before doing work they might be required to set up new companies excluding and including specific employees. Most interviewees had some personal example of difficulties:

> Some states have regulations like you cannot register as a licensed firm unless every owner of the firm is a licensed architect (I am not). In those cases, we have to set up different entities where I am not listed on the board of directors. A cumbersome and unnecessary exercise as the individuals practicing architecture are licensed, my lack of licensure has no effect on a project. (Personal Interview, Sink 2017)

For instance:

> In our home state of Oklahoma, we are required to operate as SGA Design Group, P.C. In Oregon, however, we are required to operate as SGA Architecture, P.C. This is because in Oregon, architectural firm names must include some form of the word architect/architecture. In other states, such as California, we cannot use the designation 'P.C.' because the state doesn't allow that for architecture firms. And in some other states, we operate under the name of an individual architect rather than our firm name because of unique state requirement such as ownership or corporate governance thresholds. In MI for instance, it is required that that 2/3 of the firm's board of directors have a MI license to practice architecture (Personal Interview, SGA 2017).

There are many similar examples in which even firm names can become obstacles to mobility. Nevada, for instance, does not allow firm names consisting deceased persons' names (Personal Interview, Dekker 2017). A big company with dispersed shareholding told me that they had "run into trouble" in Nevada, because the board there required 2/3 of the shareholders to be licensed in the state , which the firm deemed impractical (Personal Interview, Dekker 2017). Another firm explained that they had to use different stationary for different states, because they required different letterheads (Personal Interview, SGA 2017). In terms of company structure, these rules cost time, money, and creativity:

> We have an energy practice that does oil and gas pipelines design and in Michigan we had to create a new professional corporation that is owned by 2 engineers. We have to concoct behind the scenes side agreements for the shareholder of the actual company that says you can't sell your share from the company. Then the engineers who are the shareholders say wait a minute, I never signed up for this. So, we have complicated and detailed indemnification agreements, we provide tax services for them, since they have to report income that is really not theirs but it looks like theirs since they own that company. So it is a lot of effort to comply. (Personal Interview, STV 2017)

Overall then, despite statements to the contrary by licensing agencies, there are significant interstate barriers for most nationally operating construction firms. In contrast to the EU, the US has not used federal market authority to set some general liberal rules for the movement of construction firms and professional across its whole market. In the absence of those rules, interstate barriers proliferate—caused by the prohibition of temporary interstate service provision, the prohibition of permanent service provision without a local license, in-transparent or non-existent reciprocity requirements, substantial differences between license scope and requirements, bureaucratic and financial hurdles, as well as prohibitions on out-of-state marketing and project bidding. As a result of double-burdens and discriminatory treatments, the national market is significantly fragmented, dis-incentivizing interstate mobility.

V.c. Local Procurement Preferences

This section demonstrates similar interstate barriers caused by the local public procurement preferences. I start with a short consideration of EU rules on public

procurement. This sets up a puzzle since the EU has, despite similar structural conditions and much more national differences, created a transparent, non-discriminatory public procurement regime exercising federal market authority, while the US has not. I then consider the literature in American Political economy, showing how their attention has been shaped by competitive federalism, and mostly glanced over issue of interstate barriers. Specifically, attention has mostly been diverted to international, not interstate issues. Subsequently, I present evidence on of how states, counties, and cities prefer local firms, thereby creating a significantly nationally fragmented market for procurement. As before, I first present evidence from publicly available documents showing that there is a dearth of information. This is then contrasted with the perceptions of firms and interest groups, suggesting that there are significant competitive disadvantages for out-of-area firms.

Government procurement, i.e. all goods and services public entities purchase, account for around 10% in the US and 14% in the EU of all economic activity in terms of GDP (OECD 2017). Government spending is specifically important to the construction industry. Around 23% of all US construction (in terms of value) is paid for by government directly, and even more indirectly (U.S. Census Bureau 2018). Given this high amount of spending, government entities can significantly shape the construction market—by either creating a national framework to encourage fair competition among providers regardless of origin, or by creating protectionist policies that fragment the market into state and local subsets.

The EU has used its federal market authority to create a competitive market for government purchasing. The treaty principles of free movement of goods and services, the right of establishment, and non-discrimination apply to government purchases except defense procurement (European Commission 2018b). Discrimination based on nationality—like a percentage preference to a local company[152], a requirement to use

[152] Preference premiums in government procurement work like tariffs (Deardorff and Stern 1998). A 10% premium is formally equivalent to a 10% tariff on the (potentially) imported good. However, if the government is not the only buyer of the product, the effect of the preference is not necessarily trade distorting. What will happen depends on the proportion of private-to-public demand, as well as market structure (Trionfetti 2000). The only definitive effect is that the government will have to pay more for the goods and services procured.

only local workers, or a requirement to work with only national materials—is considered illegal for any procuring entity from local to national governments. The *White Paper for the Completion of the Single Market* identified public procurement as a significant non-tariff barrier and argued that central regulation is necessary to "create a public [procurement] market across the EU" (Bovis 2008, 4). "European institutions have assumed that encouraging the public […] sectors in the EU to adopt purchasing behavior which is homogenous and based on the principles of openness, transparency and non-discrimination will achieve efficiency gains and public sector savings" (Bovis 2008, 13). Based on these observations, the EU has passed several directives constituting today's procurement regime. Current legislation[153] instructs the European Commission to publish and enforce thresholds above which procurement contracts have not only to be awarded non-discriminatorily but also to be published Europe-wide (reaching from €144,000 for goods to €5.5 million in construction) using the mandatory 'E-Procurement System' (European Commission 2018b). Above threshold procurement by all public entities has to be submitted to the European Commission for translation into 10 working languages and publication. Additionally, procuring entities have to publish pre-information notices each fiscal year, report all awards, and send explanations to unsuccessful firms. While transparency requirements for below threshold procurement are less stringent, preference legislation is generally illegal. Countries can take into account social (e.g. disadvantaged groups) and environmental criteria (e.g. pollution levels), but these have to be applied universally to firms from all member states (so it cannot be the unemployment rate). To encourage small business participation in public contracts, the EU has pursued a strategy of transparency and standardized procedures, not local preference laws like in the US[154] (European Commission 2018b).

In addition, the EU has opened up it public procurement market globally by participating in international agreements, most importantly the Government Procurement

[153] Directives: 14/23 [2014] OJ. L. 94/1; 14/24 [2014] OJ. L. 94/65; 14/25 [2014] OJ. L. 94/243.

[154] The EU Commission deems the way US jurisdictions prefer small businesses as discriminatory: "The EU is, however, concerned that the US 'set-aside' measures and their exemption from the GPA favor US industry and have exclusionary effects to the detriment of foreign competitors" (European Commission 2007, 56)

Agreement[155] (GPA) signed first in the Tokyo Round in 1979, and revised in 1987, 1994, as well as 2012 (WTO 2015). The GPA prescribes non-discrimination and transparency on an opt-in basis, meaning every country can submit which of its entities will be covered by the agreement (Arrowsmith 1998). Based on the GPA, the EU and its member states have opened about 85% of their over threshold public procurement to participating nations (Commission 2009).

The EU has produced a single market for government procurement spanning all levels of government. This contrasts starkly with the United States (see Table 4). As we will see, the US has not established a single transparent public procurement system. Not only every state, but even municipalities and school districts follow their own rules and procedures. Local laws and informal practices often discriminate against out-of-state, or even out-of-city companies. Even the federal level is much more protectionist than the EU. While all federal entities are theoretically covered by the GPA, the Buy American Act[156] (BAA) requires preferences to domestic goods and services (Kim 2009). The European Commission explains,

> Buy American Act restrictions not only directly reduce the opportunities for EU exports, but via content requirements also discourage US bidders from using European products or services […]. Suppliers based in countries that are parties of the GPA are generally not directly excluded from the scope of the BAA and other restrictive regulations. Instead, legislation generally foresees the granting of waivers as regards these suppliers (inter alia, through the 1979 Trade Agreements Act). However, the actual implementation of these waivers may lead to legal uncertainty and act as a barrier. (Commission 2009, 51).

As a result, despite official openness European firms have to apply for waivers for each particular tender, discouraging competition—the European Commission estimates that only 12% of US above threshold procurement market is accessible for European companies (Weiss and Thurbon 2006; European Commission 2007). For subnational procurement, the US follows a voluntary compliance procedure in which state governments can sign onto the agreement (Reich 1999). Thirty-seven states have

[155] 1869 U.N.T.S. 508 (2012).

[156] Pub. L. 72-428, 47 Stat. 1589 (1933).

submitted aspects of their procurement to be covered, but exclude local procurement in all cases and in many cases procurement not administered by the state's central procurement authority (Kim 2009). In addition, it is unclear whether states actually grant waivers of Buy American Act and their own requirements; according to the European Commission, they do not (European Commission 2007, 52).

USA	**EU**
12% open	85% open
50+ policy frameworks	One policy framework
Protectionist laws	No discrimination
Limited state/local compliance	All levels of government
Unknown number of agencies	Single point of contact
No transparency, limited enforcement	Transparency, strong enforcement

Table 4: Comparison of USA and EU Participation in GPA

The mobilization around federal market authority to create a competitive framework for public procurement in the EU can, according to many authors, be attributed to the activism of the European Commission that framed the issue in ordo-liberal terms, suggesting the necessity of government involvement for a competitive market. While there was diffuse interest by European businesses, it was the single market discourse and the Commission that allowed this to happen. One expert on the European procurement system, José Maria Fernández Martin, writes:

> It is true that the policy was carried out by all Community institutions, not just by the Commission. However, this should not conceal the fact that the main actors in the conception, justification, and implementation of the policy were the Commission services, who were especially active under the Delors' Presidency. Thus, even though the public procurement policy is formally a Community policy, adopted on the basis of the Community's decision-making process, the Commission bears most responsibility for its conception and implementation. (J. M. F. Martin 1996, 23)

Similarly, based on interviews with European officials, Hoffman concludes that the outcome is "attributable to the presence of the European Commission in promoting market integration" and assembling diffuse public and business interests into a viable political coalition (Hoffmann 2011, 126). Cowles observes given the "lack of big business participation in the early years of the Community" there seems to be hardly any

doubt that it was the framing and initiative of top level bureaucrats that assembled a pro federal market authority coalition (Cowles 1995, 501f.). These arguments are important because, as we will see, American construction firms are largely in favor of creating a more unified national system for procurement. However, their preferences cannot be roped into a national agenda or single-market discourse since competitive federalism precludes this from happening. In addition, decentralized structures of interest representation discourage any communication of their preferences.

V.c.1.Procurement Practices as Interstate Barrier

There is not much data or literature on local procurement practices in the US. Even NASPO, the National Association of State Procurement Officials, only reports limited results from a survey of state governments (NASPO 2012). The extent of local preferences and its impacts are basically unknown, beyond anecdotal evidence. As we have seen, the issue has been largely ignored by federal policy-makers and think tank scholars.

The Journal of Public Procurement has only a few articles on in-state preferences, not addressing the politics behinds it or its effects. Procurements officials point out that, "While procurement programs are controversial [and wide-spread], empirical research on its impact is limited" (Qiao, Thai, and Cummings 2009, 382). There are only a few economics papers that try to estimate the effects of in-state preferences, usually operating solely in a public-choice framework (Vagstad 1995). Here the assumption is that in-state preferences illustrate how "well-informed, active interest groups have an upper hand over rationally less-informed voters and consumers" (Hoffer and Sobel 2015, 5). The latest study finds that, "Capital expenditure regressions indicate that states with broad preference policies spend $158 more per capita on capital projects than do states without any preference policy" (Hoffer and Sobel 2015, 10). Of course, overall expenditures are only a very rough proxy for the costs associated with preference policies. Another author finds that California spends around 3.8% more on road construction due to its preference policy (Marion 2007). Using similar data, Krasnokutskaya and Seim estimate that CalTrans spends an additional 7.8 percent on construction due to its preferences (Krasnokutskaya and Seim 2011). While these papers give a good idea of the potential

effects of in-state preferences, they do not address why the US maintains them while the EU does not.

The legal literature in the US has mostly focused on the market-participant doctrine, a carve-out from the dormant commerce clause that allows states "to discriminate [against other states] when acting in their roles of proprietor of their respective public domains or as employer" (Zimmerman 2003, 5). While attacked by some legal observers as anti-competitive, the Supreme Court has consistently upheld the right of states and cities to discriminate, citing five reasons: state sovereignty, the right to safe-guard state citizens, the freedom of the private trader ('sowing and reaping'), limited impact, and the difficulty of separating protectionism from legitimate state interests (Coenen 1989, 398; Bogen 2005). Some scholars point specifically at the failure of Congress to act, as legitimating the market-participant doctrine, "If the problem is sufficiently severe to disrupt the economy, Congress may deal with it expressly" (Bogen 2005, 578). Initially legal scholars criticized the market participant doctrine as an "anomaly" that "courts should retreat from" (Blumoff 1984, 73). Some author argued that states should, as they are in the EU, be subject to non-discrimination rules enforced by the courts (Abate and Bennett 1997). Others agreed: "The market participant and the publicly owned monopoly exceptions are relatively robust encroachments on the free movement of goods across state lines" (Schragger 2008, 1120). However, searching for recent law review articles shows that the debate over the doctrine has quieted down.

To understand why there has been no mobilization around federal market authority to reduce interstate barriers through local procurement preferences, we first have to consider how widespread they are and to which effect.

According to a database maintained by AGC, there are only five states that do not have any statutory preference laws that prescribe giving advantages to local construction companies (AGC 2018). Seventeen states have reciprocal, or better retaliatory preference laws—i.e. they call only for discriminating against out-of-state companies from states that do the same. Twenty-eight states have laws that prescribe some kind of preferential treatment of in-state contractors. This can be a percentage preference that artificially increases the cost of an out-of-state bid, or a local labor requirement. For instance, Hawaii requires that 80% of work in public contracts is performed by Hawaii residents

(HRS § 103B-3), Idaho requires 95% (Idaho Code § 44-1001). Similarly, Wyoming will add a 5% increase to bids from out-of-state contractors (WSA § 16-6-102a-c), California adds up to 10% (CPCC § 6107). In addition, 17 states have some statutory preference for using local materials in construction. For instance, a Georgia law specifies, that whenever feasible, Georgia-sourced wood products must be used in construction (O.C.G.A. § 50-5-63). A New Mexico law specifies, "In all public works, preference must be given to materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico" (NMSA § 13-4-5). In addition, 38 states have laws giving preference to minority- and women-owned, as well as small businesses, which often works to the detriment of out-of-state firms.

These statistics probably underestimate the amount of discriminatory public procurement practices because they only count laws that require them. In many cases, procurement officials might have the discretion to give local preferences beyond those specified in law. In addition, most of the laws apply only to central state procurement agencies; however, most states do not have a centralized system of public procurement. This means, some state departments might use the central procurement agency while others do not. Furthermore, these laws do not cover the preference laws of counties, cities, school districts, or public universities. There does not exist a database of all of those, but anecdotal evidence suggests that most larger cities and counties operate some kind of local preferences.

Many California counties and cities have a 5-10% preference for county residents (S. Chang 2012, 20). In San Diego, CA contracts below $500,000 are only open to local companies, defined as companies with at least one quarter of their workforce living in San Diego County (LaVecchia 2015). In Cleveland, OH, the mayor has made it a priority to "have 30 percent of subcontractors be firms that are certified as small and local" (LaVecchia 2015). Montgomery County, Maryland reserves 20% of its contracts to local companies (LaVecchia 2015). The city of Camden, New Jersey, has "adopted an ordinance requiring that at least 40% of the employees of contractors or subcontractors working on municipal construction projects be Camden residents" (Schragger 2008, 1109). New York City considers local procurement preferences as its main tool for economic development (Gotbaum 2003). According to city laws, any contractor using

public funds must make a good faith efforts to hire local resident workers through Hire NYC, the city's own website (NYCEDC 2018). Mayor De Blasio makes hiring local a priority arguing, "Every year the City of New York spends billions of dollars on everything from paper clips to playgrounds, plus additional investments in development. Through HireNYC we are making sure that more New Yorkers have a first shot at jobs related to City projects, and that employers have access to an expanded pool of talent" (De Blasio 2015). According to news reports, the political debate in NYC mostly concerns whether the city is doing enough to hire local, not whether it might be protectionist or discriminatory (Savitch-Lew 2016).

Interviews with big contractors and design firm provide a better insight into just how wide-spread local preference laws are, and to which degree they fragment the national market for procurement. Forty of the firms interviewed were bidding for public projects on all different levels of governments. Of those, 38 reported being negatively affected by local preference laws. For many firms, those laws are a deterrent, "If there is a preference that the local government uses, we just don't participate in the project," or put differently, "We work diligently to be on the positive side of the in-state preferences. If we can't be on the positive side, we don't pursue work in that state" (Personal Interview, Construction I 2017; Personal Interview, Construction IV 2017).

Another firm explained:

> You are at a disadvantage if you are not local. And even with the federal government, most federal government projects […] typically require that 35% of the work be done in that state. So, they are trying to support the local economy where the project is. And that is a big hindrance. And that affects big decisions on whether you are going to pursue a project or not, but definitely the percentage of work you have to give up or team up with somebody one, that is doing some work, you wanted to do, so that you could be seen as local. (Personal Interview, EYP 2017)

Especially local labor participation laws were judged as problematic. They prohibit construction firms from bringing their own workers or subcontractors:

> Wyoming also has a labor preference, 60%, but if you go through a process of advertising etc., you can get exceptions. For a long time, everybody was in the oil fields, and there was a labor shortage, but we can't just bring in our own subcontractors as we want. You'd rather work with someone you know has the ability to get things done, in general Wyoming subcontractors are

> smaller and less sophisticated […]. We have a 100million dollar high school project in Wyoming, they don't have qualified subcontractors. (Personal Interview, Haselden 2017)

Another firm similarly reported, "If contracts require us to give advantage or higher consideration for local firms, we do so, but it can inhibit quality, schedule and budget of the project" (Personal Interview, Joeris 2017).

Many firms were worried about preference on the local level because they are much less transparent than state laws: "Unusual local requirements are the biggest hurdles. Jurisdictions will often put unusual clauses in the code or ordinances to restrict competition to local companies or firms. It is hard to know what these may be until you examine the project" (Personal Interview, Lothrop 2017).

Even examining local ordinances and policies is not enough, because local preferences are often only expressed in the request for proposal or are completely informal: "Rules are less important than local practices. We do find, especially when dealing with municipalities and school systems, that there are a lot of areas in the country where they have a preference to want to use a company that is located in their city or state. So that can be a real business impediment"(Personal Interview, Little 2017). Another company confirmed this, "It usually is an informal thing" (Personal Interview, Olson 2017).

Some areas of the US are known for rejecting out-of-state companies: "If you have some work done in NY, you won't even make it past the first cut [if you are not local]. And those aren't written down, this is just known" (Personal Interview, STV 2017). These informal practices are a deterrent for out-of-state companies: "Chicago, Philadelphia, Washington, DC are places that are notorious for that. So there are some opportunities where we got a resume that is very attractive, but […] we know we will never win because those markets are more about being local than being the best" (Personal Interview, STV 2017). Another firm explained, "There are places like Portland, OR, where I have found in my experience, if you don't have a local partner or an office there, it is just very unlikely that you'd get it. And some firms will just say we don't go out to projects in Portland" (Personal Interview, Olson 2017). Some institutions go as far as having specific distance requirements: "For the CA state university system, they have requirements on how far you can be away from the site, and you have to be licensed

there, and within x numbers of miles. They require all architects on the projects to live there. So we can't do those projects" (Personal Interview, Hacker 2017).

It is not only outright discriminatory laws that fragment the procurement market. The fact that there is no centralized system or common rules across the US makes it hard for non-local forms to compete:

> Probably the most significant difference in regulations from State to State is in the procurement laws. Some states allow alternative procurement methods such as Design-Build, Construction Manager at Risk, EPC, etc. Currently most states have drafted their own requirements. Some states restrict self-performance while others have established requirements for a minimum level with self-performance encouraged. Some states select purely on qualification, others have a cost component, others have some mixture of criteria. (Personal Interview, Crowder 2017)

Similarly, another company explained, "The fact that every state or municipality has a different system to bid for public projects makes it very difficult to bid in different markets," "There is not even a national database (Personal Interview, Sundt 2017; Personal Interview, EYP 2017). The absence of a central transparent system allows local governments to follow informal rules that disadvantage out-of-state companies: "There are always those unwritten rules […]. Any public project should be the same but it is not. Everybody who is distributing public funds is procuring differently. And there is different ways to procure labor materials, then there is a bunch of plusses and minuses of procuring materials for a particular project" (Personal Interview, Fortis 2017).

In other instances, discriminatory local regulation might be hidden in collective bargaining agreements:

> Unions will require even among union contractors, even if I am a union electrician and I am based in Chicago and I want to go to Grand Rapids, then Grand Rapids will say well you have to have 80% from our Local, you can only bring 20% from Chicago. This even affects private work. And different Locals will have different ways they delineate between trades. There are lots of local nuances no matter where you build. That makes it more likely that we hire local subcontractor. (Personal Interview, Shiel 2017)

Another firm concurred:

> They were building three new stadiums in NY, we argued that they are using up all the local workforce so we can bring our own guys in under the radar and build our stores quicker. It all starts with the local government. they have

> agreements with the union in all aspects of the work, even the code officials in some areas on the east coast, are all union workers, it's all about keeping the work to those unions. (Personal Interview, National Retail Chain 2017)

The laws force companies to change their business structure and set up new offices that they do not actually need. Design firms usually team up with a local architect and split the work with them: "Public procurement preferences are also a hurdle. You pretty much need some local architect on your team to successfully bid for projects, even if there is no official preference"(Personal Interview, Architecture I 2017). Another firm concurred, "We typically deal with them by teaming with firms who meet the requirement to get the preference" (Personal Interview, Dekker 2017). A big contractor explained:

> There are preference laws in Wyoming, so they are choosing to pay more money to have a Wyoming contractor do the work […]. 5% is significant in a 5-million-dollar job. So, what we did 10 years ago, and lots of people do that, we opened an office in WY, we moved a few people there, and after 12 month, we were able to get a WY license. In my mind, it's no different than the US and Mexico, they are paying more. A couple of years ago, CO legislators were annoyed by WY, they put in a statute that said if any state has a preference, any contractor from there will be subject to the same thing. Now CO discriminates against WY contractors as well. (Personal Interview, Haselden 2017)

Two firms supported local preference laws, even when they were not always benefitting from them. According to them, those laws were not discriminatory, but just how local government entities should normally act: "Keep in mind, City, County, State and Federal projects are publicly funded" (Personal Interview, Webcor 2017). The other one explained, "We try and utilize locals as much as we can, it is the right thing for the client to support the community they operate in" (Personal Interview, Austin 2017).

However, most companies framed the laws as protectionist and inefficient: "They just make it more expensive by creating a less competitive landscape" (Personal Interview, Shiel 2017). Another firm concurred, "I think that it does the taxpayer a disservice" (Personal Interview, Crossland 2017).

In sum, the US has produced nothing resembling the liberal market for public procurement in the EU. No federal market authority has been used to set some general rules of exchange or transparency. This allows a proliferation of state and local laws as

well as informal practices that deliberately discriminate against out-of-state or non-local firms. The absence of centralized or transparent procurement procedures even within jurisdictions further contributes to a local bias. As a result, non-local firms are regularly excluded from public contracts dis-incentivizing firm mobility and increasing costs for tax-payers.

V.d. Building Codes

This section considers building codes and standards. First, I show how the EU has used federal market authority to set some general rules around codes and standards. This sets up a puzzle since the EU has despite similar structural conditions and much more national differences, created some general uniformity that is lacking in the US. I then consider the literature in American Political economy, showing how their attention has been shaped by competitive federalism, and mostly glanced how heterogeneous codes and standards might create interstate barriers. Subsequently, I present how differing codes and standards create interstate barriers for the movement of firms and the circulation of construction-related products. First, I show how publicly available documents and statements by standards setting organizations dramatically underestimate the degree of heterogeneity. I contrast this with the perceptions of firms and interest groups, demonstrating that the current patchwork of codes and standards creates significant obstacles to the free movement of firms and products.

Building codes are a set of rules designed to secure uniformity and protect public health and safety in the construction and maintenance of human-built structures. There is a variety of codes that may or may not apply to any given structure—commercial and residential building codes, fire codes, plumbing codes, electrical codes, and mechanical codes. Codes can be prescriptive, e.g. defining a minimum height for a guard rail, or performance-based, e.g. a guard rail must prevent all accidental falls. In the US, most codes remain prescriptive (Ching and Winkel 2016). Codes will often reference standards that describe how code compliance can be achieved, for instance by following a certain procedure or using specific materials. In addition, some federal law, like the American

with Disability Act[157] and the Fair Housing Act[158], prescribe some national parameters for building codes.

European countries have traditionally used central government institutions to establish codes and standards directly, or indirectly through semi-public national institutes, and are now moving towards European-wide codes and standards under the umbrella of European standardization bodies (Krislov 1997, 132; Schepel 2005, 101). In the US, codes are mostly established by local authorities, like municipalities, counties, or school districts. Since many local governments do not have the expertise and resources to develop their own codes, they will often take model codes, developed by private organizations, and customize them for their jurisdiction. The real developers of codes and standards in the construction industry are over a hundred different private and semi-private organizations; some experts count 10,000 standard development organizations in the US more generally (Krislov 1997, 109; Schepel 2005, 145). As a political scientist and scholar of standard-setting puts it:

> To the extent that one may speak of any American 'system' of standards, it is largely shaped by weak government pressure from above and diffuse pressure from business and insurance from below. The avoidance of overt responsibility, the fear of antitrust, antibusiness, or antilocalism bias, is evident throughout […]. It is hard to defend this arrangement as coherent, rational, or efficient. It minimizes government interference[159]. (Krislov 1997, 104f.)

One code expert estimates that there are 44,000 overlapping jurisdictions in the US that create and maintain their own building codes (Wible 2006, 288). As we have seen in the previous chapter, building codes have not drawn much political attention in the US, and are, if ever, only looked at in terms of overregulation. Political debates are mostly local and focus on the trade-off between "affordability vs. profitability," never on

[157] 42 U.S.C. §126 (1990).

[158] 42 U.S.C. §3601 (1968).

[159] Krislov is an ardent supporter of the American system, writing uniform standards are "the archenemy of progress and represent the sort of dead hand paralysis so typical of Eastern European Communism" (Krislov 1997, 92).

internal market issues (Flavelle 2016). Nobody has thought about to which degree they might create barriers for the free movement of goods and services.

In the EU, the issue of building codes has been analyzed in terms of technical barrier to trade, the realization that heterogeneity in standards might create market barriers. Generally, the right of market access for goods is guaranteed by case law following the Dassonville[160] and Cassis de Dijon[161] decision, as well as treaty obligations. According to the mutual recognition approach, regulatory objectives of the EU member states are considered to be equivalent, except when a state can prove significant health and safety concerns to exist to the European Commission[162]. While this approach has been deemed a success for many 'simple' products, it did not reduce barriers to the trade in more complex commodities, like elevators or houses. To remedy trade barriers created by the heterogeneity of national standards, the EU adopted the 'new approach'[163] in the 1980s, and the 'new legislative framework'[164] in the 2000s, creating a system of technical harmonization and market access, while minimizing the amount of necessary legislation. Accordingly, for complex regulated goods the EU establishes essential requirements (i.e. performance-based standards) and delegates detailed regulation, within the objectives set by a directive, to the European Standardization Organizations (CEN, CENELEC and ETSI). Compliance with a harmonized standard automatically gives product access to the European market as a whole (European Commission 2015). In addition, legislation mandates a waiting period for information exchange via the European Standardization

[160] Case C 8-74, Procureur du Roi v Benoît and Gustave Dassonville,1974 E.C.R I-00837. The ECJ held that a Belgium law which required a specific Belgian certificate for Scotch Whiskey imported from France was equivalent to a quantitative restriction of trade.

[161] Case C 120/78, Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein, 1978 E.C.R I-00649. The ECJ held that product standards (in this case the definition of 'fruit liqueur') can violate principles of free movement, even when applied indiscriminately to domestic and imported products. This founded the principle of mutual recognition.

[162] The burden of proof that a product is unsafe lies within the importing state. In this case, the state has to show additionally that it is taking the least trade-restrictive measure for ameliorating these concerns.

[163] Mutual Information Directive 83/189 [1983] OJ. L. 109/8; Council Resolution 85/C [1985] OJ. L. 136/01, Directive 98/34 [1998] OJ. L. 204/37; and Directive 98/48 [1998] OJ. L. 217/18.

[164] Regulation 765/2008 [2008] OJ. L. 218/30; Regulation 764/2008 [2008] OJ. L. 218/21; Decision 768/2008 [2008] OJ. L. 218/82.

Bodies before countries can adopt national product regulations. While European countries can still promulgate their own standards—participation in European standards is generally voluntary (except when mandated by a directive as in the Eurocodes)—following standards initiated by the EU, and defined by its standardization bodies, gives an automatic presumption of conformity, and it therefore preferred by firms over national standards. Similarly, it incentivizes national standardization organizations to work together in their European umbrella organization. Every member state has to designate one central standardization body to participate in European Institutions, and coordinate national standardization and conformity assessments (European Commission 2018a). A small part of the market remains 'non-harmonized,' meaning it is only governed by mutual recognition and notification procedures (European Commission 2018a).

Hoffmann studied the market for elevators to contrast the EU approach with the US and found: "American elevator companies are regularly forced to modify their products and retool in order to comply with the ever-changing rules imposed by the great number of jurisdictions within the United States (Hoffmann 2011, 312). In contrast, realizing that the heterogeneity of national standards impeded the trade in elevators, the European Commission pushed for harmonized safety standards that were adopted with the Lift Directive[165] (Hoffmann 2011, 297).

Building codes fall within a similar approach. While national and local procedures for zoning, as well as for the approval and inspection of construction projects vary widely[166], there has been a push to establish some harmonization (European Commission 2018c). The European Commission has long argued that differences in building codes create obstacles for the trade in construction-related products and the free movement of contractors (Mork and Hansson 2007, 22). Since 1989, the European Commission has been working on the development of common construction standards[167]. In 2007, CEN

[165] 95/16 [1995] OJ. L. 213/1, now Directive 14/33 [2014] 95/261. Superseding Directives 84/529 [1984] OJ. L. 300/86 and 90/486 [1990] OJ. L. 270/21 that regulated elevators previously.

[166] But even with those issues, there is an awareness at the European Commission that "Differences among the building control systems of EU countries represent a barrier to the freedom of movement of services in the construction industry" (De Oliveira Pedro, Meijer, and Visscher 2011, 416).

[167] Construction Products Directive 89/106 [1989] OJ. L. 40/12, replaced by Regulation 305/2011 [2011] OJ. L. 88/5.

published the finalized Eurocodes, and made their incorporation into national standards mandatory; for instance, Austria adopted them in 2009, Germany in 2012 (European Commission 2018c). The Eurocodes consist of two parts, one that is common to all member states and one called National Annex containing so-called nationally determined parameters, that can be customized towards local climatic conditions and preferences (European Commission 2018c). However, ”Member States are encouraged to co-operate to minimize the number of cases where recommendations for a value or method are not adopted for their nationally determined parameter” and deviations need to be justified to the European Commission (Mork and Hansson 2007, 25).

As we will see, this contrasts drastically with the US, where the system is not only much more decentralized, but the heterogeneity is also not recognized as a barrier to trade. Despite the fact that construction firms describe differences in codes as significant impediment to mobility, nobody mobilizes around federal market authority to overcome the obstacles.

V.d.1. Building Codes and their Interpretation as Interstate Barriers

Building codes, which vary between jurisdictions, were another major issue mentioned by firms as obstacle to interstate trade. Building codes in the US are created and enforced by states and local jurisdictions; and it is unknown how many there are. One expert estimates that there is 44,000 different jurisdictions maintaining code; the US census bureau counts at least 20,000 “permit-issuing entities” (Wible 2006; U.S. Census Bureau 2016a).

Some degree of uniformity is achieved through the work of private organizations that publish model codes. While most jurisdictions follow a model code, in most instances they use different versions of the same code and modify as they see fit. The International Building Code (IBC) is produced by the International Code Council (ICC). The National Fire Protection Association (NFPA) publishes a competing building code, NFPA 5000. As one author describes those organizations:

> Think of them as two publishing houses engaged in a war for book sales. Codebooks are a big business in the United States and abroad. When a city or a state adopts one model code or the other, it means that thousands of code officials, architects, engineers and others must purchase new copies to keep

> on their desks. In 2004, NFPA pulled in $58 million from publication sales, while ICC earned $25 million. Both organizations can make big claims when it comes to their influence. That's because jurisdictions commonly mix and match certain codes from each group. (Swope 2006)

In all states, some version of a model code is in effect. However, states will often not adopt the newest version published by ICC. Right now states are about evenly split between 2009, 2012, and 2015 versions (ICC 2017). States rarely adopt codes for their whole areas, meaning the above statistic presented by ICC is misleading. Twenty-six jurisdictions promulgate a uniform building code across their whole territory, with few exceptions. In all other states, local governments adopt their own codes (ICC 2011). It is generally not known and can only be found out by inquiring with local building departments, what kind of codes where adopted. Similarly, while states are known to modify model codes significantly, there is no existing directory of the changes they make.

Illinois can be used as an example, since its state building department tracks and publishes the adoption process in local jurisdictions. According to a recent report, 266 of 371 local jurisdictions adopted the IBC with significant local amendments (Illinois 2016). Similarly, the model versions cities base their codes on vary from 1987 to 2015 (Illinois 2016). In other states, like Texas for instance, many counties do not have building codes at all. Here, any attempts to impose uniform rules were thwarted. A Vice president at the Texas Association of Builders argued, "Cities already do a good job choosing which parts of the building code are right for them," so why impose unnecessary uniformity? (Flavelle 2016).

To concretize what local modifications of building codes mean, take the example of exit signs. While the NFPA model code only mentions that exit signs should be "distinctive in color," many states and cities have taken it upon themselves to modify this standard (Simply Exit Signs 2018). Due to the large number of jurisdictions, it is impossible to know what the requirement is without reading the local building code. But online publications illustrate that some cities like Portland, OR, Baltimore, MD, or Salt Lake City, UT require green signs, while New York City or Chicago require red exit signs. Other states, like Texas, do not care either way. In other states, it changes from one city to another—for instance, San Francisco requires green signs while Los Angeles

requires red signs (Simply Exit Signs 2018). In the US, usually only the word ‘exit’ is required, while internationally a pictogram is preferred. In 2006, New York City changed its building code to require the ISO pictogram in high-rise buildings (J. Turner and Lithwick 2010). Similar observations could be made for size, placement, and illumination of exit signs. Contrast this with the EU. The European Sign Directive[168] defined uniform requirements including color, the use of a pictogram pointing to safety, and optionally the word ‘exit,’ implementing the ISO standard. Even illiterate Europeans will be able to recognize the universal sign, while in the US, it depends on the city.

While it is not apparent from this description, building codes are relatively uniform across the US compared to the regulation of other aspects of buildings. For instance, three different organizations, the ICC (International Plumbing Code-IPC), the Plumbing-Heating-Cooling Contractors Association (National Standard Plumbing Code-NSPC) and the International Association of Plumbing and Mechanical Officials (Uniform Plumbing Code-UPC), maintain plumbing codes and sell the corresponding code books. Thirty states use the IPC, 11 states use the UPC, two states use the NSPC, and 6 states develop and maintain their own codes (Test.com 2018). However, even that exaggerates the amount of uniformity, since nobody tracks state amendments, and in states where local jurisdictions adopt the codes, the local amendments. In Nevada for instance, some jurisdictions base their codes on IPC and while others use UPC (Test.com 2018).

Similar issues are reported for other building aspects, for instance electrical codes (Zind 2006). One firm explained, “We know those issues [building codes] and get a hold of the local standards and get an understanding pretty quickly. It is the elevator codes, and the boiler codes, and the jail standards that tend to vary more than the fire life safety standards” (Personal Interview, Rosser 2017). This also affects the market for materials and construction-related products. For instance, as Hoffmann explains due to the fact that city building codes will reference different standards for elevators, there basically is no universal market access for elevators, even when fulfilling the latest ASME lift standard (Hoffmann 2011, 316). There is no standard, as there is in the EU, that gives a presumption of conformity for all jurisdictions. A representative of an international

[168] 92/58 [1992] OJ. L. 245/23.

elevator manufacturer explained, in the US, “A uniform standard doesn’t always exist. So we end up creating options or accessories that meet certain market requirements, certain small segments of the market” (cited in Hoffmann 2011, 319).

Finally, building codes are enforced by local officials, often former contractors, without uniform training. Numerous private organizations offer certificates, but as with other professional credentials, states and cities vary on what they accept and many provide their own training. This suggests that model codes might, even if similar, not be uniformly interpreted. To demonstrate the inconsistency in building codes and their interpretation, Fiatech, an industry consortium in favor of streamlining regulation nationally, sent drawings made to the most stringent code of a Target Corporation Retail Store to cities in 14 different jurisdictions (Wible 2012). Only checking for accessibility and egress, jurisdictions found between zero and 16 code violations; the study concluded that process is “dysfunctional and totally inconsistent” (Wible 2012). Especially the variance in accessibility compliance, which is uniform nationally, speaks to the interpretive discretion of local officials.

Differences in codes and code application are more noticeable for designers than for contractors (Personal Interview, Metropolitan 2017). Only a subset of my interviewees was therefore able to speak to the issue of building codes. Forty-eight firms named the heterogeneity in building regulations as a significant obstacle to jurisdictional mobility and a disadvantage for nationally-operating firms. For instance, “The next biggest hurdle is the different building codes and inspection agencies” or “Different building codes and inspection procedures don’t prevent us from going anywhere, but they cause delays a local guy wouldn’t have” (Personal Interview, Rectenwald 2017; Personal Interview, Hays 2017). Fourteen firms found that differences in building codes were not a big obstacle. They either described them as “inevitable” or explained that, since they applied to every firm, they could not possible be a barrier: “Everybody is on the same playing field—no disadvantages” (Personal Interview, Architecture I 2017; Personal Interview, Sundt 2017). A design firm elaborated, “Because all designers are subject to the same jurisdictional requirements, we don’t see this is creating an advantage for some firms” (Personal Interview, Sink 2017). Unlike in the EU, firms struggle to conceptualize how the exercise of local power might be a barrier, even though pretty obviously, “The

out of town General Contractor will struggle to learn these local 'Standards' to the advantage of their local competition" (Personal Interview, Webcor 2017).

However, the majority of firms saw significant disadvantages in a market fragmented by so many different rules by different jurisdictions: "This affects us significantly, they went to the ICC to try to limit the local interpretation and challenges, but because they allow municipalities/states to make their own amendments to be more stringent, they put more layers of regulations on it which makes things more difficult," or put differently, "It comes up all the time […]. Sometimes this disadvantages us relative to other local companies that know the code better" (Personal Interview, Wolverine 2017; Personal Interview, Fulcrum 2017).

An architect explained that there was no good reason for the local protectionism:

> [Building codes are] somewhat of an impediment. […] We have several building codes, the IBC and NFPA, they are competing, and they don't always agree. And some jurisdictions use both of them. We already got a build in conflict within each given jurisdiction. But then you are right: Maryland incorporates the model building codes but then makes amendments. And you see those happening in most states, […] that is a barrier, there is no doubt about it […]. You have to convince a jurisdiction that you are qualified to do work in their jurisdiction. And that is another excuse […]. But if you are a professional architect, you know how to apply a building code […]. It is not rocket science [but] certainly cumbersome. (Personal Interview, MCA 2017)

Alliance Residential, national real estate company with projects in 19 states explained:

> Additionally, every city or jurisdiction has their own amendments. Also, as new revisions to the IBC are released, different jurisdictions adopt the new code at different rates, providing grace periods for developments that were already permitted or are in the permitting process. […] To add further complication, different neighborhoods have different design criteria within the same governing jurisdiction. These are usually called something like Special Purpose Districts (PDs). They don't impact building codes, but they may institute requirements regarding curb appeal. For example, one of the PDs in which I'm currently building requires 80% of the exteriors to be masonry, they require specific types of paving, they limit light pollution, etc. As you can imagine, all the different governing agencies can make development extremely complicated, adding layer upon layer of complexity. In addition to building codes, there are also special codes for electrical, mechanical, plumbing, fire alarm/fire sprinkler, swimming pool, offsite

> utility work, paving and drainage, water and wastewater, irrigation, accessibility, etc., etc., etc. And every one of these governing agencies apply their own permits and fees. We'll spend anywhere from 5%-15% of our total budgets before we ever even break ground" (Personal Interview, Alliance 2017)

Due to varying codes, construction costs vary dramatically between jurisdictions: "The costs are quite significant but vary from jurisdiction to jurisdiction. The issue you discuss isn't just at the State level. It chases down to county, municipal and [school, utility, etc.] district levels. Costs can range from a few hundred dollars in hard and soft costs to hundreds of thousands of dollars in hard and soft costs—and everywhere in-between" (Personal Interview, Construction IV 2017). Another firm explained,

> Private developers see that and say to hell with it, we don't want to deal with that, there is way too many restrictions, that is becoming more common. Then they just go to a suburb [of Portland], like Washington county, planning is easier, building department is easier. That happens on a county level and on a state level. And you can't underestimate the impact of the costs you are going to incur in a particular place, if you are a private company and you want to locate somewhere, you are theoretically already doing that analysis. Income taxes, property taxes, costs of building, all are going to factor in a location decision. And the costs of taxes are more obvious than the building costs (Personal Interview, Hacker 2017).

As a result of these differences, it is quite common for national firms to hire specialized consultants who are experts on the local building department and their codes (Personal Interview, Olson 2017). "In many cities, an architect or owner must hire a local 'expediter' whose expertise is actually just their network of personal connections in the local bureaucracy. This is a city-by-city issue—not a state-by-state issue. The city-by-city obstacles are substantial in large cities" (Personal Interview, MCA 2017).

Municipalities can use their authority over building codes to deliberately favor local market participants. As one company explained, "Most municipalities and governing bodies prefer not to have outside contractors come in so they often try to exploit the lack of knowledge for the local building codes. This is not always the case but does frequently happen" (Personal Interview, Rectenwald 2017). For instance, one firm opined that Dayton County, FL and Fairfax, WV, were "notorious" for that kind of behavior; another explained, "We have found that these subtle differences [between Texas counties] can impact firms that are from out-of-town/state" to their disadvantage

(Personal Interview, Fred 2017; Personal Interview, Joeris 2017). Another firm added, "Local jurisdictions still tinker with the codes causing some problems [for instance] in New York City, Connecticut, and New Jersey" (Personal Interview, Lothrop 2017). Given the general political support for local protectionism, building inspectors can prioritize processing permits for local contractors:

> Working in the city of Chicago […] I have to meet schedules for my customers, I will go and file—you can't go to the building department office, you have to schedule your inspections online, and you have to wait 4-6 weeks for an inspection. That means, I put the under-floor plumbing in, but before I can fill it in, I have to get it inspected. They expect me to wait 4 to 8 weeks. It's impossible to meet schedules. *This oftentimes advantages local companies that know better how to work through the local bureaucracy*. But there is no question that what you are looking at the regulations from state to state vary dramatically, it's not only state to state but city to city within a state. (Personal Interview, Wolverine 2017)

Another firm explained,

> It is important to know that, every city is different. Every inspector looks at different things. And it can be very subjective. If you are not local to the market, they will be on it. If you have experience in a local market, and the inspector gets to know you, they are not as strict, they know who you are, they have seen you on dozens of projects, there is trust. It's what is *this* city going to enforce. (Personal Interview, Fortis 2017)

This was repeated quite often, "Adjacent cities such as San Francisco and San Jose have drastically different processes for reviewing the code compliance of projects. They also have their own custom code modifications" (Personal Interview, MCA 2017). "But it's not only how a city might interpret a code, but even within that city they could have different plan reviewers that could interpret it differently. I don't see this as a city thing, but rather as a person by person thing" (Personal Interview, EYP 2017). And it often differs by where a company is from, "Very subjective process we feel, not the same for each company submitting to the same department—or even depends on the reviewer who's desk it lands on and the relationship with each" (Personal Interview, Architecture III 2017).

Differences in local building codes also produce challenges for companies that sell manufactured houses or try to build uniform apartments or stores across the country.

Due to differences in codes and interpretation, what might be a safe prototype in one city, is deemed unacceptable in another:

> "We do that every day, we build for a lot of national chains, like Red Robins, McDonalds, Taco Bell, and those are examples that happen at least weekly if not daily […]. The larger corporations give you a proto-type set of plans, their prototype is based on what they see as the most stringent code, picking California or Texas as their basis, but when you bring that plan into a different state, during the review process they don't pick things up and then when you get into the field, one of the inspectors will come through and say, oh jeez, you can't do it this way. And a lot of times we run into this with structural details, with mechanical details, exhaust hood systems, fire protection systems, welded duct work, electrical side […]. We have do redesigns all the time to match the local requirements. (Personal Interview, Fulcrum 2017)

Especially retail chains expanding from Europe notice the extreme decentralization of the US system as a disadvantage: "A French firm with retail all over North America refuses to accept the fact that things take as long as they do. He can build those stores in 5 weeks in Europe, and here it takes 9 weeks. We got other companies like Triumph, Kern Millan, Cotman, we got them to understand that our system is kind of broken, it is not really efficient" (Personal Interview, Retail Construction 2017).

A national real estate developer explained:

> If you had the exact the same code, you could save lots of money. They [costs imposed by code differences] are kind of regional. In almost every state, if you are doing a low-rise building, 5 or 6 stories, you can do the electrical wiring with rolex, flexible wiring. If you were in Chicago, they would not let you do this. It has to be inconduit. Those rules are driven by the unions because they don't want lesser skilled people to come into their markets. So that does happen […]. Civil engineering, sewers, utilities, you have to hire a local for that. No one from out-of-state would pretend to understand that. They are all super state specific, or even power company specific. You really have to have that covered. Could they be more uniform? Yes, they could be, but utilities are all regional, North Carolina does not want to do anything like Georgia does, even though they are the same company. (Personal Interview, Hines 2017)

Another home builder expanded, "Building code variations also create complexity (and thus inefficiency) in plans. While model building codes do exist (IBC/IRC, etc.), they are almost always modified locally. The net result is that floor plans that can/should be able to be shared across a region are not—requiring complete redraw/resubmittal

based on local modifications to the base code language" (M. Personal Interview, Taylor 2017). Costs are created by several factors, from the inability to share plans across regions to difficulties in re-locating senior construction managers from one region to another. "It clearly it creates inefficiencies" (M. Personal Interview, Taylor 2017)

Another firm working with standardized designs explained:

> The things that most commonly require changes have to do with energy code requirements, foundation design, and exterior appearance. Retail clients make decisions on project locations primarily based on customer demographics & competition. It has been known to happen, however, that a client will look to an adjacent jurisdiction to build because they may not impose costly design requirements. Dealing with all of these different circumstances and requirements is what we do. We try to mitigate the additional cost to the client by working closely with the jurisdiction to understand exactly what is required and why. (Personal Interview, SGA 2017)

Chains, that operate the same business across the same country, are specifically affected by the regulatory differences. An employee at one of these firms explained to me, they "hired me specifically for the questions you asked. How do we manage that, how do we navigate it, how do we build in 50 states the same building, and why does it cost us more in one state than the other and why are the regulations so different? (Personal Interview, National Retail Chain 2017). When asked how fragmented the national market was, he explained:

> Inside our store, there are currently 38,000 regulations. If I expand this to the states that I operate in, and you look at all their modifications, it goes to more than 115,000 regulations. Very very complex and in some cases redundant system. The building code typically is on a 3-year cycle, most standards are on a 5-year cycle. So, every 3/5 year there is a new building code/standard […]. So, if you think about that, I as an owner, have to train all of that staff every 3 years on the latest and greatest in every state, and yet there are already acknowledged problems with the regulation I am training them under. So, when you think about regulations and how they change from state to state there is an enormous amount of costs to [us] because I am building different systems in different states. So, hundreds of thousands of dollars a year […]. We don't care what the book is, let's everybody agree to one book and I think you would reduce a lot what I am talking about. (Personal Interview, National Retail Chain 2017).

Cost are not only created by actual construction costs, but also personnel requirements:

> The money that is spent to train my architects, my engineers, my construction personal, and my facility operators […] is enormous. I want to be able to take a person in San Diego and move them to NYC without having to retrain them [but that is impossible]. The other thing is, when we hire a national vendor, there is not one size fits all, he can't develop a process to [for instance, manage] parking lots, because the restrictions in CA are different than MI or WV, and therefore he charges me more depending on where the state is. (Personal Interview, National Retail Chain 2017).

Overall then, the heterogeneity in building codes creates another layer of complexity to the existing interstate barrier created by licensing and procurement preference. In contrast to the EU, the US has not used federal market authority to guarantee national market access to firms and products. In the absence of federal rules, there is heterogeneity between jurisdictions in codes and standards, as well as their interpretation by locally trained building officials. As a result, mobility is discouraged and made more expensive and construction materials need to be jurisdiction-specific. In addition, code differences are used as justification for further barriers through non-recognition of out-of-state licenses.

Table 5 summarizes the regulations and practices perceived by nationally-operating construction firms as barriers to mobility. The next chapter will consider different explanations.

Dependent Variable Persistence of interstate barriers and lack of mobilization against	**Heterogeneity and Barriers Found**	**Impacts According to Stake-holders**
Professional and Firm Licensing 1) General Contracting 2) Design/Architecture 3) Plumbing	**1) Prohibition** of temporary service provision without local license **2) Prohibition** of permanent service provision without local license **2) Non-recognition** of out-of-state/-city licenses: Default is no recognition; Complicated, in-transparent, or non-existent reciprocity; Incomplete national standardization **3) Substantial licensing differences:** Differences in license scope and requirements; Differences in exams; Differences in education/apprenticeship requirements; Differences in continuing education; Differences in firm type, structure, name requirements **4) Bureaucratic and financial hurdles:** (Re-)licensing fees; (In-)frequency of license-issuance **5) Prohibition** of out-of-state marketing/bidding	**1) Default prohibition** of out-of-state firms **2) Disadvantage** for out-of-state firms: Double burden; Cost in terms of time, delays, and money **3) Incentivizes** certain business structures: Local joint ventures; Decentralized firm structures; Local regulatory consultants; Use of local subcontractors **4) Decreases** competition **5) Increases** costs for construction users
Public Procurement Preferences 1) State, county, city, district, and institutional preference laws 2) State, county, city, district, and institutional practices	**1) Discriminatory laws:** Percentage preference to in-state/-county/-city firms and specific business types; Percentage preference for local goods and materials; Local labor requirements **2) Practices:** Informal percentage preferences; Informal exclusion **3) Non-transparency**: No centralized procurement system or procedures; No centralized procurement agencies	**1) Prohibition** of out-of-area firms **2) Disadvantage** for out-of-area firms **3) Incentivizes** certain business structures: Local joint ventures; Decentralized firm structures; Local regulatory consultants; 'Mailbox' offices; Use of local sub-contractors **4) Decreases** competition **5) Increases** costs for tax-payers
Building Codes and Inspections 1) Local building codes adopted 2) Local plumbing codes adopted 3) Inspection Practices 4) Training of building officials	**1) Heterogeneity** in code adoption: Idiosyncratic state/local codes; State/local amendments to model codes; Different versions of model codes **2) Local** interpretation of codes: Level of scrutiny often dependent on personal relationships; Divergent code interpretation due to non-uniform training of building officials	**1) Disadvantage** for out-of-area firms in terms of knowledge and relationships **2) Incentivizes** certain business structures: Local joint ventures; Decentralized firm structures; Local regulatory consultants; Use of local sub-contractors **3) Justifies** licensing barriers and requires retraining of professionals **4) Decreases** competition **5) Increases** costs for firms and construction

Table 5: Interstate Barriers in the Perception of Construction Firms

CHAPTER VI

MAINTAINING INTERSTATE BARRIERS IN THE CONSTRUCTION INDUSTRY

This chapter considers different explanations for the persistence of interstate barriers in the construction industry. This proceed as follows. First, I present the position of construction firms. They mostly agree that licensing, local procurement laws, and the heterogeneity in building codes create interstate barriers. However, absent a national market building agenda, their diffuse preferences for national streamlining remains unrealized. I then consider why national and local trade associations do not mobilize against interstate barriers. Subsequently, I look at the positions of public and private regulators, and then at state and local law-makers, as well as their national cooperative institutions. The overall picture that evolves from considering these different actors is that decentralization and separation of powers prevents them from mobilizing for federal market authority and from creating uniform standards across sectors. At the same time, in many instances it becomes clear that given a different ideational context, many actors could be mobilized for federal market authority. The last section summarizes and discusses the implications for broader theorizing about creating markets.

VI.a. Firm Preferences

Most construction firms agreed that licensing, local procurement laws, and the heterogeneity in building codes create interstate barriers that should be reduced. However, the dominating sense was that there was nothing they could do about it. While these firms could probably be coopted into a national market-building coalition, they are not, because no such coalition exists: "To my knowledge, there is nobody working to change these rules" (Personal Interview, MCA 2017). As we have seen, competitive federalism has prevented the creation of such an agenda on the federal level. Absent a political entrepreneur and set of ideas, most firms remain politically un-mobilized; without a national agenda that would bundle efficiency gains across professions, a plumbing contractor is not going to start a national movement to reduce interstate barriers. Firms opposed to national measures to reduce interstate barriers cited specific competitive federalism arguments, like the idea that any federal regulation will decrease

market competition, or that local regulation cannot be conceptualized as an interstate barrier. The firms in favor of reforms, beyond the absence of a national agenda, named specific obstacles, specifically the preferences of interest groups, local regulators, and policy-makers.

It is not technical requirements or geographic differences—as regulators like to stress—that leave firms not pushing for reforms. Most construction firms agreed that many of the interstate barriers through licensing could be overcome through either a mutual recognition scheme like in the EU, or a federal licensing scheme like for Air Traffic Controllers without compromising issues of local difference and safety. Forty-two out of 73 firms explicitly stated that they would support a national system, and that it would be technically plausible. Thirteen companies described licensing as a significant interstate barrier, but did not take a clear position regarding changes, often related to the fact that political reforms are "just not something that is on our radar" (Personal Interview, Fulcrum 2017). Many companies were very forward in their political position: "There should definitely be a general system of reciprocity so the firms that want to grow geographically aren't hindered by local laws" (Personal Interview, Rusco 2017). Especially architecture firms were enthusiastic about a national license. One of the biggest design firms told me:

> Large firms all want a national license but it is an uphill battle and they don't say it publicly. The thing is, if we want to bid for a project, we just find somebody who can quickly become licensed in that state, so it is not a real obstacle for us. But it is inefficient. The costs are hard to estimate, but they do exist, and are passed on to clients. Especially when lots of smaller licensing boards operate really badly, nobody answers the phone, it leads to delays. It would be easier even for them to just have one regional licensing board. (Personal Interview, Architecture I 2017)

Firms took issue with the characterization by licensing boards, that there were some technical/geographical/safety reason for not recognizing each other's licenses. One firm told me, "There could easily be a national license" (Personal Interview, Shames 2017). Another argued, "While each one of the unique reasons can be justified individually in each state, overall there is no reason you cannot have one single license and one single exam and requirements that cover all 50 states, and it should be like that" (Personal Interview, EYP 2017).

The 14 companies that said they would oppose a national license fell into two categories[169]. Most of them were reciting arguments related to competitive federalism "Whenever you try to nationalize […] there is trouble" or put differently, "But in general, I would be against a national system—it just invites the federal government into the mix and that would mess things up. States should have control over how they oversee public safety" (Personal Interview, Martin 2017; Personal Interview, Austin 2017). Another company, despite describing different licensing rules as interstate barriers explained, "The national government has no business being involved in states' rights" (Personal Interview, William 2017). The conservative belief that one federal rule is necessarily more restrictive than complying with 50 different rules had diffused to some firms: "I suspect that a national bureaucracy would be more formidable than adjusting to local jurisdictions as needed" (Personal Interview, Gensler 2017). Two companies, that had acquired licenses nation-wide explained "At some point these differences can be an advantage if you are locally licensed" (Personal Interview, Kraus 2017).

A similar dynamic was to be observed in regards to building codes. Firms perceived streamlining building codes nationally as hugely advantageous—but given the absence of a national agenda or interest groups to mobilize firms, there was no strong advocacy work by firms. Of the firms directly answering the question, 34 enthusiastically supported some kind of national framework, citing huge cost savings. Five firms explicitly opposed it, explaining that federal market authority was always problematic. Two firms explained that the differences were just "technically inevitable" and one firm was just generally unconcerned (Personal Interview, Architecture I 2017; Personal Interview, Dennis 2017)

Some firms, and especially regulators questioned whether a national solution was even possible: "It's obvious when there is a change in interpretation that there was a specific reason for it," or "In Florida you have hurricanes, in California you have earthquakes, these are things you have to be respectful of" (Personal Interview, Rusco 2017; Personal Interview, Retail Construction 2017). However, the argument of geographic differences is less based on objective conditions, and more in the fact that US

[169] The position of the remaining four firms was too unclear to be categorized.

firms and regulators can simply not imagine a different world. This can be shown by the fact that many experts advocate a nationally streamlined system of building codes, and the Eurocodes prove that it can be achieved. In addition, geographical differences do not account for the fact the neighboring cities will have different codes. As one architect put it to me:

> [The argument] is baloney of course […]. They are all going to feel very compelled to want to meddle with things and customize them. And it is hard to distinguish between legitimate safety concerns and protectionism […]. But I don't believe if you were to look at it objectively that there could not be any consensus built. It might be a matter of diminishing returns […]. You could define certain sections to only apply in specific climatic zones […]. There is a lot influence by the local fire marshals, they have a whole series of things that are important to them […]. And the local officials don't feel compelled to update the new code. (Personal Interview, MCA 2017)

For local procurement preferences, the sense that nothing could be done was even stronger. While 38 of 40 firms reported being negatively affect by those preferences—reaching from extra costs to the decision to not compete—none was able to propose any solutions or advocate any changes.[170]

The absence of an overarching strategy, that would realize significant economies of scale, makes any single national reform efforts appear too costly. Instead, most firms are politically not mobilized, lobby only specific state regulators, or trust their trade organizations. Expending political and real capital for only one small change, like a federal architecture license is not worth it for companies, while trying to reform the overall system is not even on firm's radar. A national license "would save the firm money, but it does not save the firm enough money to make it a priority to fight for it" (Personal Interview, EYP 2017). As a result, most firm lobbying is for more construction projects on the state or local level: "We spend a small amount of time supporting and promoting issues mostly within our own state that improve our practice," or "We are active in local lobbying for construction projects that would benefit our communities" (Personal Interview, OZ 2017; Personal Interview, Webcor 2017).

[170] While 73 firms were interviewed, only 40 were involved in public projects.

VI.a.1. Taking Regulations for Granted

In most cases, firms take the political environment for granted unless they are assembled into a coalition through political actors. One firm told me "Regulations are 30,000 feet above us, it's not on our radar. We spend no time on thinking about how to change the political environment. It has never come up. We are concerned with building something to our clients wishes" (Personal Interview, Shrader 2017). This attitude was wide-spread making statements like, "A company just has to bite the bullet and do what is necessary to become licensed," or "In the long run, the time lost in trying to politically change it is way more expensive than paying the costs […]. It's way easier to follow the rules" (Personal Interview, Rusco 2017; Personal Interview, Fred 2017). The big real estate developers I interviewed were in favor of national licensing, but told me they had never lobbied for it (Personal Interview, DSLD 2017).

VI.a.2. Fear of Public Position Taking

The political discourse of competitive federalism dis-incentivizes taking a public position on market fragmentation. While some firms would like to see federal market authority used to reduce many interstate barriers, they generally see this stance as too controversial to articulate it publicly. Architecture firms conveyed the sense that in many cases, they were in favor of a national license, but would not want to take a public position on something so politically divisive (Personal Interview, Architecture I 2017). Similarly, many expressed the position that taking political stances might be bad for business (Personal Interview, EYP 2017). Another construction company explained, "State rights are crazy inefficient, but the political climate does not allow for change" (Personal Interview, Triad 2017).

In terms of local procurement preferences, firms were especially worried to step on anybody's toes: "It's too politically sensitive. No one is gonna make much headway in this politically," or similarly, "We have not lobbied those issues—we have never come out strongly in favor or against something," or put more bluntly, "They [most companies] fear ruffling the feathers of public officials and public employees who work for government entities, and worry about retaliation or blacklisting on future potential work"

(Personal Interview, EYP 2017; Personal Interview, Shiel 2017; Personal Interview, Dekker 2017).

In terms of building codes, firms were particularly worried about getting politically involved, because they did not want to antagonize local officials or the general public:

> Sometimes it causes delays, but we are building retail mall stores. So, we rather make the change [alter the building plans] than fighting it. We just make the change, pay for it and be done with it. The cost of delaying would cost way more money that complaining. If the store opens a month late because your political activity, you might have won a battle, but lost the war. [Political Activity] might make your life in the next project much more difficult. It's just easier to fix what they tell you instead of fighting it" (Personal Interview, Fred 2017).

Another firm explained, "There is nothing that a general contractor can do to change things at this level," or similarly, "It's unlikely we would lobby for reforming licensing or building codes. Our main concerns are as a contractor "(Personal Interview, Buildrite 2017; Personal Interview, Shrader 2017). A regulatory expert of a national company put it more bluntly,

> The same is true for architects: when you go into the city, you are not giving them a hard time, because this is your livelihood, this is where you work and operate, so nobody tells the story, it's like the untold terrible thing […]. It does not really cost them [Contractors] anything, and only costs their clients, and I think the hardest part is—how do you extract the data that shows the money? Because the money will be the compelling argument, however, the problem is, I am a publicly traded company, I can't go out and make a statement, because of that process we are absorbing an 80-90 million dollar hit every single year, because they will ask me what am I doing wrong. So we can't publicly say that, we can only say the system is broken. (Personal Interview, National Retail Chain 2017)

Another regulatory expert expanded:

> Going against local power is politically dangerous. Companies are on my side of this debate, they want more unification. If they want to do business somewhere where they usually don't do business they have to hire local consultants who understand the ins and out of the local code. The worry is more about missing some important local regulation than direct costs […]. This is all just crazy inefficient. But again, it is hard to change. There is not even an authority for them to speak to. (Personal Interview, CSI 2016)

This problem is exacerbated by the fact that many firms, interest groups, and politicians also adhere to a competitive federalism conception of markets, as one regulatory expert put it, "Because our political system is so fractured, it's hard to know who would fight this company, but someone would, and you have the political philosophy of some people, that the most local jurisdiction is easier to deal with than government far away […]. I cannot say that we have no challenges but I believe that most companies and people simply accept the situation at hand and work through the process as they find it" (Personal Interview, Zettersten 2017).

Even more, many firms questioned even the legality in the US of the EU examples of mutual recognition I had given: "I personally feel a national system might be easier for individual architects to navigate, but given our republic form of government which (in theory) gives the power to the states I can't see it" (Personal Interview, Dekker 2017) or but more bluntly, "It would be unrealistic, because it is by the states, it would be easier if there was no gravity" (Personal Interview, Macgregor 2017). A representative of NCARB told me, "The constitution of the US leaves licensing to the states, there is no national ability to do so without changing the constitution and this is simply not going to happen" (Personal Interview, NCARB 2016).

VI.a.3. Institutional Obstacles

At the same time, firms pointed explicitly at the complex structures of federalism (i.e. decentralized interest representation and the separation of powers) as an obstacle to change. In terms of licensing, one firm told me, "Nothing will change. It would take a board of the 50 governors to get together and agree on something," the assumption being that governors would not do so (Personal Interview, Little 2017). Especially not when they then would need the approval from their state legislatures, "We don't even have one driver's license" (Personal Interview, NCARB 2016). Similarly, an engineering firm explained, "There is trade groups, like the American Council of Engineering Corporations, and on occasion I see stuff from them on streamlining this and getting engineering boards to talk to each other. But I don't see any change. Because every place is different, and the boards are all given a task, mostly appointed by the governor, and

they take it very seriously, and why would they change the status quo" (Personal Interview, STV 2017).

In terms of building codes, firms explained that lobbying was futile since local governments have the authority and they were unlikely to ever give it up: "[Differences] are inevitable, given the presence of local governing authorities. They are inefficient for our internal operations but are a part of growing a business […]. I cannot envision comprehensive change, but there could be a push for a unified minimum standards code (Personal Interview, Joeris 2017). Similarly, others said "It's too big of a challenge," or "Every city wants to do their own thing. You are moving mountains on this. There would be a lot of benefits, a lot of efficiency if people got on board. Here is your building code for that region, that would be sweet" (Personal Interview, Shiel 2017; Personal Interview, Fortis 2017). Local building officials and governments, are usually not in favor of any national rules: "I personally feel a national system might be easier for individual architects to navigate, but given our republic form of government which (in theory) gives the power to the states I can't see it happening." (Personal Interview, Dekker 2017). Or similarly, "Standardizing national building codes and inspection procedures would be great, but again states loathe giving up power" (Personal Interview, Architecture I 2017).

VI.b. Interest Groups

Interest groups are mostly thwarted by the incentives set out by the structures of their organization. However, some explicitly adopt a competitive federalism rhetoric. These factors are crucial because most firms trust their trade associations to represent them politically. For instance, architecture firms explained: "We don't lobby. But I will tell you that I am a member of the AIA, and they are typically involved in lobbying efforts," or "Our efforts are mostly via AIA" (Personal Interview, SGA 2017; Personal Interview, Rosser 2017). Similarly, most contractors explained that they only lobbying activity was through ABC or AGC, and firms agreed unanimously, that none of these organization was actually pushing for any changes, "I am unaware of anyone trying to change or minimize the differences across local governmental entities" (Personal Interview, Joeris 2017).

Institutional structures deter trade associations from advocating for federal market authority. Most firms told me that they had never heard of any organization promoting national streamlining of licensure in the US, saying things like "I am not of aware of any efforts to create a more nationally uniform licensing system," "No, I have given up on that," or "I would if I knew where to advocate for that change" (Personal Interview, Rusco 2017; Personal Interview, Retail Construction 2017). Many emphasized that their only lobbying happened through those organizations, "I am involved with ABC, and it's not their major priority" (Personal Interview, Wolverine 2017).

The obstacle is that national organization work on federal issues, while local chapters only work on local issues—and actually often oppose any changes that would take away from their state, because "Small local members are not interested in loosening local restrictions" (Wolverine Building Group). No organization works on creating meaningful state-cooperation that actually involves a transfer of authority (Personal Interview, NTS 2016). An architecture firm complained, "They [AIA] mostly lobbies on a local level, and not for national changes. They don't really represent the large firms, but local architects and engineers and they don't see the inefficiencies of the system" (Personal Interview, Architecture I 2017). Another elaborated on the incentive structure,

> We feel the American Institute of Architects should be far more politically proactive at the state and local government levels. Among other things we'd like the AIA to advocate for more national standardization and simplification. Unfortunately, since architects are selected subjectively, most local architects in a given jurisdiction are unwilling to speak publicly against or even for issues on their own. (Personal Interview, Dekker 2017)

Interstate barriers through licensing, procurement preferences, and building codes are on the radar of most industry trade groups, but are not a priority in any significant way, because they separate their lobbying work into federal and single-state respectively. Hence, there have been no major reform efforts, by trade groups, only little changes in specific states in specific professions. The trade groups' efforts are hampered by the fact that they deem a national solution impossible and lobbying specific states to cooperate extremely difficult. Instead, they might approach one state if they consider its regulation as particularly protectionist. For instance, AGC has publicly come out against protectionist licensing rules in Hawaii (Personal Interview, Salsgiver 2017).

Most national organizations are dealing only with federal policy, while the state chapters are in charge of state issues, reinforcing a piecemeal approach. A horizontal approach, spanning multiple states or multiple professions, bundling the benefits, was out of the imagination of the organizations. This fits what other scholars have observed, ”Fragmented interest group activity […] makes it inordinately difficult to build winning coalitions across issue areas, let alone across states and regions” (McKay 2001, 43).

The piecemeal approach—lobbying against one regulation in one state at a time instead of some more general reform—is reinforced by the fact that trade groups are mostly service organizations and those services are provided within specific jurisdictions. One representative explained that most firms joined for their workforce development programs, safety courses, discounts, and networking opportunities at conferences (Personal Interview, Brubeck 2017). Another explained, “The number one reason members join is our SAFE corporation—we offer workers comp insurance through membership. They receive discounts, dividends, the best deals. We also do networking events” (Personal Interview, Salsgiver 2017). In addition, many industry groups, especially in trades like plumbing and electrics, compete with unions in offering and managing apprenticeship programs.

However, there are also ideational aspects to explaining the position of interest groups. ABC, for instance, discarded concerns about interstate barriers with the comment, “Local competition works” (Personal Interview, Brubeck 2017). More generally, interest groups often do not conceptualize cross-state heterogeneity as a trade barrier, explaining that since every firm is treated the same, it cannot possibly be discriminatory. Interest groups do not imagine bold reforms like the European Commission pursued. Despite the fact that arrangements like a national licensing regime would be completely feasible under the Constitution, many interviewees cited legal reasons for not pursuing general reforms: “Professional licensure exists within a system of federalism in which, under the Tenth Amendment, the federal government displays respect for the sovereign decisions made by the states to oversee professionals providing services within their boundaries” (Personal Interview, Schnaidawind 2017).

In all of these ways, interest groups reinforce interstate barriers instead of mobilizing against them—despite the preference of nationally operating construction firms.

VI.b.1. RCA—Retail Contractors Association

The President of the RCA, an association of national retail contractors, told me that local licensing differences, especially with protectionist intent, were a big concern and priority of their lobbying (Personal Interview, Moore 2016). He explained that there could be huge savings through nationally streamlining the licensing process, but the organization perceived that as infeasible. Instead they were only lobbying specific states with particularly protectionist regulations like Florida and Hawaii (Personal Interview, Moore 2016). In the past, "RCA has made some efforts toward national licensing but has since ended them," apparently because it was unclear to them how to achieve it (Personal Interview, Warwick 2017).

He voiced similar concerns about building codes. While RCA saw the heterogeneity as a "huge problem for their members," there was not really anything they could do about it:

> "Establishing a general framework would make sense. But I would go back to these issues being firmly in the hands of states, absolutely not under the charter of the federal government […]. It would be very unpopular to ask the federal government to do it. I think states would resist on the basis of state rights, under the constitution. They would not want to give up sovereignty over these kinds of decisions. So, it's really about lobbying individual states to group together and do something smart. And then there is the state bureaucracy. And that bureaucracy is often not interested in change or consistency […]. Without a doubt, it could be streamlined. There is much redundancy. […]. The states are operated as individual countries. H & M, they are a big customer of ours […]. We have learned lessons from them comparing contracting in Europe vs. US, because in Europe things have been streamlined. They can build faster and cheaper that they can in the US, because of differences from state to state. (Personal Interview, Moore 2016)

RCA does not have a position on public procurement preferences since it is exclusively concerned with retail construction.

VI.b.2. AIA—American Institute of Architects

The national branch of AIA also only works on federal level policy, citing respect for local policy making and general principles of federalism. They seem to promote more uniform licensure standards: "AIA supports the use of uniform criteria for licensure that facilitate reciprocity and do not inhibit the interstate and international practice of architecture" (AIA 2017). However according to the Director of Public Affairs and Media Relations, they are not actively lobbying states to cooperate more:

> Professional licensure exists within a system of federalism in which, under the Tenth Amendment, the federal government displays respect for the sovereign decisions made by the states to oversee professionals providing services within their boundaries. State licensing boards are in the best position to limit the ability of unqualified professionals from entering the market and restrict or remove professionals when they do not adhere to the professional standards set by the state or they endanger members of the consuming public. This can be most efficiently done by the states. (Personal Interview, Schnaidawind 2017)

Similarly, a representative of AIA Oregon told me that there might be inefficiencies, but "The states regulate things, and that's just how it is" (Personal Interview, Hoffmann 2016).

For the same reason, belief in states' rights coupled with decentralization, AIA does not advocate for reducing local procurement preferences. On the federal level, AIA only takes positions on federal procurement issues, while local chapters explicitly support local preferences (AIA 2018; Personal Interview, Schnaidawind 2017). As one firm explained, AIA might probably "do little bit on that. But local governments are just very powerful when it comes to that stuff" (Personal Interview, Little 2017).

The AIA supports uniform building codes and permitting processes but does not see federal market authority as a solution. Instead they support the private-local regulatory system: "The AIA supports regulation by a single set of comprehensive, coordinated, and contemporary codes and standards, which establish sound threshold values of health, safety, and the protection of the public welfare throughout the United States (AIA 2017, 11). However, "Codes are best regulated by the states" (Personal Interview, Schnaidawind 2017). AIA deems incentives to create more uniformity as acceptable, but does not want to take any power away from local authorities (Personal

Interview, Schnaidawind 2017). For instance, since 2007 two Democrats and one Republican have been introducing the Safe Building Code Act[171] in Congress, earmarking disaster relief funds to incentivize states to adopt one minimum building standard state-wide. The act was never debated in committee, but was supported by AIA (AIA 2015).

VI.b.3. AGC—American General Contractors

AGC, one of the biggest industry trade groups, described licensing differences between states as a huge interstate barrier for commercial contractors. However, given the decentralization of their organization, a Director of Government Affairs deemed any remedy impossible: "AGC has 92 chapters, scattered across the US. At the national level we don't do a lot to direct what our individual state chapters do, it's up to them, if they see laws that they don't like, or laws they would like to have. Generally this responsibility is up to them" (Personal Interview, AGC 2016). This leaves state chapters to address licensing issues for specific professions and only within their own or neighboring states. However, within a specific state the interests of regional or national contractors might not be represented. A representative of AGC Oregon explained, "Our average member has gross sales of $6 million. These are small companies. For a small company, to have to navigate the bureaucracy, is very difficult. We exist to help them to do it. They are afraid that a regional license would be more complicated. They are suspicious of government in general, so creating a new layer of government is just not something we would support" (Personal Interview, Salsgiver 2017).

Similarly, AGC sees procurement preferences as a big problem: "My association has worked pretty hard to oppose those kinds local hire preferences, we view them as bad for the industry as a whole. [How often are those laws decisive for who wins a contract?] Nobody really tracks that kind of information. I don't have any hard data. The evidence is only anecdotal" (Personal Interview, AGC 2016). But again, on the federal level advocacy only deals with federal issues, while local chapters only deal with their state, and might or might not oppose in-state preferences. Specifically, AGC does not want to

[171] H.R. 3926 110th Cong. (2007).

promote any new federal market authority to create more uniform procurement rules: “In general, we don’t want the federal government involved, because states are opposed in the federal government telling them what to do” (Personal Interview, AGC 2016). When I pointed out that it was unlikely that local chapters would get states to cooperate and might actually support local preference laws, the representative responded “that’s a fair point, in the past we had those disagreements with our chapters” (Personal Interview, AGC 2016).

While the Oregon representative of AGC explained to me that they opposed local procurement preferences, I could not find any statements by any chapter on this matter, suggesting that it is not a huge priority (Personal Interview, Salsgiver 2017). Indeed, perusing policy documents by local chapters in my state clusters showed nobody advocating for an end to local preferences (AGC CA 2017; AGC OCC 2018; AGC WA 2018). This makes sense in terms of institutional incentives: there are no huge gains for a local chapter to advocate against rules that benefit its members— and advocating against other states’ rules is outside the scope of their activity.

The national branch AGC does not have any position on building codes. The incentives of a decentralized system of interest representation become apparent again: “AGC members and chapters work with local governing bodies when it is time to review, update and enact local code” (AGC 2016; Personal Interview, AGC 2016). But on the local level, chapters are not involved with trying to streamline building codes across states since they only work within a state. If anything, they need good relationships with building departments and are unlikely to challenge them. As one regulatory expert explained, “Even AGC, a very powerful organization, they are more worried […] about good relations with the local building department than with good building codes” (Personal Interview, National Retail Chain 2017). Case in point, none of the chapters in my state cluster has any policies in regards to building codes posted (AGC OCC 2018; AGC CA 2017; AGC WA 2018). A local representative explained that heterogenous building codes could not be regarded as a barriers but were a common sense safety measure, “If you move to a different state, it’s up to the state, it’s sort of part of being a responsible contractor to know about those differences” (Personal Interview, AGC 2016).

VI.b.4. ABC—Associated Builders and Contractors

ABC, the other big industry trade group, explained that one uniform licensing framework across the country would be sufficient, solve lots of problems, reduce redundancies, and overcome barriers. However, it was nothing they were advocating for: "We have never pursued something like national licensing. States like their own licensing and control over their state. States like licensing because it is a revenue stream" (Personal Interview, Brubeck 2017). As with AGC, their national government relations team was mostly focused on dealing with federal policy; their advocacy is limited to trying to encourage states to adopt more similar standards. As many others, they deemed trying to convince states to cooperate as "a waste of time" (Personal Interview, Brubeck 2017).

Inattention towards interstate barriers by ABC is interesting but not really surprising given that they are a classical conservative organization. Their extensive lobbying is directed at repealing "Unnecessary, burdensome and costly regulations resulting from the efforts of Washington bureaucrats who have little accountability for their actions" (ABC 2016a). However, while using language that would lend itself to opposing interstate barriers, their *Halt the Assault* campaign is directed at federal policy, not state regulation. While they do not oppose state licensing explicitly, they lobby states extensively against prevailing wage laws, and for right to work laws as well as related anti-union legislation (ABC 2016b). In the end, for them the competitive federalism argument prevails. When asked about the problem of protectionist local licensing rules, I was told "If local communities adopt good rules, they get good prices—so the markets will push the localities to eventually adopt the good rules. Local competition works" (Personal Interview, Brubeck 2017).

A representative of ABC Oregon stressed that they were telling legislators in Oregon and Washington about interstate barriers through licensing, especially to moving electricians across the border. However, their approach was limited—only focusing on one specific rule between two states. A more general approach encompassing several states or professions was not on their radar (S. Personal Interview, Miller 2017). While, he told me, "a national or regional system would be much more efficient," he did not expect them to be able to do anything beyond changes to individual rules, "Every state has created their own system and they are not willing to change" (S. Personal Interview,

Miller 2017). Fundamentally reforming the system of licensing was just not something the organization even considered.

Dealing with procurement preferences is also left to local chapters. A representative of the national branch of ABC explained:

> State procurement rules are different, counties have their own rules, cities have their own rules, school districts have their own rules. It gets even more complicated when it's a local project with federal assistance. That triggers another set of rules to go into effect. It becomes really complicated to understand all these regulations. This is a huge barrier to entry. What we see a lot is local hiring requirements, cities say we want to give contracts to companies with a local workforce. Politicians from both sides of the aisle like that idea. So we oppose those. (Personal Interview, Brubeck 2017)

However, ABC does not lobby for an overhaul of the national system of procurement. Instead, their local chapters might address local issues on a case by case basis. "We assess the situation, and try to educate them, and make our case. Mostly it is an educational process school board members etc. often do not understand how competition works" (Personal Interview, Brubeck 2017). While the representative explained, "In an ideal world, we would just have one set of rules," he argued: "I am not a big fan of the federal government making rules for everybody. Local government is closes to the people, and that is the most effective form of government. I don't want to be overly prescriptive. Local governments should just ensure competition. That's ABCs philosophy—local change, not federal government" (Personal Interview, Brubeck 2017).

Of course, the problem with local change is that local chapters often have no position at all. They are mostly focused on reducing the power of unions. Given their language of "merit shop, a philosophy that awards work to the most qualified and lowest bidder" it is surprising that they do not oppose local procurement preference laws (ABCW 2017). Within a local chapter, the incentives to do so are not very big, as one lobbyist told me, "We haven't really pursued this as a priority. It is always controversial within our organization. You have contractors on both sides—it is a hard issue" (S. Personal Interview, Miller 2017). In this way, the decentralization of interest representation together with a competitive federalism conception of markets prevent mobilization for federal market authority. Indeed, while ABC 'opposes' procurement preferences, their federal organization only deals with federal issues, while all local

chapters in my state cluster are silent on the issue, only focusing on opposing unions (ABC 2016b; ABC SoCal 2018; ABCW 2017; S. Personal Interview, Miller 2017).

ABC does not have a position on building codes at all. A representative told me, "We are not really involved in that—it concerns architects and engineers" (Personal Interview, Brubeck 2017). While this does not to seem true given the evidence by firms, the position is not surprising. ABC is not concerned with local heterogeneity because it is a local issue, and their belief is that "markets will push the localities to eventually adopt the good rules" (Personal Interview, Brubeck 2017).

VI.b.5. Other Interest Groups

Smaller more specialized interest groups also demonstrate that the fragmentation between states and between professions prevents any mobilization for federal market authority. This often mixes with explicitly competitive federalism arguments. A representative of the national association of home builders, NHBA, explained that they were not taking any positions on state policies, which were solely in the discretion of their local chapters. My interviewee wanted to be particularly clear they do not want to circumvent local control in any case: "We believe in states' rights, people belong locally" (Personal Interview, HBA 2016). A representative of the Oregon HBA was enthusiastic about Oregon's licensing laws: "We don't let people from Idaho build in Oregon, because they do not offer the same protections to consumers than we do" (Personal Interview, OHBA 2016). After laying out to him potential benefits of uniform rules, he conceded it would be more efficient, "But it would take a large effort nobody is pursuing. It just would be a super large effort. If not even doctors can do it, we can't do it" (Personal Interview, OHBA 2016). In addition, he was concerned who would decide the rules "We don't want Idaho regulation" (Personal Interview, OHBA 2016).

NHBA does not have a position on public procurement since their members only build residential housing. They support state-wide building codes, but oppose anything beyond: "The construction industry, specifically the Oregon Home Builders Association, drove the impetus for a uniform statewide building code" in Oregon (Code Division 2013). Before 1973, Oregon's 138 jurisdictions all had different building codes, or none at all. As a representative of the OHBA remembers, "There would be different standards

for the same thing across Oregon. In one community, the railing had to be so high and the bars had to be so far apart. Maybe you needed an outlet in the attic or maybe you didn't have to have an outlet. We believed there should be a uniform statewide building code" (VanNatta 2013). However, while Democrats and Republicans praised the "consistency and uniformity" provided by Oregon's state-wide building code at its 40-year anniversary, they would not apply the same argument across state borders (Code Division 2013). As a representative of OHBA told me, nobody is pursuing to streamline codes with neighboring states, even though it causes massive costs for businesses operating in metropolitan areas like Portland, OR-Vancouver, WA (Personal Interview, OHBA 2016). He told me, while it would be a reasonable thing to do, it would require "too big of an effort" and was therefore "not achievable," especially because, as another representative put it, "uniform standards are impossible" anyway (Personal Interview, OHBA 2016; Personal Interview, HBA 2016).

Unfortunately, interview requests to the two major plumbing trade groups, PHCC and MCC, in my state clusters were declined. However, review of all their websites shows that they are roughly similar to contractor associations. They are mostly service organizations, selling code books, offering classes on safety and management, running apprenticeship programs, and offering insurance and pensions programs. None of their government relations websites indicates that they are working to reduce interstate barriers caused by licensing, and they are supportive of local building codes. Most of their advocacy work is directed at making sure that safety and labor laws do not become too stringent. In electrical affairs, the National Electrical Contractors Association (NECA) does not take any position on state licensing, but focuses its significant advocacy work only on federal regulation (NECA 2017)

We can also look at broader national trade organizations. The U.S. Chamber of Commerce and the National Association of Manufacturers (NAM), for instance, have not addressed the issue of licensing at all, except to suggest that states probably should regulate businesses less—their concrete policy positions are all relate to international trade[172] (Hackbarth 2017).

[172] Search of the Online Archive of the U.S. Chamber of Commerce and National Association of Manufacturers by Author on February 21, 2018.

Following the common model of decentralization, the Chamber promotes opening up federal procurement to foreign competition, but does not take a position on local preferences, arguing, "At the state and municipal levels, we understand and appreciate the limitations of the federal government to further open those markets" (Finiello 2014; Murphy 2018; Hoffmann 2011, 187). Anecdotally, lots of local Chambers of Commerce lobby cities and counties to adopt local preference laws (ACCE 2018). For instance, the Chamber of Commerce of Eastern Connecticut promotes buy local legislation region-wide (Hoffmann 2011, 163). Similarly, a representative of the National Association of Manufacturers explained they supported competitive bidding, "But as a national organization we focus on national issues. State manufacturing organizations are more likely to focus on state and local procurement rules and procedures. But, as you pointed out, the in-state companies may have a bias toward protecting their home turf" (cited in Hoffmann 2011, 188).

In terms of building codes and standards, the Chamber and NAM follow the same model, only taking international positions, either not recognizing or not wanting to recognize internal barriers. They advocate mutual recognition towards the EU, but not internally: "We have no intention to advocate the importation of the European regulatory practice in the U.S. Nor do we wish our problems on our European partners" (Litman 2003). Given that they only endorse "private and voluntary standards" they do not see any policy options to streamline the US system nationally; the Chamber doesn't "get into states," because this would mean "we would chose winners and losers" and "we would have then to choose one [state member] chamber over the other" (U.S. Chamber of Commerce 2018; Hoffmann 2011, 187)

The Construction User Roundtable (CURT) and Construction Industry Roundtable (CIRT) are both organizations restricted to the largest companies, buying and providing construction services. Unfortunately, they could not be interviewed, but judging from publicly available sources, their policy position is broadly similar to other national organizations, focusing on federal policy and services for their members[173]. "CURT exists to create a competitive advantage for construction users. CURT

[173] Search of the Online Archive of CIRT and CURT by Author on February 15, 2018.

accomplishes this multifaceted objective by providing aggressive leadership on those business issues that promote excellence in the creation of capital assets" (CURT 2018a). One of their main concerns is the "very limited productivity gains" of the construction industry compared to other sectors of the economy (CURT 2018b). While they see one of the causes in a market fragmented into many small firms and jurisdictions, their solutions are all non-political, like improving management practices and communication (CURT 2018b).

Similarly, CIRT represents over 100 of the biggest construction, engineering and architecture firms, and locates inefficiencies in the jurisdictional fragmentation of the market:

> The process of designing and constructing is one of man's most complex and daunting endeavors. This complexity is borne not just from the number of parties and interested players that may have a hand in or influence over a given project, but also from the number of layered jurisdictions (federal, state, local, etc.) that are involved. Taken together, it's easy to understand the countless places and opportunities where delays and/or redundancies can creep into the process through unnecessary red tape. […] The mountains of laws, regulations, and rules that we insist on heaping on our private sector job creators is unprecedented and their cumulative burden is *not really known or fully appreciated*. (CIRT 2012, 2)

Give this statement, one would expect them to support streamlining regulation across jurisdictions, but this is not the case. Their specific demands all concern the federal government, reaching from "The federal government should rely on the private sector for services readily available," to "Institute standard procurement policies for all federal agencies" (CIRT 2012, 6). Similarly, their white paper on *Regulatory Streamlining*, only addresses federally-funded projects and federal environmental regulations (Casso 2011). While public procurement practices are described as unfair and inefficient, this is only applied to federal agencies (Casso 2011).

The only time industry groups can successfully mobilize nation-wide is when they have a single issue that can be achieved state-by-state. This usually implies goals like reducing or abolishing regulations. For instance, ABC has successfully mobilized all their chapters to lobby state government for right-to-work legislation. Similarly, in 2008 the ICC adopted a new standard that every new home should have fire sprinkler systems. Industry groups, including ABC, AGC, and HBA successfully lobbied every jurisdiction

to not adopt that section of the model code, except in Maryland and California (Faturechi 2016).

I spoke to two national organizations, and one technology company, that were advocating for nationally streamlining building codes. However, their general sense was that nothing 'dramatic' could be done because local officials and law-makers did not want change, and national organizations did not pursue it. A director of the Construction Specification Institute[174] explained, jurisdictions did not even agree on a common format for construction specification, "For commerce it would be better. If we could, we would force people to. But we would lose all our political capital trying to push for something like this, so we prefer to keep it on a voluntary basis" (Personal Interview, CSI 2016).

Similarly, Fiatech[175], an industry consortium, pursues "national regulatory streamlining" through a working group which is led by led by Robert Wible, founder of Robert Wible & Associates, a regulatory consulting firm, as well as initiator of the Alliance for Building Regulatory Reform in the Digital Age. According to the working group, the regulatory system is "Cumbersome, overlapping, poorly administered; Does not delineate clear lines of authority & jurisdiction; Leaves compliance to guesswork and repeated re-applications" (Wible 2012). Through the working group, I was able to interview several regulatory experts. However, due to the obstacles, the change they pursue is very limited: "First and foremost is education, telling the story, telling them why it doesn't work, sponsoring and funding education […]. We engage the public hearing process of regulations, we testify on a regular basis (Personal Interview, National Retail Chain 2017). In addition they look at how "technology can bridge the gap" and exchange of best practices of how best to navigate the regulatory system (Personal Interview, Wible 2017). Together with Solibri, a software company within the design field, they have looked at "How do I take an inefficient process and make it more

[174] CSI was founded in 1948. Its mission is the publication of two voluntary specification standards (MasterFormt and UniFormat), basically a common language for designing and managing construction projects (CSI 2018).

[175] "Fiatech is a global community of capital facilities stakeholders [including Bechtel, Target, Shell] working together to drive productivity and efficiency improvements by advancing technology and innovative practices" (Fiatech 2018). According to them the total capital construction cost could be reduced on average by over 20% by measure through national regulatory streamlining.

efficient and consistent by automating it" (Personal Interview, Widney 2017). The basic idea is to digitize the process of checking within design software, thereby making code-compliance basically automatic. However, the initiative has not taken hold. While ICC is maybe best situated to promote the project, they have abandoned it, most likely because it would basically make their business model obsolete (Khemlani 2015).

VI.c. Regulators—Public and Private

Institutional and ideational elements work hand in hand in explaining the positions taken by regulators, local building officials, procurement officials and licensing boards, as well as national private organizations that serve as platforms for those officials. The latter, one might think, should be most likely to mobilize around federal market authority to create more uniform licensing and procurement rules, as well as model codes. However, several institutional elements impede that. They are private organizations, created by state licensing agencies or local officials as coordination device. Membership is voluntary and no actual authority is transferred. Everything they do is subject to voluntary cooperation of the state agencies, within the bounds of what state legislatures allow—meaning there is no binding cooperation. In this sense, it is akin to the open method of coordination in the EU, where ministers will agree on a few common goals and exchange best practices, without committing anything.

At the same time, these organizations a limited by the fact that they are organized differently for each profession, depending on how state agencies are set up—there is a national association for building officials, for plumber licensing boards, for electrical codes, and so on. This means, there is nobody that could coordinate all of them and realize the economies of scale from cross-sectoral reforms. Being a form of executive cooperation, all their work is autonomy-conscious—careful to not usurp any authority from local legislatures. This fits quite well the theoretical expectations laid out in the theory chapter. A lack of binding cooperation

> Can be attributed to the striking inability to pool power within the individual state as well as the inability to speak with one voice for the states as a level of government. […] As a result, [national organizations are] unable to represent the states as coherent actors, IGAs focus on lobbying for the interests of their particular members, members perceived predominantly as professionals, not

> as representatives of a political system with a particular interest profile. (Bolleyer 2009, 112ff.)

At the same time, ideational elements were visible, especially when speaking with licensing boards and local building officials. To some degree, they were just status-quo biased and lacked the imagination of an alternative system. This ties into competitive federalism—because its implication is that national action is unnecessary and local action is not problematic. This can be seen in the fact that licensing agencies simply did not accept the argument that redundant requirements cause a double burden for out of state firms. But it also ties into traditional American conservative localism. Despite evidence to the contrary, regulation by other states and cities was frequently presented as unknown and potentially dangerous.

VI.c.1. National Institutions

Consider NCARB, the association of architect licensing agencies, first. Despite a comparatively high degree of standardization, a representative told me, pushing for more was always difficult, because any change they proposed "does not take effect until all state boards vote on it. And […] the individual state board might accepts the change or not" (Personal Interview, NCARB 2016). He went on, "I personally, not speaking for NCARB, am not a big supporter of states' rights in those kinds of things. I think there should be a national license instead of 54 versions of the same thing" (Personal Interview, NCARB 2016). However, when NCARB tried to push for that ten years ago, state boards were upset and changed out the leadership: "When they were unveiling this initiative, there was a lot of pushback. Why are we doing this? Why is there a need for this? How is this not a function of the states via the constitution? etc. etc. They made it about who has the original authority" (Personal Interview, CAB 2016). Another representative added, after all "It has taken 97 years to achieve the kind of standardization we have now," referencing the founding mission of NCARB established 1919 (Personal Interview, NCARB 2016).

NCARB does not get involved in convincing state boards to transfer authority because they see themselves as their agents. The idea that having 50 similar but distinct licensing regimes is discriminatory due to putting a double burden on out-of-state firms,

was foreign to them. In terms of protectionism, they were only familiar with arguments against licensing in general. This was the only area where they were getting politically involved:

> I was at a hearing in Arizona, in January, the board of architects was considering to deregulate several professions, one of them was landscape architecture, they were saying just by word of mouth people will know who is a good /bad landscape architect. This is an overly simplistic view of how regulation works, and from my perspective I would much rather go to somebody who I know has met requirements, and who if involved in project that caused harm to the public, could be disciplined by the board and license taken away. […] There are people that would say just by having a minimum education requirement you are barring entry into the profession. It's a travesty that they look at having some education as barring from licensure. (Personal Interview, NCARB 2016)

The national organization of engineering licensing agencies, NCEES, is similarly situated. A representative explained, "The state boards make it more difficult than necessary at times but we are working to try to bring greater uniformity to the process" (Personal Interview, Carter 2016). Their strategy for more uniform rules is restricted to releasing standardized tools that states can use, explicitly not to create a national license: "The state boards of licensure were all created by their respective legislators and the belief is that it is the state's right to determine what requirements should be in place for licensure as an engineer" (Personal Interview, Carter 2016). When I pointed out that a system of mutual recognition might be much more efficient, I was told "We hear the concern chiefly from individuals who are licensed/certified in other countries. I feel that most U.S. citizens recognize and accept the sovereignty of each individual state and have accepted that although it makes sense, a national system of licensure is not likely to occur" (Personal Interview, Carter 2016).

While architecture and engineering has seen quite a bit of national standardization over the last 100 years, contractor and subcontractor licensing have not. NASCLA, an organization of state contactor licensing agencies was founded to "Support best practices in the construction industry that promote quality standards and public safety, mutual interests, and regulation of business practices" (Personal Interview, Wilberscheid 2017). While they are trying to increase mobility for contractors, as we have seen, there is no consistent national standard. A representative told me, "A lot of states are going to have

different laws and regulations, so unfortunately many states do choose not to reciprocate with other states. And that is their choice. Here at NASCLA we do try to help them" (Personal Interview, Wilberscheid 2017). When asked what that means, I was told, "Well we encourage them [states], but we don't push them […]. We do not go to Colorado and tell them that it would be more efficient to have state-wide contractor licensing. It is what it is" (Personal Interview, Wilberscheid 2017). Contractors and industry groups can become associate members of NASCLA, and "They definitely want more uniformity" (Personal Interview, Wilberscheid 2017). But apparently states are very clear in that they do not want to go beyond voluntary cooperation:

> States don't want that [real mutual recognition]—even if they have reciprocity, they still want you to go through a big process of application etc. We definitely get that question about national licensing a lot—but it is one of those things, maybe eventually? It would be nice to have something like one license. But for now, having some uniform exams is a more reasonable strategy to streamline things. We don't really talk about something like giving the federal government the power do licensing—we can't even get all states to accept a national exam" (Personal Interview, Wilberscheid 2017).

For electrician or plumber licensing agencies, there simply does not exist a national association to organize cooperation or the exchange of information. According to their websites, none of the major industry associations is interested in pursuing anything along such lines[176]. When asked about coordination meetings with other plumbing boards, one representative explained to me, "No, I am not aware of anything like that. We are all unique" (Personal Interview, Kilb 2017). Another plumbing board representative told me, regulatory "Boards and Commissions remain unwilling to grant a professional license to a neighboring state" (Personal Interview, Cyr 2017). A national plumbing magazine writes[177], "I often wonder why. If you can do plumbing in one location, you certainly should be able to do plumbing in another. I am licensed in New Jersey, but I know I could still install plumbing in California." The author concludes, "A national license clearing house is needed" (Ballanco 2000).

[176] Search of the Online Archive of PHCC and MCC by Author on January 15, 2018.

[177] Searching the websites of the major contractor online magazines (January 16, 2018), I did not find more than five articles over the last 20 years addressing the issue of state licensing differences.

Similarly, the Council of Licensure, Enforcement, and Regulation has members of licensing boards across all professions and would therefore be well situated to promote a cross-sectional approach to licensing reform. However, the organization is only a forum for the exchange of best-practices and networking (CLEAR 2018).

Professional associations of procurement officials usually oppose local preference laws and consider them market-distorting. While NASPO has "historically opposed purchasing preferences" they now caution, "NASPO believes that more research and cost-benefit analysis studies are warranted" before taking a position (NASPO 2012, 2f.). The Institute for Public Purchasing, another association of public procurement officials, states in-state preferences "conflict with the fundamental public procurement principles of impartiality and full and open competition" (NIGP 2015). According to a 2004 survey of procurement officials, about 78% percent of respondents think that preference laws violate free market principles (Qiao, Thai, and Cummings 2009, 395). They do not advocate this position more publicly, because they do not want to oppose their own state legislatures. Hoffmann cites a former NASPO president, an Alaskan procurement official, as saying "Am I going to go out to lobby Congress to overturn legislation that has been passed in my state? How long would I, you know, how long would I be allowed to do that, [chuckles] by my employer here in the state who is on record as saying we like these preferences?" (cited in Hoffmann 2011, 187). Similarly, another former Director of NASPO explains, "Our members have not wanted to make a formal, state a formal position on it, because of increasing pressures that they are feeling to, quite frankly, to implement preferences. So, there is not an official NASPO policy on the books" (personal correspondence, Jack Gallt 2009).

Firms perceive the organizations maintaining model codes, like ICC, as not really interested in pursuing significant change:

> [Could the US have a national building code?] Absolutely. That's one of my pet peeves. There is a lot of special interests on the code side. There are organizations that build and maintain model building codes. And they are like little fiefdoms on themselves. And it has gotten better over the years. [But] there is no doubt that this is the single biggest impediment. I have talked to people on the codes committees, it comes up all the time in committee meeting, but it seems to get very little traction. Everybody talks about what neat idea it would be, but nobody wants to take a leadership role, in actually

> doing something. [There] are large committees, broken down into subcommittees, and they have industry experts, lots of fire marshals, material vendors, etc. They all have their own special interests. There is so much redundancy between IBC and NFPA, they don't cover exactly the same thing, but both of them have a very stubborn insistence on maintaining their own codes […]. To my knowledge nobody is working on it seriously" (Personal Interview, MCA 2017)

If some entity took up the cause of nationally uniform building codes, it would be the ICC, a non-profit organization with 63,000 members that develops and maintains 15 construction codes, sells a variety of publications, and offers code interpretation assistance (ICC 2018). However, while ICC wants to 'sell' its model codes to every jurisdiction, they are indifferent on how local jurisdictions use them. The head of ICC's government relations division explained:

> These are model codes, they are meant to be adapted. We understand that it is impossible to have a one size fits all in the US. We have regions that have different climates, CA has serious seismic provision, very stringent, Florida has very stringent wind provisions. So, the goal is to allow jurisdictions to adapt the codes for their local needs. The consistency and uniformity the codes provide is basically in code format […]. *We don't get involved in the state or local amendment process. We believe that's their business.* It's their business to amend the code as they see fit. We normally advocate for adoption of the codes with no amendments. Because in our opinion, when the codes come out at the end of the cycle and we issue the revised edition, that edition has already been revised and blessed by our members. So, our job here then is to get those codes adopted. We don't have an opinion. But when it comes to states amending or not amending, we don't voice an opinion. (Personal Interview, Yerkes 2016)

When I pushed the fact that many firms had spoken out for more nationally uniform system, the representative explained, that local government would oppose any such attempt. "Look, we have 50 states, they are all on different cycles, some states are home rule within their local jurisdictions […]. They are never gonna all agree on anything. How to do something the same way throughout the country […]. There may be some in the industry who would like to see more consistency. But I just don't see how that is gonna happen." (Personal Interview, Yerkes 2016). An expert on building regulations confirmed this point more directly to me: "ICC cannot speak out against local code amendments because they are comprised of local building officials that prefer it that way" (Personal Interview, Wible 2017).

In addition to not wanting to usurp the authority of local jurisdictions, ICC oppose a more nationally uniform system because they might lose control and profits to the federal government: "We would never support a federal code […]. The codes and standards community is very happy with the way the system is in the US. It's a private public partnership. The development of the codes is a private sector activity. It does not cost the taxpayer any money. The federal government cannot move as fast as a private organization like ICC" (Personal Interview, Yerkes 2016).

As many observers pointed out to me, the business model of organizations like ICC is predicated on selling code books and interpreting codes for the construction industry—which requires keeping codes a private commodity. Hence, they oppose any proposal that would give them public authority. A person in charge of regulatory compliance for a national retail chain explained:

> SDOs [Standard Development Organizations], regardless of how they list themselves, they are all for profit, so the last thing they want to do is something for free or let industry to dictate what they regulate. They believe they are the experts, and nobody else knows […]. The problem is they make hundreds of millions of dollars by selling standards, so it's a profit driven industry […]. There was a lawsuit in Georgia, that proposed that you must be able to access all those regulations for free […]. SDOs fought it successfully […][178]. I would know, I have 2500 live [construction] projects. (Personal Interview, National Retail Chain 2017)

VI.c.2. State and Local Institutions

Interviewees at licensing agencies, always assumed, without providing any evidence, that without their scrutiny, a contractor or plumber from another state might just do serious harm. It appeared that they were not able to conceptualize the idea that simply recognizing the equivalence of different state standards, at least on a temporary basis, might significantly reduce barriers without causing significant harm (even though they do this for military spouses).

[178] Indeed, three Standard Development Organizations sued a public access website for publishing parts of the Federal Register and Georgia laws, which included their standards, for copyright infringement; they won the case (Mullin 2017; Ambrogi 2017).

State licensing boards make two simultaneous arguments for the status quo. They deny the presence of any interstate barriers with economic consequences due to the heterogeneity of regulatory systems and take the present situation for granted, describing any regulatory divergence as justified by substantive material differences between the states. As a corollary they offer the fact that state boards themselves cannot create any significant changes, because they are doubly bound by the executive authority of governors and the statutes passed by the legislature. Overall, they were unable to conceptualize a world that would somehow supersede the current patchwork of state regulation.

An architect licensing board administrator explained, "Reciprocity is easy, the system is very similar across jurisdictions […]. There are no problems (Personal Interview, Brown 2016). A contractor licensing board administrator similarly expressed, "There are no complaints by contractors [about interstate mobility]. Nobody has communicated to me that they feel disadvantaged by these rules" (Personal Interview, Denno 2016). A plumber licensing board employee explained, "I am working with the board. We think it's working pretty well" (Personal Interview, Kilb 2017). This is subjectively true. However, many firms told me that they do not complain out of fear for losing public contracts or facing stricter scrutiny by regulators.

Taking regulators by their word about similarities and laying out the evidence of significant interstate barriers given by construction firms, I confronted them with the idea of replacing the current system with a system of automatic mutual recognition. Regulators rejected this idea as absurd: "A Utah architect cannot come to Oregon for a day to practice architecture on a project without first becoming licensed […]. State licensing is necessary because of local differences" (Personal Interview, Brown 2016). Another board member exclaimed, "This has too big of an impact. If you would be comfortable with your building collapsing, then go ahead" (Personal Interview, CAB 2016). Regulators are not willing to make a distinction between a professional from a different jurisdiction and an unqualified person, "A person who is licensed in another state is considered to be unlicensed in California, just as someone who is not licensed anywhere" (Personal Interview, Eissler 2016).

The reason given, is an odd fear of 'the stranger' from the neighboring state. "Oregon believes that a minimum standard has to be assured and other states are not doing it […]. For instance, in Idaho and Washington they only register contractors" (Personal Interview, Denno 2016). As in many other cases when I asked whether anybody was aware of adverse health and safety outcomes in those states, I was told "not that I am aware of" or "that is an interesting question" (Personal Interview, Denno 2016; Personal Interview, Kilb 2017).

There are many more of those examples. When I asked is not a plumber a plumber, and should they not be able to work nation-wide? The answer was, "No, that is a very subjective opinion […]. We have some serious distinctions (Personal Interview, Kilb 2017). Generally, the sentiment was very similar to the findings of Hoffmann's study in which he interviewed regulators of barbers and cosmetologists. The argument he reported, may be best summarized by this quote from a member of the Ohio Barbers' Board: "If you went to school in Pennsylvania or in Mexico or India or China or wherever, and you only had a 1000 hours [of training], it would not be fair in Ohio […] to give this person a license, because […] they don't know anything about our sanitation nor health rules or our laws and rules" (cited in Hoffmann 2011, 232).

This evidence should not be construed to say that regulators in charge of licensing agencies are unreasonable. Interviewees usually pointed out that, even if my argument were convincing, there was nothing they could do. One regulator explained,

> Would a regional license make sense? Absolutely. But politics plays a role and states like to not lose control over that aspect of it. […] States don't like to be told by anybody what to do. They like to have their own sovereignty. Unfortunately, they don't look at the bigger picture and the good of the whole. But in the state of Rhode Island, we don't even have a million citizens. And we have 12 000 contractors. They are able to go from RI to MA is 10 minutes. The portability for us would be really nice. But that has been held up. […] There is no portability whatsoever. (Personal Interview, Whalen 2017)

Another regulator explained, that given the legal situation, taking care of their own state was all they could do: "Our responsibility is to protect consumers and to enforce the laws that are in place. License law was established and is changed by the state legislature" (Personal Interview, Lopes 2016). This was echoed again and again: "It's just

a constitutional issue, a states' rights issue. It's just a function delegated to the states. We have our own standards in California, and they are critically necessary. We wouldn't want to see some kind of national mandate usurp our authority" (Personal Interview, CAB 2016). In some cases, regulators told me that looking at the bigger national picture, was "above the paygrade" of a licensing board: "[A national license] is not an issue that the Board would address. The Board is charged with implementing and enforcing the laws as enacted by the State Legislature and the Governor. It would not be for us to address whether the federal laws, or the U.S. Constitution, should be amended to eliminate state licensure and enact a national license" (Personal Interview, Eissler 2016).

To some degree, I found what was earlier theorized. Compulsory power-sharing between state legislatures and fragmented executives leads to a strong emphasis on institutional interests (Bolleyer 2009, 132). Legislative actors simply seek to preserve their autonomy, while executive actors are limited in how much their policy delivery can rely on interstate cooperation. At the same time, the motives of state officials are only partly located in their desire to preserve autonomy. There is obviously an ideational element to the fact that they simply do not recognize the fact that they are creating interstate barriers. Without a national discourse or market building agenda explained by competitive federalism, they are unlikely to develop any desire to pursue reforms or broaden their perspective. In some ways, their perspective is simply parochial or lacks imagination. This can be particularly seen when they do not accept the argument that requiring the same from in-state and out-of-state state firms creates a double burden and might actually create interstate barriers. As discussed above, their justification is that just accepting out-of-state firms would be synonymous with abolishing all regulatory standards, even though that is demonstrably untrue.

The same attitude was reflected by the building officials, I was able to interview. They seemed to combine a desire to preserve autonomy with a limited imagination, which simply did not include thinking about the impact of their action on other states. Mostly their interest is focused on their state, not on thinking about how their regulations affect neighboring states. In Pennsylvania, where there are discussions about establishing a state-wide plumbing code, a building official explained:

> "It would be so much simpler. But we are only slowly moving towards it. The main factor is politics though. Manufacturers and unions have lots of power. Unions want to stay with the older codes, because they need a higher level of training and skill, and they control the training. Trying to preserve the jurisdictions. Some manufacturers want to preserve the old codes because they require more expensive old school materials. Like manufacturers of cast iron pipes. (Personal Interview, Wexler 2017)

What other observers had described as inertia of local officials, was a virtue for this representative: "Our position is neutral. We just want safe codes. We don't get involved in politics" (Personal Interview, Wexler 2017). So, in this sense, they might be more alike to public procurement officials, who privately see the benefits of national standards, but due to the position of local legislators, do not advocate this position. Indeed, several procurement and building officials emphasized the way they were constrained by the preferences of the local public and legislators. In the end, one building official explained, "We are here for safety. Period" (Personal Interview, Mata 2017). However, it soon became clear that he actually had a strong desire to preserve local autonomy, based on competitive federalism beliefs, explaining, "All cities are different," and the federal government could not possibly create uniformity AND safety (Personal Interview, Mata 2017).

All building officials interviewed, whether opposed or supportive of national building codes, explained that due to local interests this was impossible. Some blamed the general anti-federal government climate: "The United State of America is never going to recognize ONE national model code. Having the I-Codes was a great improvement, but even with a national publication, some states still modify for their specific conditions and needs. Home rule/State rule is strong" (Personal Interview, Rouleau-Cote 2018). Similarly, the president of the New Hampshire Building Officials Association explained, "Personally I think that [uniform codes] would be great, but in this political climate of anti-regulation it would be a hard sell. 'Government intrusion' and all" (Personal Interview, Richardson 2018). According to some 'enlightened' officials, most local building officials oppose nation-wide mandates because "They fear the loss of local control and feel the government should not be too involved in local affairs" (Personal Interview, McKinney 2018). In addition, "Many code officials are Firemen, and feel that code modifications are based on life safety issues. They understand the current codes, so

change would not benefit them" (Personal Interview, BSAV 2018). This is reinforced by the fact that "local labor unions are trying to build or maintain their influence," which they can much more easily do on the local level (Personal Interview, WABO 2018). Here again we find the fact that they simply do not consider the impact of local actions on a broader scale. This can also be seen in the fact that many officials explained that they had never even heard of any complaint over regulatory heterogeneity. The President of the Maine Building Officials Association remarked, "I wish I knew why some local officials oppose this [national codes], I wonder if they know why they do?" (Personal Interview, Lister 2018).

Another regulatory expert repeated this point. "I would tell you that sometimes things are intentionally kept the way they […], people want it to be fragmented. The longer people are in their job, the longer they guard their turf […]. There is a lot more politics than there is logic" (Personal Interview, Widney 2017). However, this desire combines with just a limited perspective. As a representative of CSI explained,

> A national standard would be great, but there is no way to achieve it. There are strong arguments about state/local rights. It would be hugely unpopular. Secondly, there is short term costs of change for small government entities like cities, and school districts. Thirdly, people want to hold on to how things have always been […]. There is also no precedent for government involvement. Everything has to be private. This is the difference to Europe, where specifications are often adopted by national standardization bodies. It is way easier to do business across borders in EU […]. Even Canada, which has more climate differences has one building code. (Personal Interview, CSI 2016)

Maybe the simplest explanation for the persistence of local differences and the inattention to the issue by regulators is that "local officials don't feel compelled to update the code" (Personal Interview, MCA 2017). According to Wible, to only thing that can overcome this local inertia are disasters, but even then, the involvement of the federal government in building codes is rejected:

> The adoption of codes is not a federal issue. The only way it ever became a federal issue is the ADA in terms of civil rights, and in terms of energy conservation […]. The federal government has done things to encourage uniformity, in the 60 and 70s and 80[179]s. Since then the federal government

[179] He is referring to incentives set out by the Department of Housing and Urban Development (HUD). In the 1970s, Congress tasked HUD with creating a set of standards for manufactured housing,

> has taken a hands-off approach to the issue […]. The latest state to go to a uniform standard was Louisiana in the wake of Katrina, I testified, and worked with them. Three quarters of the state did not have codes at all. And those that did didn't do any enforcement […]. During the creation of DHS [Department of Homeland Security], it was considered to be given authority over building codes to make them uniform, but in the end, they did not want to touch the federalism issue, it would be challenged in the courts, they didn't go this path. [Why do local officials not see the benefits of national streamlining?] Why do local building officials not see the gains? It's not their job. Their job is enforcing the law. (Personal Interview, Wible 2017).

Another expert similarly explained that thinking about the overall system was out of the scope of building officials: "Every one of those communities, thinks that they are the best communities, they all have opportunities to improve, but they don't know because they look in the mirror […]. You have the people that at one time were a plumber and fell into a ditch and broke their back, so now they are behind a desk issuing plumbing permits, that does not mean they understand the regulations, how it was written or its intent" (Personal Interview, National Retail Chain 2017). This way of becoming an official deeply shapes their perspective: "Building inspectors/officials at time have a tendency to be very much like feudal lords overlooking their fiefdom. They don't like to be told what to do by any one. They have forgotten what their jobs are: Enforce the code how it was written (Personal Interview, Richardson 2018). Non-uniform, city-by-city training, explains the uneven enforcement of codes. As one official remarked,

> Even with a state-wide adopted code, administration and enforcement varies greatly across the states. We just don't have the national requirement. In many states building inspectors are not looked upon as being that important on the grand scheme of public safety and a safe livening environment. Nor does the insurance industry recognize the true value of risk reduction on property that has been inspected by a competent inspector. (Personal Interview, McKinney 2018)

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which went into effect in 1976 (MHI 2011). It preempts state law for some manufactured houses, but not all pre-fabricated products—modular homes for instance remain governed by local building codes (HUD 2018). The Federal Housing Administration, and later HUD, published minimum property requirements, a minimum standard, for all federally financed housing to incentivize more safety and uniformity (NIBS 2003, 2). However, after pressure from, among other the NHBA, and an internal report stating, HUD should rely "on State and/or local authorities […] to regulate the health and safety aspects of such housing, and on free market forces to establish acceptable performance levels for livability and marketability of such housing," the program was phased out (NIBS 2003, 31). Since 1983 local codes are considered equivalent and the minimum property requirements have become obsolete (Pub. L. 98-181).

There are also other reasons that the building officials I talked to saw uniformity not as that big of a problem. Plumbing, boiler, or electrical codes, which vary even more across jurisdictions, are often regulated by different departments. One official explained. "Elevators and boilers are regulated by Labor and Industries [Department] who, in my opinion, don't try to be consistent with other states" (Personal Interview, WABO 2018). State-level officials often do not see the problems on the local level. For instance, due to local jurisdiction not always referencing the newest national standard, "There probably is a problem when developers want to use methods or materials that are not addressed in our codes. In those cases they must obtain approval from the local building official and building official decisions can vary widely" (Personal Interview, WABO 2018).

VI.d. Policy-Makers

Federal-policy makers, as seen in the previous chapters, are basically not involved with the interstate barriers discussed here. If they are, they follow the discourse prescribed by competitive federalism, calling for local reforms. State and local policy-makers guard their autonomy and are not interested in endorsing federal market authority or creating meaningful cooperative institutions to address interstate barriers. On the one hand, this is related to the extreme decentralization of the interest group and party system as well as the separation of power in legislatures. Most broadly, they have no incentives to create federal market authority, because any transfer in authority will result in a loss of power, not a transformation of power as under cooperative federalism. On the other hand, the influence of the competitive federalism conception of markets is quite clear. Absent a national market building agenda, we simply do not know whether local policy-makers could be coopted into it. At the same time, the arguments of interviewees clearly demonstrate that they do not conceptualize markets as needing central authority—most describe local regulation as inevitable and unproblematic for single markets.

VI.d.1. National

Federal policy-makers have rarely taken positions regarding interstate barriers. There are no federal initiatives to create a transparent and non-discriminatory public

procurement system or to streamline building codes nationally in order to increase mobility of firms or market access for construction goods. In 2013, a report by the White House recognized the problem of interstate barriers through licensing for veterans and military spouses (White House 2013). In 2015, this was followed up by another White House report, this time criticizing interstate barriers through licensing in general. However, federal intervention was rejected; instead the report suggested, "Best practices in licensing can allow states, working together or individually, to safeguard the well-being of consumers while maintaining a modernized regulatory system that meets the needs of workers and businesses" (White House 2015). The White House's initiative leads to the absurd situation that 22 states now offer temporary or expedited licensing to military spouses, but not to the general public or firms.

On the federal level, the FTC might be best situated to promote single market building and even change the national imagination around markets. For instance, as we have seen in Chapter III, the FTC together with the Justice Department were able to dramatically change how the US thinks about anti-trust. However, considering the three interstate barriers discussed here, the FTC has not taken any significant action. According to two reports, the FTC does not consider local procurement preferences problematic—they are only concerned with outright corruption, i.e. bid-rigging between a procurement official and a private company (FTC 2010, 2007).

The FTC has not taken any position on building codes[180]. The position towards standards is that it is a private activity that might be subject to anti-trust considerations. Given the fragmented nature of the private standard-setting industry, the FTC Chairman noted in 2001 that there were potential anti-competitive implications of firms holding standard-essential patents—i.e. a firm might collude with a standardization organization to create anti-competitive effects, or a standardization organization might decline to certify new materials or procedures because they are patented by a private firm, thereby stifling innovation (Muris 2001). In the 1990s and 2000s, the FTC pursued legal action against several technology and telecommunications firms holding standard-essential patents for not granting licenses to competitors and against competitors who refused to

[180] Search of FTC Online Archive by Author on February 21, 2018.

pay for those licenses (Ohlhausen 2017, 119f.). However, the current chair of the FTC, in what reads like a competitive federalism manifesto, argues that intervention into codes and standards is only rarely necessary (Ohlhausen 2017, 122). Even market imperfections or monopoly do not justify government intervention, as long as no significant harm to consumers can be proven in court (Ohlhausen 2017, 106f., 122f.). Interestingly, the FTC has not considered the role of state and local governments; they support the private standard-setting industry and only look at it from a perspective of managing property rights (Ohlhausen 2017). Furthermore, since the 1980s they have argued against anything like the European Approach: "Industry regulatory standards […] are often quicker, more flexible, less adversarial, and therefore less burdensome, than governmental regulation. This is true both in adopting and in enforcing standards. Private sector self-regulation is thus at times less likely to impede innovation inadvertently and more efficient for society" (Valentine 1988; Ohlhausen 2017). Apparently, competitive federalism completely blinds them to how the interaction of private standards setting and local government adoption can actually create market barriers and impede innovation. According to international elevator manufacturers, the ordoliberal approach, relying on federal market authority to manage competition, is much more successful in maintaining a competitive market:

> [In the US] technical legislation is very detailed. So, we have to fulfill every detail of the standards. So, it means that when we have a new product, new solutions, new innovations, it takes quite a very long time to introduce into the market, to convince all the jurisdiction that the solution is safe and can be used until the standards, technical standards catch up with this innovation and become [part] of this standard. This process can take years before any new solutions or innovation can come into the market! So in fact, *the difficulties in the US are non-harmonized requirements in the jurisdictions, and a second is rigidity of the system to introduce new solutions and new technologies.* (Kone International cited in Hoffmann 2011, 314)

Europe's centralized system of performance-based standards is superior according to the same company:

> [This ordoliberal approach] allows us to develop and introduce innovative solutions and new products into the market in a very rapid pace […]. We can bring the new technologies through risk-assessment and when such a solution becomes state-of-the-art then it is included in the [EN] standards. So the lift directive not only harmonized the technical regulations between member

> states, but opened the door for innovative solutions and new technologies. (Kone International cited in Hoffmann 2011, 310f.)

The FTC has taken no official position on whether occupational licensing by states creates interstate barriers to commerce, but they do comment on particular instances where they deem a specific regulation by an agency anti-competitive (FTC 2016, 9). Their position is mostly deregulatory, not arguing for reducing interstate barriers. For instance, influenced by competitive federalism, former FTC Chairman Timothy Muris argues, "Although the effect of state regulation is often bad, the performance of the Commission [FTC] could be worse" (Clarkson and Muris 1980, 88). Recent FTC testimony does not change this position (FTC 2016). Even one single author, who argues that the FCC could learn from the European Commission, sees licensing mostly as overregulation, not as interstate barrier (Sanderson 2014). The FTC has litigated two types of cases, the imposition of anti-competitive rules like price controls or advertising restrictions and the actions of licensing boards that are not "actively supervised by the state," falling outside the protections established in the state action doctrine (FTC 2016, 2). According to recent testimony by the FTC, their "battle" against anti-competitive practices focuses solely on anti-trust analysis, not issues of interstate barriers (Lipman 2015; FTC 2014, 2016). A report by the FTC State Action Task Force complains that current state action doctrine does not take into account the creation of interstate barriers; but they do not advocate changing this, for instance through pursuing negative commerce clause arguments (FTC 2013).

While the "existence of unnecessary 'double burdens' (in the country of origin and in the country of service provision) have been at the heart of the [ECJ's] scrutiny," in the US, courts have not considered this discriminatory (De Witte 2007, 4). "Most states do not recognize occupational licenses from other states, and plaintiffs have argued that such 'non-reciprocity' violates the dormant commerce clause by discriminating against out-of-state commerce in favor of in-state interests. But courts have rejected this claim" (Edlin and Haw 2014, 1130). As long as in-state and out-of-state firms or professionals are treated the same, courts have not recognized this double burden as irrational (legal term) in terms of the Equal Protection Clause or discriminatory in terms of the Commerce

Clause; and seemingly nobody has argued to change this jurisprudence (Edlin and Haw 2014, 1130).

Since 1959, the FTC has brought 31 cases against states or local jurisdictions due to licensing restrictions[181]. However, none of them contains any references to interstate mobility as an anti-competitive issue. The FCC is only concerned with restraints to trade unrelated to interstate mobility, for instance some restrictions on advertising or which profession can perform what kind of tasks (Clarkson and Muris 1980). A database search similarly found no cases concerning licensing boards that where argued on basis restraints to labor mobility. There is a few cases in which private persons have tried to challenge discrimination against out-of-state professionals but mostly unsuccessful (Sanderson 2014).

In line with court rulings, as we have seen, state regulators do not perceive any barriers to trade as long as they require largely the same from in-state and out-of-state state firms, not accepting the argument of a double burden and defending the right to examine any out-of-state firm or professional. They described treating to-be-licensed in-state providers and already licensed out-of-state providers the same as non-discriminatory, even though it quite obviously imposes a double burden on out-of-state providers.

VI.d.2. Local

One step down from true federal market authority, states might maintain non-federal but national cooperative institutions to make binding decisions. However, due to the separation of powers and weak cross-state party linkages, the US has created no such organizations. Interstate compacts, binding agreements between states, are rare and akin to a treaty revision in the EU or an international treaty in the sense that establishment and changes have to be ratified by every state legislature. “Being usually drafted by administrators, [state compacts] often do not find the support of legislatures within the individual states jealously guarding their legislative autonomy” (Bolleyer 2017, 532). The creation of state compacts requires significant political effort; hence most existing ones

[181] Search of LexisNexis Database by Author on July 20, 2017.

focus on single important issues—like the recognition of state drivers licenses—but have never been established in more general terms to deal with multiple problems. As Zimmerman explains, compacts have rarely been used to remove interstate barriers, focusing mostly on the "settling of boundary disputes" (Zimmerman 2002, 54). Instead the most prominent mechanism for policy harmonization is voluntary model law pushed for by private initiative, like for instance the Uniform Commercial Code pursued by the American Bar Association (Bolleyer 2009, 131). Beyond this, as we will see, local governments carefully guard their autonomy and rarely consider their actions as potential interstate barrier.

The National Governors Association (NGA) is much weaker than comparable European institutions like the Council of the EU. It is not a decision-making body but a forum for information exchange, networking, and federal lobbying. Binding agreements are rare, and no powers are devolved to the organization. None of the interstate barriers discussed in this dissertation, including licensing, is in anyway addressed in NGA's policy positions (NGA 2018). According to publicly available meeting documents, streamlining the national licensing system has not been on the political agenda. In response to the White House report on licensing, the NGA Center for Best Practices released a study of the issue, concluding it could be addressed through better communication and the removal of unnecessary licensing regulations (Dunker 2015). No real cooperative or federal solutions were discussed (Dunker 2015).

Similarly, the National Conference of State Legislatures (NCSL) is mostly a forum for information sharing, not for making binding agreements. In 2017, its research division released a report addressing the mobility barriers caused by licensing—however, the only policy options discussed are that "states should review or abolish their licensing laws" (Hultin 2017). They have also not taken any specific position on local procurement preferences, but oppose any attempts at federal preemption (NGA 2018; NCSL 2013). The only reference that could be found, is a statement by NCSL that presents any federal move to question these laws as infringing on states' rights, stressing that state procurement policy and practices often are set in state law and are sometimes designed to serve "social or economic purposes beyond the mere provision of goods and services" for state government use (NCSL 2013). They have also not developed any policy position on

the heterogeneity of building codes and standards. In terms of the regulation of construction services, they only serve as "a platform of information exchange" (NCSL 2015).

In terms of licensing, the inaction of boards combines with legislators not wanting to transfer power to executive agencies or to an organization that would establish binding cooperation with other states. As indicated by interviews with regulators and interest groups, state policy-makers have shown no interest in putting a mutual recognition agreement or a federal licensing regime on the political agenda. Occupational licensing reform is never discussed across professions, and usually focusses on whether licensing a profession is (un-)necessary, not on jurisdictional mobility.

For instance, in 2016 the Little Hoover Commission, an independent state oversight agency in California, released a report suggesting several necessary reforms to occupational licensing (Nava 2016). The report mostly addresses to which degree licensing rules are necessary. However, it touches on interstate barriers, recommending that "The Legislature should require reciprocity for all professionals licensed in other states as the default, and through the existing sunset review process, require boards to justify why certain licenses should be excluded" (Nava 2016, 7). They do not propose any solutions to increase coordination between states, or convince others states to pass similar laws.

Unsurprisingly, no law to address this proposal was introduced in the state legislature[182]. The only debate and legislation coming out of this process, was an attempt to de-license certain professions like barbers and audiologists[183]. According to journalistic observers, like *Capitol Weekly*, occupational licensing did not become a major issue in California, and debates were limited to whether certain professions needed to be licensed at all (M. V. Holden 2015; Greenhut 2017, 2016).

The situation in the state of Washington is similar. A search of the online archives of the *Washington Wire*, the capitol newspaper, turns up no recent debates about

[182] Search of the California Legislative Information Network by author, February 13, 2018.

[183] CA State Leg. S.B. 247. Reg. Sess. 2017-2018 (2017).

licensing. The only exception is a recent bill[184] that, among other professions, tries to de-license landscape architects (Whitehouse 2017; Myers 2017). However, the bill has not been scheduled for a vote. Similarly, a search of the Oregon legislative database only turns up a few bills relating to one specific rule in one specific profession. The only references to a public debate about the issue is a few state politicians talking about "excessive licensing" (Boden 2017; Aristotle 2012)

I contacted several members of the Senate and House Business Affairs Committee in Colorado to ask specifically about why they would allow municipalities to license contractors, a significant obstacle to firm mobility. First of all, I was told, licensing was not really on the political agenda. A Democrat explained, " I sit on the business and local government committee, and I am not hearing a lot about professional licensing this session" (Personal Interview, Coleman 2017). In general, he was opposed to any inter-state cooperation or federal market authority, "I think locally driven policy is more important than state driven policy to be honest" (Personal Interview, Coleman 2017). A Republican on the same committee explained to me that licensing was generally restrictive and should be abolished. However, in terms of solutions he explained, "Regardless of that, a federal occupational licensing program is not a good idea; A federal solution is a federal nightmare and a clear grab for power in my book. The nature of the states leading this issue is that the standards are unique to every state's needs." So despite opining that licensing was generally restrictive and anti-competitive, he insisted that the issue would have to be addressed in Colorado internally though "deregulation" and "state-by-state solutions." (Personal Interview, McGrady 2017)

A Republican Senator similarly explained, "The idea of state licensing is usually a barrier to entry," however, when asked about contractor licensing, he sided with the argument that local control is important and the state should not intervene. He also explained that state legislators would never want to give up power in order to create more uniform licensing across the country (Personal Interview, Neville 2017). A Democratic Senator similarly told me about local licensing, "That's just how it is in Colorado" (Personal Interview, Jahn 2017).

[184] W.A. State Leg. H.B. 3161. Reg. Sess. 2017-2018 (2018).

The same pattern can be observed in terms of local procurement preferences that seem to enjoy cross-party support among state legislators. Several recent legislative initiatives demonstrate that state lawmakers conceptualize those preferences as legitimate and unproblematic in terms of market competition. In the absence of a federal market building initiative, or significant state cooperation, they seem to perceive their interest in laying exclusively in preserving their state autonomy, even at the cost of other states. Lacking an understanding of the importance of central authority for the functioning of markets, this is not surprising.

For instance in his work, Hoffmann tracks an Oregon bill from 2010[185] that created a 10% cost preference to in-state providers of agricultural goods (Hoffmann 2011). The story he uncovered suggests that state legislators do not perceive any need to take into account the preferences of other states, and they do not see local government activity as contrary to free market principles (Hoffmann 2011, 150ff.). The bill's author is cited saying, "When I was figuring out how I was to frame the sale of this to go to the legislature, I originally started out with an environmental argument [about environmental benefits of "buying local"] and I quickly found out that […] it didn't resonate with people. And so, then I switched it to a local economic argument. Then everyone was wildly enthusiastic about it" (cited in Hoffmann 2011, 154). Unsurprisingly, the bill passed unanimously in both Oregon legislative chambers[186]. One quote particularly demonstrates how, in the absence of cooperative relations between states, and a conceptualization of markets that excludes central authority, local lawmakers are incentivized to pursue local protectionism to preserve their autonomy. The law's author answers the question of whether legislation like this might lead to a quasi-trade war between states, "Yeah, that's true, but you know what, they [the others states] need to do the same thing" (cited in Hoffmann 2011, 190). A Republican Lawmaker, in an interview concerning the bill, expresses a similar sentiment, "Oregon taxpayers would like to have tax money stay within the state of Oregon […]. We first have to see for a while if the [out-of-state] providers are reliable" (cited in Hoffmann 2011, 151f.). In fact, a

[185] Or. Rev. Stat. § 279a.050 (2009).

[186] Or. Stat. Leg. H.B. 2763. Reg. Sess. 2009.

committee reports suggests that lawmakers did not even consider this law to be protectionist, saying "HB 2763-A does not mandate protection for Oregon agriculture, but authorizes contracting agencies to pay a preference premium" (Oregon Legislative Information 2009)

Plenty of other instances mirror this dynamic, currently there are bills to increase local preferences pending in many states and cities[187]. Democrats and Republicans in Michigan are currently arguing for more generous in-state preference laws without any significant political opposition (P. Egan 2017). Democratic Senator Curti Hertel argues, "States such as Ohio and Oklahoma already offer similar incentives, and it's time for Michigan to make sure our hard-earned tax dollars are not going to create jobs in other state" (cited in P. Egan 2017). The *Michigan Jobs First Plan* passed nearly unanimously in Senate but has not been taken up in the House yet.

In the mind of state legislators, there is no contradiction between free markets and local preference laws. A California preference law states in its preamble, "The essence of the American economic system of private enterprise is to be free, open, and to have transparent competition[188]." Similarly, in a transcript of a legislative debate on a Connecticut preference bill[189] that passed nearly unanimously, several Senators make arguments like, "I think it's benign in that respect, there's very little harm to come from the bill, but it can do a lot of good," or the purpose is "Simply to provide a level playing field for our companies in the State of Connecticut when they're bidding on state contracts and competing with companies from out of state," or "We should give any job we can to an in-state company" (Connecticut State Assembly 2008).

This impression was confirmed by several external observers. One design firm explained, "Well it is very political. Local politicians want to keep the jobs, I don't know that anybody is really advocating to open these things up" (Personal Interview, Hord 2017). Another firm concurred, "I personally feel a national system might be easier for

[187] Among others: Maine State Leg. LD 956. 128th Sess. 2017 (Thistle 2017); Michigan Leg. S. B. 0515 Reg. Sess. 2017-2018 (2017); North Carolina Leg. S.B. 277. Reg. Sess. 2017-2018 (2017); Springfield, MO (Zhu 2018); Cedar Rapids, IO (Cedar Rapids 2017) and probably many more.

[188] CA State Leg. S.B. 1176. Reg. Sess 2015-2016 (2016).

[189] CT Pub. Act No. 08-154.

individual architects to navigate but given our republic form of government which (in theory) gives the power to the states I can't see it happening […]. Each state has its own jurisdictional idiosyncrasies. This is often due to laws passed by well-meaning but ill-informed politicians" (Personal Interview, Dekker 2017). This is also the observation of ABC, "Politicians from both sides of the aisle like that idea" (Personal Interview, Brubeck 2017).

This dynamic is mirrored in terms of how local governments treat building codes. According to the representative of CSI, "It is insane that we have 4000 different building codes. This is hugely inefficient […]. But every city wants to customize. Or often, they just don't have the resources to update their building code, so they fall behind the newest safety standard. There is really no need for many different building codes" (Personal Interview, CSI 2016).

The regulatory experts at Fiatech made clear that there was not much interest by local officials in national change. The reasons include institutional incentives and an outlook on markets that does not see local regulation as a trade barrier. Zettersten explained,

> What's happening is rather than trying to centralize more authority in the federal government, to overcome these obstacles, we are creating them. We are far less likely to create enforceable national standards to assist the business community, than to strip the federal government and return jurisdiction to the states. The interesting thing here is the Republican Party, that is most interested in business, would be more likely to return jurisdiction to the individual states, and their sub-jurisdictions, even though that would create obstacles. America is a country of irony. (Personal Interview, Zettersten 2017)

In Texas it could be recently observed how local legislators do not want to give up control over building codes. In 2017, Senator Don Huffines (R), introduced a bill[190] which would require cities to show articulable public harm before being able to amend the model building code as promulgated by ICC. While this measure should be supported by most companies and industry association according to my interviews, there was not much support. The only two interest groups publicly supporting it were the Texas

[190] TX Leg. S.B. 636. Reg. Sess. 85 (2017).

Association of Builders and the Texas Apartment Association (Texas 2017). However, due to significant opposition, the bill failed in the House. Seven major cities as well as the Texas Municipal League sent representatives of the mayor, city council, or city manager to testify against the bill (Texas 2017). Many professional and industry association, including the Society of Architects, the Association of Builders, the Building Officials Association of Texas, as well as the Sierra Club, opposed the bill, the common argument being that it was an "attack on city authority" (Texas 2017).

Selso Mata, president of the Building Officials Association of Texas was himself sympathetic to the law, but explained the opposition:

> It is a governance issue and how states are set up to legislate in each respective state. Texas is a home rule state. Meaning that each city is allowed to govern how they think best fits their community. The state requires each city to adopt a code and enforce it. Each city does so but not every city is under the same code […]. Some cities are behind three, six or nine years. Some are current […]. Politically, it may be reluctance to give up local control. If this occurs here it opens the gates for more State intervention where cities are concerned […]. Cities don't understand the need for a disconnected State Senate or Representative dictating more requirements from an interest group/lobbyist for financial gain toward their own agendas. (Personal Interview, Mata 2017)

VI.e. Summary of the Argument

The question of why there is no mobilization around federal market authority to deal with interstate barriers like the licensing patchwork, discriminatory public procurement rules, as well as heterogeneous building codes and standards, requires an answer on multiple levels. Interviews with construction firms clearly demonstrate not only the existence of significant barriers, but also the degree to which formally non-discriminatory regulations can create a double burden for out-of-state companies with the effect of deterring competition and raising the costs of services more generally.

Given this situation, most firms are in support of a national license or a system of automatic mutual recognition. In contrast to some politicians, firms acknowledge the necessity of licensing, but argue that safety can be guaranteed without giving every state or municipality the power to regulate as they see fit. Similarly, firms oppose local procurement preferences and describe them as incompatible with free market principles,

despite the position of local officials that they are not problematic. Firms would also like to see building codes and standards nationally streamlined. In contrast to building officials and legislators, they clearly think it is technically possible.

However, these preferences are thwarted in several ways tying together ideational and institutional dynamics. Most broadly, due to competitive federalism as described in the previous chapters, there is no national political agenda for market building that firms could be plugged into or an actor that could mobilize firms across several states and professions for federal market authority. Without a 'motor of integration' like the European Commission, unified by a belief in federal market authority and the importance of central rules for market competitions, problems are addressed in limited and unimaginative ways (tinkering with single issues instead of transforming the system). Nobody has researched or attempted to realize economic gains that may be possible through licensing reforms that encompass all the states and multiple professions, through procurement reforms that encompass the establishment of central rules about non-discrimination and transparency, as well as through nationally unifying building codes and standards. Instead, national actors follow the normal politics of competitive federalism. The FTC has pointed out that licensing creates interstate barriers, but only pursues litigation of specific practices in specific states as a strategy. Courts do not recognize, unlike in Europe, that heterogeneity in licensing rules, differing codes, or procurement preferences create a significant burden on interstate commerce. When political actors like the Obama White House take up small elements of these issue, like the study of licensing problems for military spouses, they suggest state-by-state solutions based on information exchange.

The inaction of firms can be understood within this ideational context. Furthermore, the interviews demonstrate that most firms do not conceptualize themselves as political actors, and therefor are unlikely to take any radical action. Instead, if any, their lobbying activity is restricted to small local changes, and deference to whatever priorities the national trade association pursue. Put simply, a plumbing company is not going to start a movement for national regulation of the building industry, even if it may benefit from it. However, there are also more concrete, institutional obstacles. Firms are unlikely to lobby local politicians and regulators because they are convinced that those

actors will not give up any authority and might even retaliate. Similarly, they perceive their own trade associations as unlikely to pursue any major reforms due to their own internal federal structures, which generally ignore what they see as state or local issues.

To understand the lack of mobilization around federal market authority and the inaction on interstate barriers, we have to specifically explain the behavior of interest groups, regulators, and local politicians. Here I have found institutional elements salient. Specifically, US federalism and its complete separation of interests into state vs. federal, the separation of power between executives and legislatives, as well as the fragmentation of political parties, has encouraged a pattern of state cooperation that is voluntary, sectoral, and mostly organized around exchanging information and lobbying the federal government. This pattern, while not unique to the construction sector as pointed out by others, is reproduced in the structures of interest representation I found (Bolleyer 2009). Overarching intergovernmental organizations, like the NGA, are mostly service providers, not a meaningful forum for national policy reform. Sectoral organizations, like NCARB, are restricted to only addressing one profession and by the fact that they can only encourage state licensing boards to cooperate, not make binding decisions. Similarly, private code developers like ICC, are mostly interested in selling their product to local jurisdictions, and do not want to prescribe to their customers how to adopt codes. National associations of procurement officials go even farther, trying to stay apolitical to not offend local legislators. As can be expected, the most common tools for market integration are thus private coordination efforts, voluntary administrative cooperation between licensing boards, and bilateral reciprocity agreements. These all remain much more ad-hoc and burdensome than the central liberal rules in the EU.

Licensing boards and public officials themselves are constrained by the fact that they are 'only' agents of state legislatures, and therefore unable to make any binding commitments or transfers of authority to national organizations. Arguing for federal market authority, even when they see it as beneficial, is considered too politically risky. At the same time, they show no particular interest in giving up their authority, conveniently emphasizing that it is not their job to take into account effects of their own actions on interstate commerce—they see their job as enforcing the laws, not thinking about reforms. However, this cannot simply be explained by institutional incentives:

interview evidence showed that they are often not politically strategic actors, but simply take the status quo for granted and lacking any imagination of an alternative system. This ties into competitive federalism, because its implication is that national action is unnecessary and local action is not problematic. This can be seen in the fact that licensing agencies simply do not accept the argument that redundant requirements cause a double burden for out of state firms. But it also ties into traditional American conservative localism. Despite evidence to the contrary, regulation by other states and cities is often considered inferior or dangerous. The ordoliberal awareness that local action often undermines a single market, is simply non-existent. Instead, good local action is contrasted with bad federal policy that will always be subject to bias and interest group capture.

Similarly, state legislators are just not interested in creating a national institution to reduce interstate barriers. Whether this is due to their incentives—lacking formal representation in Congress gives them no stake in a federal scheme; the separation of powers makes devolving power to the governors unattractive—or the internalization of competitive federalism could not quite be ascertained. There was evidence for both. But overall most prominent seemed the fact that they simply are unaware of the interstate consequences of their action—given the valued dichotomy between state vs. federal set up by their conceptualization of markets, local government appears unproblematic.

Evidence of interest group activity similarly demonstrates that in the US groups find it difficult to create coalitions across issue areas or across states. As a result, we see federal interest groups fragmented by profession and mostly concerned with federal policy. As expected under dual federalism, state-level interest groups are torn between preserving state autonomy (which is where they have influence and where most of their members operate), and federal market authority preferred by their big competitive members. In effect that leads them to not address issues of interstate barriers at all. However, some interest groups are also caught up in the competitive federalism rhetoric. For instance, ABC clearly insisted that jurisdictional competition would eventually overcome interstate barriers. AIA insisted that state governments were best left alone in how they regulated professions.

Overall then, the answer to the question why there has been no significant mobilization around federal market authority to reduce interstate barriers for construction services has two parts: First I have emphasized that given the dominant conception of markets, a national agenda of market-building is illogical for federal policy-makers and political entrepreneurs—and absent such an agenda, I have shown most actors follow a logic of normal politics, advocating for changes at the margins, but mostly take the overall system for granted. Secondly, I have shown that several institutional elements that are peculiar to the US political system reinforce the tendency to only address market barriers in a piecemeal fashion, sector by sector, and sometimes to even allow the proliferation of those barriers. Table 6 summarizes expectations by different theories and the findings of this case study.

How these findings fit into the overall question of this dissertation, and how they challenge the existing accounts of market integration, is addressed in the next chapter.

Actors	**Materialist**	**Institutional**	**Ideational**
National/ regional construction firms	Pro federal market authority, cooperate across industries– non-success unexplained **No Evidence**	Diffuse interest for federal market authority; emphasize that there is nothing they can do about it; no allies; no cross-sectoral cooperation **MOST**	Pro free markets; See federal government as the problem; prefer state regulation; markets will flourish with deregulation **SOME**
Small firms in state clusters	Against federal market authority **MISSING**	Mostly do not care/do not get involved **MISSING**	No political position or anti-government in general **MISSING**
Construction industry groups national	Pro federal market authority, cooperate across industries – non-success unexplained **No Evidence**	Diffuse interest for federal market authority; emphasize that there is nothing they can do about it; no cross-industry cooperation **MOST**	Pro free markets; See federal government as the problem; prefer state regulation; markets will flourish with deregulation **SOME**
Construction industry groups in state clusters	Against federal market authority **No Evidence**	Torn between small and big members; Insist on state autonomy in regulation or are silent; See federal market authority as a loss of power, because they do not have influence on that level of	Pro free markets; See federal government as the problem; prefer state regulation; markets will flourish with deregulation **SOME**

		government; diffuse interest in state-wide harmonization, with little success. **MOST**	
Government officials in state clusters	Follow big industry demands **No Evidence**	Insist on their institutional autonomy; nothing to gain from mandatory cooperation; participate in sectoral coordination of mostly administrative nature; inability to make binding agreements **MOST**	Pro free markets; See federal government as the problem; prefer state or local regulation; heterogeneity not conceptualized as barrier **MOST**
Legislators in state clusters	Follow big industry demands **No Evidence**	Insist on their institutional autonomy/states' rights; inability to work together with other states, nothing to gain from cooperation **MOST**	Pro free markets; See federal government as the problem; prefer state regulation; heterogeneity not conceptualized as barrier **MOST**
Construction users and pro-streamlining groups	Pro federal market authority **No Evidence**	diffuse interest for federal market authority; emphasize that there is nothing they can do about it; sectoral streamlining organizations see themselves as 'service providers' for the states; cost-benefit calculation skewed by sectoral approach **MOST**	Pro free markets; See federal government as the problem; prefer state regulation; markets will flourish with deregulation **No Evidence**

Table 6: Theoretical Expectations and Empirical Findings

CHAPTER VII

CONCLUSION

The conclusion proceeds in three sections. The first section summarizes the findings of this dissertation. The second section discusses the theoretical and practical implication of these finding. The last section considers limitations of these findings and shows the future research agenda this dissertation implies.

VII.a. Summary of Findings

This dissertation started out noting how market governance in Australia, Canada, the EU, and the US had undergone a striking but little remarked divergence since the 1980s, leading to somewhat puzzling outcomes. The puzzle is that during this 'neoliberal' period of pro-market politics, Europe has pursued a vast single market project, while the US has not only largely overlooked interstate barriers, but actively proliferated them. I therefore set out to explain why the US had seen little mobilization around federal market authority to curb sub-national protectionism and interstate barriers since the 1980s, noting that conventional theories of European integration have in common an expectation that the US should have more liberal rules for economic exchange. To answer this research question, the reader must have expected a theoretical account and empirical demonstration, but first convincing evidence for my descriptive claim about the state of the internal market in the US. This dissertation has provided all three.

Due to the fact that Europe's regulatory departure from the US model had gone largely unnoticed by scholarly literature and policy-makers, much space was devoted to assembling a wide-range of data from federal policies and agendas, to state-level rules and their concrete effects on firms, showing the continued relevance of interstate barriers in the US. The first case study, focusing on the federal policy-agenda, showed that under conservative rule in the 1980s, 1990s, and today, self-described neoliberals have not mobilized around single-market issues or taken actions that would curb interstate barriers. Instead they have focused on tax-cuts, federal deregulation, and state's rights. This is also reflected in the contemporary political agenda of three pro-market think tanks. My analysis demonstrated, based on interviews with scholars at AEI, Heritage, and CATO,

that all three do not comprehensively think about interstate market barriers, and prefer local decentralized solutions to national policy problems, leading them to often explain-away or contribute to the proliferation of those barriers.

To concretize the effects of heterogeneous and outright protectionist rules that fragment the US internal market, the second case study focused on firms and professionals in the construction sector. Based on interview evidence, I was able to demonstrate that jurisdictional fragmentation actually creates significant legal obstacles to the national flow of constructions services. Specifically, I showed this in three interrelated areas: The way states and municipalities license firms and professionals in construction and design creates a burden on interstate commerce reaching from inefficiency to deterrence of market entry. While in the EU redundant demonstration of skills and testing is considered an unnecessary double burden, in the US this is a standard practice, considered by regulators as non-discriminatory. Even farther, small regulatory differences between states lead to the denial of any automatic recognition of out-of-state licenses in the US, while in the EU mutual recognition is standard, and derogations need to be approved by the EU commission as reasonable and proportional. In addition, US states prohibit the temporary provision of services by out-of-state providers without going through the new state's licensing process, while the EU allows this generally on the grounds of encouraging mobility, especially for small businesses.

I observed a similar pattern in terms of how state and local government procure goods and services. Existing data on protectionist state laws demonstrated that local jurisdictions regularly prefer local firms, local labor, and local materials either through price premiums or outright prohibitions. My interviews with firms showed that these laws do create significant deterrence for interstate mobility, but in addition that protectionist practices are much more widespread than legal surveys suggest. Decentralized procurement systems—many state departments procure individually, and cities and counties use their own systems—already create distinct advantages for local firms in terms of transparency. Furthermore, requests for proposals will often go beyond local preferences mandated by law. In contrast, the EU has outlawed all of these provisions due to their interference with interstate commerce, and above certain thresholds has created a European-wide transparent system for publishing procurement opportunities.

I have shown that the heterogeneity in building codes, which are adopted by state and local governments, creates another layer of complexity to the existing interstate barriers. Differences in codes create uncertainty for firms operating across jurisdictions, make it hard to establish standard-operating procedures, and make the use of uniform designs impossible. In addition, the fact that standards are adopted by local jurisdictions means that construction material requirements may vary by area. This implies that compliance with for instance the newest elevator standard does not confer a presumption of conformity for the whole US market. In contrast to the US, the EU has used federal market authority to guarantee European-wide market access to firms and products. Despite claims by regulators that national building codes were technically impossible, the EU has established European-wide building codes. Similarly, while any European country can adopt any standard it prefers, compliance with European standards confers a presumption of conformity, thereby creating a unified market for construction materials.

In sum, I uncovered that the US has produced nothing resembling the liberal market rules promulgated in the in the EU. In the US, no federal market authority has been used to curb interstate barriers and the national neoliberal agenda has not included any references to assessing the state of the internal market, instead focusing on cutting taxes and spending, deregulation, and decentralization. As a result, nationally operating firms confront many obstacles that are legally prohibited in the EU.

These findings challenge existing theoretical accounts of European integration, US market-building, and federalism. Specifically, they all expect more mobilization around federal market authority to create single markets in the US. Materialist theories emphasize the incentives of interdependence and mobility, which both are heightened in the US. Institutional theories emphasize the resources of federal government and agencies, both pointing at a stronger capacity of the US to pursue single markets. Ideational theories emphasize the role of the US as leader of the global neoliberal movement. All these accounts fail to capture the dynamics of maintaining interstate barriers, I have described. They have made too many assumptions about state and local politics and have been hampered by a lack of comparative focus. Therefore, assimilating the facts of the US case and the shadow comparison to the EU required the development of a new theoretical account.

Most basically, my theoretical account has demonstrated that we have to take economic ideas seriously to understand what kind of issues are perceived as policy problems, and what kind of solutions are assigned to these policy problems. From the federal to the local level, I have shown that the meaning and perception of federal market authority in the US systematically differs from the EU. While ordoliberals learned from the chaos of the 1930s that strong central rules made by a central insulated authority are necessary to maintain competitive markets, US neoliberals have in many ways adopted the opposite conception. Combing economic ideas from public choice with pre-existing antipathy to federal government, they have created a system of thought that expects markets to thrive naturally when government retreats, or when it is decentralized.

The power of this competitive federalism perspective could be observed at many different inflection points. Analyzing primary documents like memoirs of policy-makers and elite-interviews showed that this particular conception of markets accounts for the lack of consideration of interstate barriers in the agenda of 'Reagan Republicans' in the 1980s, 'Gingrich Republicans' in the 1990s, and 'Ryan Republicans' today. Similarly, it leads federal market supervisors, like the FTC, to consider issues like licensing, instances of overregulation, not interstate barriers. Competitive federalism also strongly influenced the agenda-setting of conservative think tanks: they have not systematically analyzed interstate barriers and argue that federal market authority is unnecessary to guarantee a single market. While economic ideas are not the only cause, a simple thought-experiment demonstrates their transformative power. Given the vast powers of Congress and resources of federal agencies like DOJ and FTC, as well diffuse business interests for federal market authority, it is easily imaginable that the US would pursue an EU-like single market push; however, in the absence of economic ideas that would justify such an undertaking, institutional structures and material resources remain non-mobilized. Similarly, I am not arguing that institutional and structural forced did not play a role in the EU single market project. But even from my shadow comparison the power of market conceptions becomes clear—an EU based on competitive federalism would look differently.

Tracing the mobilization of diverse political and economic actors in the construction sector, based on interviews with construction firms, regulators, politicians,

and interest groups, demonstrated a diffuse preference for federal market authority and central rules for exchange, which could not be realized in the absence of a national market-building agenda. National actors, particularly self-described pro-market groups, tended to take the competitive federalism conception of markets for granted, leading them to pursue policies that undermine federal market authority. Similarly, I observed attitudes among local regulators and legislators that are related, but not quite congruent with competitive federalism. They do not conceptualize a need for federal market authority to maintain a national market, and therefore see local regulatory activity generally as unproblematic. At the same time, even when acknowledging difficulties with firm mobility, they take the status quo for granted—they simply do not imagine radical reforms as for instance automatic mutual recognition like in the EU. Those factors were combined with an aggressive localism, one would not expect in a country with a national identity and much mobility: state regulators tended to treat the regulations of neighboring states as potentially dangerous and definitely not equivalent—because of that they saw their role as protecting local citizens from those 'foreign' jurisdictions. Similarly, they conceived of out-of-state as somehow 'undeserving' of public contracts.

While competitive federalism creates a good frame of understanding these dynamics, I found specific institutional obstacles that push firms and interest groups to pursue specific solutions that if not reinforce interstate barriers, at least maintain limited approaches to dealing with them. Fragmentation, decentralization, and separation of powers prevent interest groups and state policy-makers from mobilizing for federal market authority to curb interstate barriers. Division of powers between federal and state, and between executive and legislative dis-incentivizes transfers of powers to the federal level, binding cooperation between states, and dealing with policy-problems from a broad, cross-sectoral perspective. Instead, state interest groups only lobby their state, while federal interest groups only deal with federal policy. Fragmented regulatory agencies deal only with their specialty, like architecture for instance, not taking into account gains that might be had from regarding occupational licensing in general. In the absence of state representation on the federal level, and cooperative institutions among states, state legislators do not have any incentives to pursue the creation of rules beyond

state borders. Similarly, interest groups focused on state policies, simply do not think about policy-implications for neighboring states.

VII.b. Theoretical and Practical Relevance

As alluded to in the discussion of findings, this dissertation makes several significant contributions to existing political science literature and has important practical implications. Substantively, I have challenged the conventional portrayal of the US economy as integrated single market with limited local protectionism (Eisner 2014). I have also challenged the characterization of conservative thinking as generically neoliberal (Harvey 2005). Given that the strategies of deregulation and decentralization are very different from centralization to create single market rules, we cannot easily speak of a global neoliberal movement with globally similar effects. More pointedly perhaps, my findings question whether conservative thinking about markets, and strategies to create markets are correct: it simply appears that markets do not evolve naturally when government retreats.

My dissertation contributes empirically to the debate whether markets are Hayekian—a default kind of human relationship in the absence of state coercion, or Polanyian—created by state coercion (see: Höpner and Schäfer 2012; Caporaso and Tarrow 2009; Polanyi-Levitt 2012; Cerny 2016). I have shown that in the absence of a central authorities setting clear rules, local market barriers are likely to proliferate. Importantly, these rules go beyond the tasks assigned to the state by classical liberals: regulatory differences become non-tariff barriers in the absence of a central coordinating institution. This contributes significantly to the literature on the social embeddedness of markets, suggesting not only how economic ideas shape forms of capitalism, but also emphasizing the complex set of central regulations and rules necessary to make the 'free market' possible (see for instance: Granovetter 1985; Fligstein and Dauter 2007).

Methodologically, my dissertation highlights that forgoing systematic comparisons due to 'sui generis concerns' is problematic and may lead to wrong conclusions (see: Parsons 2015). For instance, approaches that rely on the mobilization of business interests due to material incentive to explain single market building may seem convincing in the European case (Moravcsik 1998; Frieden 2002). However, applied

comparatively they cannot account for the evidence. Furthermore, my findings emphasize the importance of considering competing alternatives and paying attention to causal mechanisms, or the specific instances when explanations pass through human action. For instance, based on correlational evidence economists have argued that state based licensing exists because local firms capture regulator to insulate them from competition (Kleiner 2013). However, the implied causal chain has not been tested against alternative explanations. My interviews suggested that the self-understanding of regulators is different from those assumptions: they believe that what they are doing is essential to safeguarding the public. Similarly, big corporations that presumably have the political clout the capture regulators actually opposed the state-based licensing system as redundant and inefficient.

My dissertation has several implications for the ways ideas intersect with preferences. As one author has observed, "Interests do not exist, but constructions of interests do. Such constructions are inherently normative and subjective/intersubjective conceptions of self-good—of what it would advantage the individual to do or to have done either on his or her behalf or inadvertently by others" (Hay 2010, 79). In several instances, I have specifically demonstrated how ideas construct interests and mobilize political coalitions. For instance, the conservative agenda cannot simply be understood as the representation of pro-business electoral interests. Instead, competitive federalism has suggested specific policy interests, and ignored others. At the same time, it made the coalition of socially conservative states' rights advocates and free-market libertarians mobilizable as a political force.

Emphasizing the ideas as 'social device' constructing interest also implies stricter scrutiny for economic and institutional arguments, especially when they rely on correlation data (Woll 2008; Abdelal, Blyth, and Parsons 2010). Assumptions about firm preferences are often wrong, firms do not automatically mobilize for those preferences, and interest groups often only represent those firm demands imperfectly. For instance, contrary to conventional assumption, most firms described themselves as apolitical, not even considering what kind of regulations and reforms they would prefer. In my research, firms did rarely appear as the strategic actors as which public choice theory imagines

them, instead they seemed to mostly rely on cues from higher level organizations in determining what is possible.

The findings of my dissertation have policy-relevant implications, suggesting the possibility of a bi-partisan single market building agenda. Reducing interstate market barriers is the kind of centrist good-governance policy, most Democrats and Republican could support. A broad policy proposal around reducing regulatory heterogeneity could be framed as good governance, creating a level playing field, increasing market competition, helping small businesses, or more generally increasing national productivity. It might be able to avoid common criticism from the left— 'Republicans advocate for deregulation and pro-business policies that favor big corporations,' and from the right— 'Democrats oppose free market solutions'. Building this approach on binding interstate cooperation and mutual recognition schemes might also bridge the gap between Democrats, who traditionally support central authority, and Republicans, who traditionally oppose it. I have demonstrated that low productivity in the construction sector can at least partly be attributed to regulatory heterogeneity. This means Republican arguments of overregulation are exaggerated, as are Democratic arguments of crony capitalism demanded by big businesses. Instead, it is local regulators making policy without taking into account national affects that creates problems; this suggests a national good governance initiative that focusses on good regulation.

Beyond these suggestions, there are also implications for leftist critics of capitalism more generally. Adopting strong central rules to curb business rents might be pragmatic and reasonable at least in the short term. Furthermore, as I have shown most arguments that sustain local regulatory heterogeneity are not based on convincing critiques of capitalism. Instead, they are barely coherent, often accounting to simple protectionism. This suggests two things: while the US is a relatively liberal market economy from a social policy perspective, its structure of federalism allows significant local variations from that model. However, to realize those opportunities the left has to articulate a more convincing set of policies that goes beyond protecting in-state firms at the expense of out-of-state firms and local taxpayers. Currently, policy only fragments the national market but does not supersede the market logic.

VII.c. Limitations and Future Research

The findings of this dissertation are not without limitations. While a good first step, to increase the confidence we have in my claims, research needs to be expanded into several directions. I have challenged some of the assumptions and theoretical explanations derived from simply looking at the EU or the US. At the same time, having treated the EU as a shadow case, future research must investigate the EU more directly. While it is clear that the EU has more liberal rules on the central level, concrete evidence from the national and sub-national level is missing. Therefore, my study of the construction industry should be expanded to the EU, following a similar research strategy. This might either reveal how EU rules enable interstate mobility, or that despite liberal rules there may still be many protectionist local practices. While I have alluded to the ordoliberal motivation behind the EU, this needs to be investigated more directly by looking at statements and memoirs of EU decision-makers. While there is some evidence for it, it might just be coincidental to the broader elite project of uniting Europe. To gain confidence, my approach should also be expanded to other federal polities, the next best cases to study are the Australia and Canada.

For theoretical and practical reasons, my dissertation has relied on qualitative evidence and a process-tracing logic. To increase the confidence in my findings and appeal to the mainstream political science audience, future research should try to translate the work of my dissertation into statistically testable propositions and develop an appropriate data-set. While I think the meaning-making process of political actors can only be captured through qualitative evidence, other aspects of this project are very amenable to quantitative investigation. A data set of interstate barriers for the US, similar to already existing investigations by the European Commission, should be constructed. In the best case, this data set would contain measures of actual barriers and measures of the rules. This would allow a more global way of comparison instead of focusing on one specific sector. Expanding this research to more federal polities would also allow certain institutional and ideational explanations to be tested. Based on content analysis of national newspapers, federations could be coded as ordoliberal vs. competitive federalist, which we then could correlate to the degree to which they have created federal market authority.

This dissertation has focused on the economic ideas that have enabled the Southern Strategy of the Republican Party. As discussed, economic priorities were traded-off against other commitments—some conservatives might have preferred stronger federal authority against interstate barriers to commerce, but they ended up opposing federal authority rather broadly to achieve goals on social policy or race. But by the time period addressed in this study, most of these actors seem to have convinced themselves that their opposition to federal authority was desirable for markets too; arguing that less federal power was directly good for markets, the economy, and their social policy priorities. After bracketing issues of race for the exploration of competitive federalism, future research should bring it back in.

Critical race theorists have long argued that neoliberalism reinforces the racial ordering of society[191]: "Insisting on race-neutrality at the level of law and policy, neoliberalism in effect privatizes racism, allowing systematic discrimination in employment, housing, and other sectors to persist, since to articulate a critique of structural inequity is to raise charges of an inverted 'racism' that violates the rhetorical construction of social policy as colorless" (Lissovoy 2013, 742). However, the distinction of ordoliberal and competitive federalist market thinking, I have suggested, implies that we cannot easily speak of neoliberal racism. At a minimum, it calls for investigating the relationship between different conceptualizations of markets and the perpetuation of racial hierarchies. It also questions the common claim that American neoliberals believe "Markets must be actively constructed; market behaviors must be learned; they must be deliberately extended to new arenas. Neoliberalism treats market rationality as a normative ideal to be pursued through applications of public authority"(Soss, Fording, and Schram 2011, 21; see also: W. Brown 2003; Dawson and Francis 2016). While the empirical existence of American policy might include elements of deliberate use of central power for disciplining market participants, in the Conservative imagination of markets this is not the case.

Another avenue of research relates to the claim of neoliberalism as a strategy to preserve white elite power (Hohle 2015; Lester 2015). If this were true, we would have to

[191] See for instance Omi (1994), Lipsitz (2006, 15ff., 73ff.), Goldberg (2009), Chari (2015), or Hohle (2015, 2018).

ask, what is different about Europe's racial orders requiring a different economic preservation strategy? At the same, the comparison to European neoliberalism might suggest questioning the 'natural alliance' between neoliberalism and racism, seeing it more as distinct causal forces that happened to coalesce in the US.

Donald Trump's rise to power has been explained by white backlash against increasing power of historically marginalized groups (T.-N. Coates 2017), by rebellion of the working class against the cultural resentment by political elites, as well as increasing inequality and economic precarity ostensibly caused by globalization (Auerback 2017, 58; T.-N. Coates 2017). For many pundits, this implies that Trump's populist 'America First' platform naturally includes calls for protectionism. Protectionism, we are told, is a dangerous anomaly not repeated since the 1930s (Hankla 2017). However, this ignores how much local protectionism has been part of American politics. As I have shown, it is quite common for Michigan to argue against doing business with Ohio firms. This suggests more research is necessary into understanding local protectionist sentiments, and how and when they become scaled up to the national level. At the same time, future research should investigate how this state based economic nationalism intersects with cultural and environmentalist arguments for localism.

REFERENCES CITED

Abate, Randall S., and Mark E. Bennett. 1997. "Constitutional Limitations on Anticompetitive State and Local Solid Waste Management Schemes: A New Frontier in Environmental Regulation." *Yale Journal on Regulation* 14: 165–94.

Abbott, Alden. 2005. "A Brief Comparison of European and American Anti-Trust Law." The Competition Law & Policy Guest Lecture Programme. Oxford, UK: University of Oxford. https://www.law.ox.ac.uk/sites/files/oxlaw/cclp_l_02-05.pdf.

———. 2014. "Transatlantic Trade Negotiations: Keeping Regulation in Check." The Heritage Foundation. 2014. https://www.heritage.org/europe/commentary/transatlantic-trade-negotiations-keeping-regulation-check.

———. 2016. "Two Helpful Developments Aimed at Curbing Anticompetitive Protectionist Occupational Licensing Restrictions – Harbingers of Reform?" The Heritage Foundation. 2016. www.heritage.org/economic-and-property-rights/commentary/two-helpful-developments-aimed-curbing-anticompetitive.

———. 2017. "Brexit, Competition, and Economic Welfare." The Heritage Foundation. 2017. www.heritage.org/global-politics/commentary/brexit-competition-and-economic-welfare.

ABC, Associated Builders and Contractors. 2016a. "Halt The Assault." 2016. http://haltttheassault.com/the-latest/.

———. 2016b. "Issues." 2016. http://www.abc.org/en-us/politicspolicy/issues.aspx.

ABC SoCal, Associated Builders and Contractors Southern California. 2018. "Local Political News." 2018. https://www.abcsocal.org/en-us/politicaladvocacy/localpoliticalnews.aspx.

ABCW, Associated Builders and Contractors Washington. 2017. "Govverment Affairs." 2017. http://www.abcwestwa.org/en-us/abc.aspx.

Abdelal, Rawi, Mark Blyth, and Craig Parsons. 2010. *Constructing the International Economy*. Ithaca, NY: Cornell University Press.

ACCE, Association of Chamber of Commerce Executives. 2018. "Buy Local Initiatives." 2018. https://secure.acce.org/wiki/buy-local-initiatives/.

Ackerman, Bruce. 1993. *We the People, Volume 1: Foundations*. Cambridge, MA: Belknap Press.

Adam B. Summers. 2009. “Occupational Licensing: Ranking the States and Exploring Alternatives.” Los Angeles, CA: Reason Institute.

Adler, J. H. 2004. “Frank Meyer: The Fusionist as Federalist.” *Publius* 34 (4): 51–67. https://doi.org/10.1093/oxfordjournals.pubjof.a005053.

Adler, Matthew D. 2001. “State Sovereignty and the Anti-Commandeering Cases.” *Annals of the American Academy of Political and Social Science* 574 (March): 158–72.

AEI, American Enterprise Institute. 1993. “Proposals to Permit Banks to Branch on an Interstate Basis.” Shadow Financial Regulatory Committee. Washington, DC: AEI. http://www.aei.org/publication/proposals-to-permit-banks-to-branch-on-an-interstate-basis/.

———. 2015. “A Policymaker’s Guide to No Child Left Behind Reauthorization.” AEI. 2015. https://www.aei.org/publication/policymakers-guide-no-child-left-behind-reauthorization/.

———. 2017. “Search of Web Archive by Author.” 2017. https://www.aei.org/.

AGC, Associated General Contractors. 2016. “Preparing Buildings for the Next Natural Disaster - Resilience Series Part 2.” 2016. https://www.agc.org/news/2016/07/28/preparing-buildings-next-natural-disaster-resilience-series-part-2.

———. 2018. “State Law Matrix.” 2018. https://www.agc.org/news/2010/02/26/agc%E2%80%99s-state-law-matrix%E2%84%A2.

AGC CA, Associated General Contractors California. 2017. “Legislative Report.” 2017. http://agc-ca.org/uploadedFiles/Legislative-Report-2017.pdf.

AGC OCC, Associated General Contractors Oregon Columbia Chapter. 2018. “AGC Core Policies.” 2018. https://www.agc-oregon.org/wp-content/uploads/2018/02/2018-AGC-Core-Policies.pdf.

AGC WA, Associated General Contractors Washington. 2018. “AGC 2017 Annual Report.” 2018. https://d1jbk5omxb4scq.cloudfront.net/media/media/000/001/157/original/AGC_2017_Annual_Report_PDF_master2.pdf?1517334613.

AIA, American Institute of Architects. 2015. “Federal Relations Issue Brief.” 2015. http://aiad8.prod.acquia-sites.com/sites/default/files/2016-04/FederalRelations_SBCIAIssueBrief_0.pdf.

———. 2017. “Policy Guidlines.” Washington, DC: AIA. http://aiad8.prod.acquia-sites.com/sites/default/files/2016-04/PublicPolices-PositionStatement-Directory.pdf.

———. 2018. “Top Issue: Procurement and Project Delivery.” 2018. https://www.aia.org/pages/3321-top-issue-procurement.

Aiginger, Karl, and Wolfgang Leitner. 2002. “Regional Concentration in the United States and Europe: Who Follows Whom?” *Weltwirtschaftliches Archiv* 138 (4): 652–79. https://doi.org/10.1007/BF02707656.

Alberto. Alesina. 2003. *The Size of Nations*. Cambridge, MA: MIT Press.

Allen, Nathen, and Sanders Daniels. 2013. “Grow the Economy through Small Businesses.” AEI. April 3, 2013. https://www.aei.org/publication/grow-the-economy-through-small-businesses/.

Allister. 2003. “Reagan and the Transformation of American Conservatism.” In *The Reagan Presidency: Pragmatic Conservatism and Its Legacies*, edited by W. Elliot Brownlee and Hugh Davis Graham. Lawrence, KA: University Press of Kansas.

Alt, Robert. 2012. “What Is the Proper Role of the Courts?” The Heritage Foundation. 2012. www.heritage.org/courts/report/what-the-proper-role-the-courts.

Álvarez-Fernández, Andrés, and Peter Brandstrup. 2013. “The Access of Third Countries to the European Union’s Public Procurement Market.” IER 4014. Maastricht, NE: Maastricht University. https://www.maastrichtuniversity.nl/sites/default/files/2013/alvarez.pdf.

Ambrogi, Robert. 2017. “In Blow to Open Law, Court Upholds Private Copyright in Public Safety Laws.” Robert Ambrogi’s LawSites. February 14, 2017. https://www.lawsitesblog.com/2017/02/blow-open-law-court-upholds-private-copyright-public-safety-laws.html.

Amel, Dean. 1993. “State Laws Affecting the Geographic Expansion of Commercial Banks.” https://fraser.stlouisfed.org/scribd/?title_id=4954&filepath=/files/docs/historical/frb/Amel_StateLawsAffectingtheGeographicExpansion.pdf.

Anderson, George, ed. 2012. *Internal Markets and Multi-Level Governance : The Experience of the European Union, Australia, Canada, Switzerland, and the United States*. Don Mills, CA: Oxford University Press.

Anderson, Martin. 1988. *Revolution*. San Diego, CA: Harcourt Brace Jovanovich.

Andrews, David M. 1994. “Capital Mobility and State Autonomy.” *International Studies Quarterly* 38 (2): 167–91.

Arbury, Chelsea, Gerardo Bonilla, Thomas Durfee, Megan Johnson, and Robin Lehninger. 2015. “The ABCs of Regulation: The Effects of Occupational Licensing and Migration Among Teachers.” http://conservancy.umn.edu/handle/11299/170743.

Architectural Record. 2017. “Top 300 Architecture Firms.” 2017. https://www.architecturalrecord.com/Top300/2016-Top-300-Architecture-Firms-1.

Areeda, Phillip. 1994. “Antitrust Policy in the 1980s.” In *American Economic Policy in the 1980s*, edited by Martin Feldstein. Chicago, IL: University of Chicago Press.

Aristotle, Portland. 2012. “Occupational Licensing: The Latest Way to Shoot Ourselves in the Economic Foot.” OregonLive.Com. 2012. http://blog.oregonlive.com/myoregon/2012/05/occupational_licensing_the_lat.html.

Armey, Richard K. 1995. *The Freedom Revolution: The New Republican House Majority Leader Tells Why Big Government Failed, Why Freedom Works, and How We Will Rebuild America*. Washington, DC: Regnery Publishing.

Arpaia, Alfonso, Aron Kiss, Balazs Palvolgyi, and Alessandro Turrini. 2014. “Labour Mobility and Labour Market Adjustment in the EU.” 539. European Economy Economic Papers. Brussels, BE: European Commission.

Atiyah, P. S., and Robert S. Summers. 1987. *Form and Substance in Anglo-American Law a Comparative Study of Legal Reasoning, Legal Theory, and Legal Institutions*. Wotton-under-Edge, UK: Clarendon Press.

Auerback, Marshall. 2017. “Explaining the Rise of Donal Trump.” *Real-World Economics Review* 78 (22): 54–61.

Azerrad, David. 2016. “Ties That Bind.” The Heritage Foundation. 2016. www.heritage.org/the-constitution/commentary/ties-bind.

———. 2017. “America Divided: The Republican Party in Theory and Practice.” The Heritage Foundation. 2017. www.heritage.org/conservatism/commentary/america-divided-the-republican-party-theory-and-practice.

Baake, Pio. 1996. *Regulating Europe*. London, UK: Psychology Press.

Bagley, Nicholas, and Richard L. Revesz. 2006. “Centralized Oversight of the Regulatory State.” *Columbia Law Review* 106: 1260–1329.

Bailey, Brian. 2000. “Federalism: An Antidote to Congress’s Separation of Powers Anxiety and Executive Order 13,083.” *Indiana Law Journal* 75 (1): 333–51.

Baker, James, and Steve Fiffer. 2008. *Work Hard, Study... and Keep out of Politics!* Evanston, Il: Northwestern University Press.

Baker, Kermit. 2012. "The Business of Architecture." Washington, DC: AIA. https://boa-toolkit.s3.amazonaws.com/2012_AIA_firm_survey_report.pdf.

Ballanco, Julius. 2000. "National License Clearing House Needed." *Plumbing Mechanical Magazine*, March 31, 2000. https://www.pmmag.com/articles/85158-national-license-clearing-house-needed.

Bandow, Doug. 1997. "Is Voluntarism Enough?" Cato Institute. May 27, 1997. https://www.cato.org/publications/commentary/is-voluntarism-enough.

Banzhaf, H. Spencer, and Randall P. Walsh. 2008. "Do People Vote with Their Feet? An Empirical Test of Tiebout's Mechanism." *The American Economic Review* 98 (3): 843–63. https://doi.org/10.2307/29730097.

Barnard, Catherine. 2009. "Restricting Restriction: Lessons for the EU from the US?" *The Cambridge Law Journal* 68 (3): 575–606. https://doi.org/10.1017/S0008197309990158.

Barnett, Randy. 2001. "The Original Meaning of the Commerce Clause." *Georgetown Law Faculty Publications and Other Works*, January, 101–47.

Bartley, Robert L. 1992. *The Seven Fat Years: And How to Do It Again*. New York, NY: Free Press.

Barton, John H. 2006. *The Evolution of the Trade Regime : Politics, Law, and Economics of the GATT and the WTO*. Princeton, NJ: Princeton University Press.

Beach, Derek. 2014. *Process-Tracing Methods Foundations and Guidelines*. Ann Arbor, MI: University of Michigan Press.

Beach, William. 1998. "President Clinton's Sellout of Federalism." The Heritage Foundation. 1998. www.heritage.org/political-process/report/president-clintons-sellout-federalism.

Bebchuk, Lucian, Alma Cohen, and Allen Ferrell. 2002. "Does the Evidence Favor State Competition in Corporate Law?" *California Law Review* 90 (6): 1775–1821. https://doi.org/10.2307/3481435.

Been, Vicki. 1991. "'Exit' as a Constraint on Land Use Exactions: Rethinking the Unconstitutional Conditions Doctrine." *Columbia Law Review* 91 (3): 473–545. https://doi.org/10.2307/1122797.

Beer, Samuel. 1973. "The Modernization of American Federalism." *Publius* 3 (2): 49–95. https://doi.org/10.2307/3329438.

———. 1993. *To Make a Nation : The Rediscovery of American Federalism*. Cambridge, MA: Belknap Press.

Bekaert, Geert, Campbell Harbey, Christian Lundbland, and Stephan Siegel. 2017. "Economic and Financial Integration in Europe." *Ifo DICE Report* 15 (1): 36–42.

Benham, Lee, and Alexandra Benham. 1975. "Regulating through the Professions: A Perspective on Information Control." *Journal of Law and Economics* 18 (2): 421–47.

Bensel, Richard Franklin. 2000. *The Political Economy of American Industrialization, 1877-1900*. Cambridge, UK: Cambridge University Press.

Berk, Gerald. 1994. *Alternative Tracks : The Constitution of American Industrial Order, 1865-1917*. The Johns Hopkins Series in Constitutional Thought. Baltimore, MD: Johns Hopkins University Press.

Berman, Sheri. 2006. *The Primacy of Politics: Social Democracy and the Making of Europe's Twentieth Century*. Cambridge, UK: Cambridge University Press.

Berman, William C., and Stanley I. Kutler. 1998. *America's Right Turn: From Nixon to Clinton*. Baltimore, Md: Johns Hopkins University Press.

Bessen, James. 2016. "Accounting for Rising Corporate Profits: Intangibles or Regulatory Rents?" 60. Research Briefs in Economic Policy. https://www.cato.org/publications/research-briefs-economic-policy/accounting-rising-corporate-profits-intangibles.

Bevir, Mark, and R. A. W. Rhodes. 2015a. *Routledge Handbook of Interpretive Political Science*. Routledge.

———. , eds. 2015b. *Routledge Handbook of Interpretive Political Science*. London, UK: Routledge.

Bewley, Truman F. 1981. "A Critique of Tiebout's Theory of Local Public Expenditures." *Econometrica* 49 (3): 713–40. https://doi.org/10.2307/1911519.

Blake, Jennie. 2000. "Presidential Power Grab or Pure State Might? A Modern Debate Over Executive Interpretations on Federalism." *BYU Law Review* 2000 (1): 293–324.

Blasko, Andrew. 2004. "Reagan and Heritage A Unique Partnership." The Heritage Foundation. 2004. www.heritage.org/conservatism/commentary/reagan-and-heritage-unique-partnership.

Bleich, Erik, and Robert Pekkanen. 2013. "How to Report Interview Data." In *Interview Research in Political Science*, edited by Layna Mosley. Ithaca, NY: Cornell University Press.

Bloomfield, Matthew J., Ulf Brüggemann, Hans B. Christensen, and Christian Leuz. 2015. “The Effect of Regulatory Harmonization on Cross-Border Labor Migration: Evidence from the Accounting Profession.” Working Paper 20888. Cambridge, MA: National Bureau of Economic Research. https://doi.org/10.3386/w20888.

Blumoff, Theodore Y. 1984. “The State Proprietary Exception to the Dormant Commerce Clause: A Persistent Nineteenth Century Anomaly.” *Southern Illinois University Law Journal* 9: 73–120.

Blyth, Mark. 2002. *Great Transformations : Economic Ideas and Institutional Change in the Twentieth Century*. Cambridge, UK: Cambridge University Press.

Boden, Anastasia. 2017. “Drawing Pretty Pictures Shouldn’t Require an Architect’s License.” OregonLive.Com. March 16, 2017. http://www.oregonlive.com/opinion/index.ssf/2017/03/drawing_pretty_pictures_should.html.

Bogen, David. 2005. “The Market Participant Doctrine and the Clear Statement Rule.” *Faculty Scholarship*, January, 543–80.

Bolleyer, Nicole. 2009. *Intergovernmental Cooperation : Rational Choices in Federal Systems and Beyond*. Oxford, UK: Oxford University Press.

———. 2017. “Executive-Legislative Relations and Inter-Parliamentary Cooperation in Federal Systems – Lessons for the European Union.” *Journal of European Public Policy* 24 (4): 520–43. https://doi.org/10.1080/13501763.2016.1272623.

Bolton, John. 2016. “The UK Should Embrace Brexit.” AEI. April 19, 2016. https://www.aei.org/publication/the-uk-should-bid-adieu-to-the-eu/.

Bonefeld, Werner. 2012. “Freedom and the Strong State: On German Ordoliberalism.” *New Political Economy* 17 (5): 633–56.

———. 2015. “European Economic Constitution and the Transformation of Democracy: On Class and the State of Law.” *European Journal of International Relations* 21 (4): 867–86. https://doi.org/10.1177/1354066115570158.

Bork, Robert H., and Daniel E. Troy. 2001a. “Locating the Boundaries: The Scope of Congress’s Power to Regulate Commerce The Federalism Symposium: The United States Chamber of Commerce Institute for Legal Reform.” *Harvard Journal of Law & Public Policy* 25: 849–94.

———. 2001b. “Locating the Boundaries: The Scope of Congress’s Power to Regulate Commerce The Federalism Symposium: The United States Chamber of Commerce Institute for Legal Reform.” *Harvard Journal of Law & Public Policy* 25: 849–94.

Borre, Ole, and Elinor Scarbrough. 1998. *The Scope of Government*. Beliefs in Government. Oxford, UK: Oxford University Press.

Börzel, Tanja A., and Madeleine O. Hosli. 2003. "Brussels between Bern and Berlin: Comparative Federalism Meets the European Union." *Governance* 16 (2): 179–202. https://doi.org/10.1111/1468-0491.00213.

Boskin, Michael J. 1987. *Reagan and the Economy: The Successes, Failures, and Unfinished Agenda*. San Francisco, CA: ICS Press.

Bourne, Ryan. 2017. "Brexit Is the Start, Not the End, of the Process." Cato Unbound. 2017. https://www.cato-unbound.org/2017/09/15/ryan-bourne/brexit-start-not-end-process.

Bovis, Christopher. 2008. *EU Public Procurement Law*. Northampton, MA: Edward Elgar Publishing.

Bowles, Nigel, and Robert K. McMahon. 2014. *Government and Politics of the United States*. New York, NY: Palgrave Macmillan.

Bowman, Sam. 2017. "Brexit's Dangers." Cato Unbound. 2017. https://www.cato-unbound.org/2017/09/18/sam-bowman/brexits-dangers.

Bradsher, Keith. 1994. "Interstate-Banking Bill Gets Final Approval in Congress." *The New York Times*, September 14, 1994. http://www.nytimes.com/1994/09/14/business/interstate-banking-bill-gets-final-approval-in-congress.html.

Brady, Henry E., and David Collier. 2004. *Rethinking Social Inquiry : Diverse Tools, Shared Standards*. Lanham, MD: Rowman and Littlefield.

Brannon, Ike, and Brannon Albright. 2017. "Occupational Licensing. Who Are We Really Protecting?" 2017. https://object.cato.org/sites/cato.org/files/articles/brannon-wpri-special-report.pdf.

Bratton, William, and Joseph McCahery. 1997. "The New Economics of Jurisdictional Competition: Devolutionary Federalism in a Second-Best World." *Georgetown Law Journal* 36 (201): 203–78.

Brennan, Geoffrey, and James Buchanan. 2006. *The Power to Tax*. Cambridge, UK: Cambridge University Press.

Broder, David S. 1998a. "Executive Order Urged Consulting, but Didn't; State, Local Officials Want Federalism Say." *The Washington Post*, July 16, 1998, sec. A15. http://global.factiva.com/redir/default.aspx?P=sa&an=wp00000020010919du7g00sfu&cat=a&ep=ASE.

———. 1998b. “White House to Rewrite Federalism Order, Now With State-Local Input.” *The Washington Post*, July 29, 1998, sec. A19. http://global.factiva.com/redir/default.aspx?P=sa&an=wp00000020010919du7t00vkq&cat=a&ep=ASE.

Bromund, Theodore R. 2015. “TTIP: Small Upside, Big Downside.” The Heritage Foundation. 2015. www.heritage.org/europe/commentary/ttip-small-upside-big-downside.

Brown, Douglas. 2002. *Market Rules : Economic Union Reform and Intergovernmental Policy-Making in Australia and Canada*. Montreal, CA: McGill-Queen’s University Press.

Brown, Wendy. 2000. “Neo-Liberalism: Policy, Ideology, Governmentality.” *Studies in Political Economy* 63 (Fall): 5–25.

———. 2003. “Neo-Liberalism and the End of Liberal Democracy.” *Theory & Event* 7 (1): 37–59. https://doi.org/10.1353/tae.2003.0020.

Brownlee, W. Elliot, and Steuerle. 2003. “Taxation.” In *The Reagan Presidency: Pragmatic Conservatism and Its Legacies*, edited by W. Elliot Brownlee and Hugh Davis Graham. Lawrence, KA: University Press of Kansas.

Brownwyn, Howell. 2017. “Can State Regulations Go Where Federal Ones Do Not?” AEI. 2017. https://www.aei.org/publication/can-state-regulations-go-where-federal-ones-do-not/.

Builder, Magazine. 2017. “TOP Construction Companies 2016.” 2017. http://www.builderonline.com/builder-100/builder-100-list/2016/.

Burgess, Michael. 2006. *Federalism and European Union: Political Ideas, Influences, and Strategies in the European Community 1972-1986*. New York, NY: Routledge.

Burgess, Michael, and Alain Gagnon. 1993. *Comparative Federalism and Federation : Competing Traditions and Future Directions*. Toronto, CA: University of Toronto Press.

Burley, Anne-Marie, and Walter Mattli. 1993. “Europe Before the Court: A Political Theory of Legal Integration.” *International Organization* 47 (01): 41–76.

Burnham, David, and Special to the New York Times. 1983. “Reagan’s Counsel Ordered to Make Inquiry into EPA.” *The New York Times*, February 25, 1983. http://www.nytimes.com/1983/02/25/us/reagan-s-counsel-ordered-to-make-inquiry-into-epa.html.

Burnley, James. 1994. “Health and Safety Regulation.” In *American Economic Policy in the 1980s*, edited by Martin Feldstein. Chicago, IL: University of Chicago Press.

Bush, George H. 1989a. “George Bush: Address on Administration Goals Before a Joint Session of Congress.” 1989. http://www.presidency.ucsb.edu/ws/index.php?pid=16660.

———. 1989b. “Remarks to the National Legislative Conference of the Independent Insurance Agents of America.” 1989. http://www.presidency.ucsb.edu/ws/index.php?pid=16785.

———. 1990. “George Bush: Address Before a Joint Session of the Congress on the State of the Union.” 1990. http://www.presidency.ucsb.edu/ws/index.php?pid=18095.

———. 1991. “George Bush: Address Before a Joint Session of the Congress on the State of the Union.” 1991. http://www.presidency.ucsb.edu/ws/?pid=19253.

CA Attorney General. 2016. “Probibition on State-Funded and State-Sponsored Travel to States with Discriminatory Laws.” State of California - Department of Justice - Office of the Attorney General. December 22, 2016. https://oag.ca.gov/ab1887.

CAB, California Architects Board. 2010. “Budget.” 2010. http://www.cslb.ca.gov/Resources/LawsAndRegulations/CCR811_isr_full%20year%20amended.pdf.

Cacciatore, Matteo, Fabio Ghironi, and Viktors Stebunovs. 2015. “The Domestic and International Effects of Interstate U.S. Banking.” *Journal of International Economics* 95 (2): 171–87. https://doi.org/10.1016/j.jinteco.2014.12.001.

Cagan, Philip, ed. 1986. *Contemporary Economic Problems, 1986*. Washington, DC: AEI Press.

Calabresi, Steven G. 1995. “‘A Government of Limited and Enumerated Powers’: In Defense of United States v. Lopez.” *Michigan Law Review* 94 (3): 752–831. https://doi.org/10.2307/1289947.

Calabria, Mark. 2017. “Reforming the Financial Regulators.” Washington, DC: Heritage Foundation. www.heritage.org/markets-and-finance/report/reforming-the-financial-regulators.

Campbell, Colin, Bert Rockman, and Andrew Rudalevige. 2008. *The George W. Bush Legacy*. Washington, DC: Sage.

Campbell, William. 1988. “The Political Economy of Cultural Conservatism.” The Heritage Foundation. 1988. www.heritage.org/political-process/report/the-political-economy-cultural-conservatism.

Campos, Nauro, Fabbrizio Coricelli, and Luigi Moretti. 2014. “Economic Growth and Political Integration: Estimating the Benefits from Membership in the European Union Using the Synthetic Counterfactuals Method.” IZA Discussion Paper 8162. http://anon-ftp.iza.org/dp8162.pdf.

Cannon, Michael. 2009. “Why Freedom Is the Key to Health Care Reform.” Cato Institute. September 5, 2009. https://www.cato.org/publications/speeches/why-freedom-is-key-health-care-reform.

Caporaso, James A., and Sidney Tarrow. 2009. “Polanyi in Brussels: Supranational Institutions and the Transnational Embedding of Markets.” *International Organization* 63 (04): 593–620. https://doi.org/10.1017/S0020818309990099.

Carpenter, Daniel. 2001. *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928*. Princeton Studies in American Politics. Princeton, NJ: Princeton University Press.

———. 2010. *Reputation and Power Organizational Image and Pharmaceutical Regulation at the FDA*. Princeton Studies in American Politics: Historical, International, and Comparative Perspectives. Princeton, NJ: Princeton University Press.

Carpenter, Dick, Lisa Knepper, Angela Erickson, and John Ross. 2012. “License to Work.” Institute for Justice. https://ij.org/report/license-to-work/.

Carroll, Sidney L., and Robert J. Gaston. 1983. “Occupational Licensing and the Quality of Service.” *Law and Human Behavior* 7 (2–3): 139–46. https://doi.org/10.1007/BF01044518.

Carruthers, Bruce G., and Naomi R. Lamoreaux. 2016. “Regulatory Races: The Effects of Jurisdictional Competition on Regulatory Standards.” *Journal of Economic Literature* 54 (1): 52–97. https://doi.org/10.1257/jel.54.1.52.

Carter, Dan T. 1996. *From George Wallace to Newt Gingrich: Race in the Conservative Counterrevolution, 1963-1994*. Baton Rouge, LA: Lousiana State University Press.

Caruso, Daniela. 2005. “Lochner in Europe: A Comment on Keith Whittington’s Congress before the Lochner Court Symposium: Lochner Centennial Conference.” *Boston University Law Review* 85: 867–80.

Casso, Mark. 2011. “Regulatory Streamlining. A Matter of Sound Governance.” Washington, DC: The Construction Industry Roundtable (CIRT). http://www.cirt.org/Resources/Documents/112912_Future%20of%20Regulatory%20Issues.pdf.

CATO, The Institute. 2017a. “Search of Web Archives by Author.” Cato Institute. 2017. http://www.cato.org/.

———. , ed. 2017b. *Cato Handbook for Policymakers*. Washington, DC: Cato Institute.

CCB, Oregon Contractor Board. 2016. “Budget.” 2016. http://www.oregon.gov/CCB/Documents/pdf/Budget/05%20ARB%20Revenues.pdf.

Cecchini, Paolo. 1988. “The European Challenge 1992 Benefits of a Single Market.” Commission of the European Communities. http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.394.9348&rep=rep1&type=pdf.

Cedar Rapids. 2017. “Buy Local Program.” 2017. http://www.cedar-rapids.org/local_government/departments_g_-_v/purchasing_services/buy_local.php.

Centeno, Miguel A., and Joseph N. Cohen. 2012. “The Arc of Neoliberalism.” *Annual Review of Sociology* 38 (1): 317–40. https://doi.org/10.1146/annurev-soc-081309-150235.

Cerny, Philip G. 1995. “Globalization and the Changing Logic of Collective Action.” *International Organization* 49 (4): 595–625.

———. 2016. “In the Shadow of Ordoliberalism: The Paradox of Neoliberalism in the 21st Century.” *European Review of International Studies* 3 (1): 78–92.

Chandler, Alfred. 1993. *The Visible Hand*. Boston, MA: Harvard University Press.

Chang, Michele, Dominik Hanf, and Jacques Pelkmans. 2010. “The Services Directive: Trojan Horse or White Knight?” *Journal of European Integration* 32 (1): 97–114. https://doi.org/10.1080/07036330903375206.

Chang, Semoon. 2012. “Considering Local Business Preference.” *Government Finance Review* June: 38–41.

Chari, Anita. 2015. *A Political Economy of the Senses: Neoliberalism, Reification, Critique*. New York, NY: Columbia University Press.

Ching, Francis D. K., and Steven R. Winkel. 2016. *Building Codes Illustrated: A Guide to Understanding the 2015 International Building Code*. Hoboken, NY: John Wiley & Sons.

Chirinko, Robert S., and Daniel J. Wilson. 2011. “Tax Competition Among U.S. States: Racing to the Bottom or Riding on a Seesaw?” 3535. CESifo Working Paper Series. CESifo Group Munich. https://ideas.repec.org/p/ces/ceswps/_3535.html.

Chitnis, Shailesh. 2016. “Sizing the Market for US B2B Companies in 7 Charts.” Compile. July 13, 2016. https://www.compile.com/blog/insights/sizing-us-b2b-market-7-charts/.

CIRT, Construction Industry Roundtable. 2012. “CIRT Letter on Excessive Regulations.” Washington, DC: Testimony before U.S. House of Representatives Committee on Oversight and Government Reform. http://www.cirt.org/Resources/Documents/CIRT%20Govt%20Regs%20Letter%20Comments.pdf.

Clarke, Kevin A., and David M. Primo. 2007. “Modernizing Political Science: A Model-Based Approach.” *Perspectives on Politics* 5 (4): 741–53. https://doi.org/10.1017/S1537592707072192.

Clarkson, Kenneth, and Timothy Muris. 1980. “Constraining the Federal Trade Commission: The Case of Occupational Regulation.” *Miami Law Review* 35 (1): 77–130.

CLEAR, Council on Licensure, Enforcement & Regulation. 2018. “About.” 2018. https://www.clearhq.org/page-1720466.

Coase, R. H. 1976. “Adam Smith’s View of Man.” *Journal of Law and Economics* 19 (3): 529–46.

Coates, Dennis, and Brad Humphreys. 2000. “The Stadium Gambit and Local Economic Development.” *Regulation* 23 (2): 15–20.

Coates, Ta-Nehisi. 2017. “The First White President.” *The Atlantic*, 2017. https://www.theatlantic.com/magazine/archive/2017/10/the-first-white-president-ta-nehisi-coates/537909/.

Code Division, Oregon. 2013. “A Regulatory Success Story.” July 2013. http://www.oregon.gov/bcd/Documents/annualreports/BCDmagazineJuly2013.pdf.

Coenen, Dan T. 1989. “Untangling the Market-Participant Exemption to the Dormant Commerce Clause.” *Michigan Law Review* 88 (December): 395–488.

Cohen, Benjamin J. 1979. Review of *Review of The Way the World Works: How Economies Fail-And Succeed*, by Jude Wanniski. *The Journal of Interdisciplinary History* 10 (2): 359–60. https://doi.org/10.2307/203354.

Cohen, Manuel Frederick, and George J. Stigler. 1971. *Can Regulatory Agencies Protect Consumers?* Washington: American Enterprise Institute.

Cole, Daniel H. 2007. “Political Institutions, Judicial Review, and Private Property: A Comparative Institutional Analysis.” *Supreme Court Economic Review* 15 (1): 141–82.

Collier, David. 2011. “Understanding Process Tracing.” *PS: Political Science and Politics* 44 (4): 823–30. https://doi.org/10.1017/S1049096511001429.

Conlan, Tim. 1998. *From New Federalism to Devolution : Twenty-Five Years of Intergovernmental Reform*. Washington, DC: Brookings Institution Press.

Conlan, Tim, and John Dinan. 2007. "Federalism, the Bush Administration, and the Transformation of American Conservatism." *Publius* 37 (3): 279–303. https://doi.org/10.1093/publius/pjm009.

Conlan, Tim, and Paul L. Posner. 2016. "American Federalism in an Era of Partisan Polarization: The Intergovernmental Paradox of Obama's 'New Nationalism.'" *Publius* 46 (3): 281–307. https://doi.org/10.1093/publius/pjw011.

Conley, John P, and Hideo Konishi. 2002. "Migration-Proof Tiebout Equilibrium: Existence and Asymptotic Efficiency." *Journal of Public Economics* 86 (2): 243–62. https://doi.org/10.1016/S0047-2727(01)00082-2.

Connecticut State Assembly. 2008. "Senate Session Transcript for 05/02/2008." 2008. https://search.cga.state.ct.us/r/adv/.

Cooper, James, Luke Froeb, Daniel O'Brien, and Michael Vita. 2005. "A Comparative Study of United States and European Union Approaches to Vertical Policy." *George Mason Law Review* 13 (2): 289–308.

Cooper, Preston. 2017. "Pennies on the Dollar: The Surprisingly Weak Relationship Between State Subsidies and College Tuition." 2017. https://www.aei.org/publication/pennies-on-the-dollar-the-surprisingly-weak-relationship-between-state-subsidies-and-college-tuition/.

Council on Competitiveness. 1992. "The First Annual Report of the Competitiveness Policy Council." US Government. https://www.jec.senate.gov/reports/102nd%20Congress/The%20First%20Annual%20Report%20of%20the%20Competitiveness%20Policy%20Council%20(1583).pdf.

———. 1993. "Second Annual Report of the Council on Competitiveness." https://www2.gwu.edu/~iiep/assets/docs/Second_Report.pdf.

———. 1994. "Third Report on Promoting Long-Term Prosperity from the Competitiveness Policy Council." US Government. http://hdl.handle.net/2027/uc1.31210014075962.

———. 1995. "Saving More and Investing Better : A Strategy for Securing Prosperity : Fourth Report to the President & Congress." Article; Article/Report. US Government. https://trove.nla.gov.au/version/39867352.

Cowles, Maria Green. 1995. "Setting the Agenda for a New Europe: The ERT and EC 1992." *JCMS: Journal of Common Market Studies* 33 (4): 501–26. https://doi.org/10.1111/j.1468-5965.1995.tb00548.x.

Crane, Edward. 1983. “A Conservative Isn’t an Ideologue.” *Wall Street Journal*, November 25, 1983.

Crescenzi, Riccardo, Andrés Rodríguez-Pose, and Michael Storper. 2007. “The Territorial Dynamics of Innovation: A Europe–United States Comparative Analysis.” *Journal of Economic Geography* 7 (6): 673–709. https://doi.org/10.1093/jeg/lbm030.

Crews, Clyde Wayne. 2005. “The Revolution Spins toward More Regulation.” In *The Republican Revolution 10 Years Later: Smaller Government or Business as Usual?*, edited by Chris Edwards. Washington, DC: Cato Institute.

Croley, Steven P. 2009. *Regulation and Public Interests: The Possibility of Good Regulatory Government*. Princeton, NJ: Princeton University Press.

CSI, Construction Specification Institute. 2018. “About Us.” 2018. https://www.csiresources.org/institute/csi-history.

CURT, Construction User Round Table. 2018a. “About CURT.” 2018. https://www.curt.org/about-us/about-curt/.

———. 2018b. “Managing Construction Productivity.” 2018. https://www.curt.org/committees/managing-construction-productivity/.

Cutler, Lloyd N., and David R. Johnson. 1975. “Regulation and the Political Process.” *The Yale Law Journal* 84 (7): 1395–1418. https://doi.org/10.2307/795487.

Dao, Mai, Davide Furceri, and Prakash Loungani. 2013. “Moving Closer? Changing Patterns of Labour Mobility in Europe and the US.” *VoxEU.Org* (blog). December 1, 2013. http://voxeu.org/article/labour-mobility-europe-and-us.

Davies, William. 2010. “Economics and the ‘Nonsense’ of Law: The Case of the Chicago Antitrust Revolution.” *Economy and Society* 39 (1): 64–83. https://doi.org/10.1080/03085140903020655.

Dawson, Michael, and Megan Francis. 2016. “Black Politics and the Neoliberal Racial Order.” *Public Culture* 28 (1): 23–62. https://doi.org/10.1215/08992363-3325004.

De Blasio, Bill. 2015. “De Blasio Administration Launches Hirenyc to Help New Yorkers Access Jobs through the City’s Purchases and Investments.” NYCEDC. 2015. https://www.nycedc.com/press-release/de-blasio-administration-launches-hirenyc-help-new-yorkers-access-jobs-through-citys.

De Oliveira Pedro, J. A., F. M. Meijer, and H. J. Visscher. 2011. “Comparison of Building Permit Procedures in European Union Countries.” *COBRA 2011, RICS International Research Conference Construction and Property, Salford (UK), September 12-13, 2011*. http://resolver.tudelft.nl/uuid:b391c687-3ecb-4017-abba-06f1539017e6.

De Ville, Ferdi, and Gabriel Siles-Brügge. 2015. “The Transatlantic Trade and Investment Partnership and the Role of Computable General Equilibrium Modelling: An Exercise in ‘Managing Fictional Expectations.’” *New Political Economy* 20 (5): 653–78. https://doi.org/10.1080/13563467.2014.983059.

De Witte, Bruno. 2007. “Setting the Scene: How Did Services Get to Bolkestein and Why?” Working Paper. Florence, IT: European University Institute. http://cadmus.eui.eu//handle/1814/6929.

Dehring, Carolyn, and Martin Halek. 2014. “Do Coastal Building Codes Make Stronger Houses?” *Regulation* 37 (2): 40–45.

DeLong, James. 2011. “Regulatory Agencies Cannot Be Controlled by Requirements of Interior Rationality.” AEI. March 21, 2011. https://www.aei.org/publication/regulatory-agencies-cannot-be-controlled-by-requirements-of-interior-rationality/.

DeMint, Jim. 2015. “Let the Subsidies Die.” The Heritage Foundation. 2015. www.heritage.org/health-care-reform/commentary/let-the-subsidies-die.

DeMuth, Christopher. 1994. “Health and Safety Regulation.” In *American Economic Policy in the 1980s,* edited by Martin Feldstein. Chicago, IL: University of Chicago Press.

———. 2004. “Competition in Government.” AEI. October 4, 2004. https://www.aei.org/publication/competition-in-government/.

DeMuth, Christopher, and Douglas H. Ginsburg. 1986. “White House Review of Agency Rulemaking.” *Harvard Law Review* 99 (5): 1075–88. https://doi.org/10.2307/1341244.

Denning, Brannon. 2008. “Reconstructing the Dormant Commerce Clause Doctrine.” *William & Mary Law Review* 50 (2): 417.

Derthick, Martha, and Paul J. Quirk. 1985. *The Politics of Deregulation*. Washington, DC: Brookings Institution Press.

Design Intelligence. 2016. “US Architecture Firms Statistics.” DesignIntelligence. October 18, 2016. https://www.di.net/almanac/stats/firm-statistics-architecture/.

Dibadj, Reza. 2004. “Beyond Facile Assumptions and Radical Assertions: A Case for Critical Legal Economics.” *Utah Law Review*, July, 1155–1200.

———. 2006. “Weasel Numbers.” *Cardazo Law Review* 27 (3): 1325–91.

Diefenbach, Thomas. 2009. “Are Case Studies More than Sophisticated Storytelling? Methodological Problems of Qualitative Empirical Research Mainly Based on Semi-Structured Interviews.” *Quality & Quantity* 43 (6): 875–94. https://doi.org/10.1007/s11135-008-9164-0.

Dinan, John. 2004. “Strengthening the Political Safeguards of Federalism: The Fate of Recent Federalism Legislation in the U.S. Congress.” *Publius* 34 (3): 55–84. https://doi.org/10.1093/oxfordjournals.pubjof.a005041.

Ding, Lei, Roberto G. Quercia, Carolina K. Reid, and Alan M. White. 2012. “The Impact of Federal Preemption of State Antipredatory Lending Laws on the Foreclosure Crisis.” *Journal of Policy Analysis and Management* 31 (2): 367–87. https://doi.org/10.1002/pam.21604.

Discovery Institute. 2017. “George Gilder - Discovery Institute.” 2017. http://www.discovery.org/p/10.

Dobbin, Frank. 1994. *Forging Industrial Policy : The United States, Britain, and France in the Railway Age*. Cambridge, UK: Cambridge University Press.

Doherty, Brian. 2007. *Radicals for Capitalism: A Freewheeling History of the Modern American Libertarian Movement*. New York, NY: PublicAffairs.

Drahokoupil, J., and L. Horn. 2008. *Contradictions and Limits of Neoliberal European Governance: From Lisbon to Lisbon*. New York, NY: Palgrave Macmillan.

Drew, Elizabeth. 1997. *Showdown: The Struggle Between the Gingrich Congress and the Clinton White House*. New York, NY: Simon & Schuster.

Drezner, Daniel. 2006. “The Race to the Bottom Hypothesis: An Empirical and Theoretical Review.” Fletcher School, Tufts University. http://danieldrezner.com/policy/RTBreview.doc.

Drezner, Daniel W. 2005. “Globalization, Harmonization, and Competition: The Different Pathways to Policy Convergence.” *Journal of European Public Policy* 12 (5): 841–59. https://doi.org/10.1080/13501760500161472.

Duffy, Michael, and Dan Goodgame. 1992. *Marching in Place: The Status Quo Presidency of George Bush*. New York, NY: Simon & Schuster.

Duina, Francesco G. 2006. *The Social Construction of Free Trade : The European Union, NAFTA, and MERCOSUR*. Princeton, NJ: Princeton University Press.

Dunker, Amanda. 2015. “Vereran’s Licensing and Certifivation Demonstration.” NGA Center for Best Practices. https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2015-03.pdf.

Dwyer, Gerald. 2017. “A New Federal Charter for Financial Institutions.” The Heritage Foundation. 2017. www.heritage.org/markets-and-finance/report/new-federal-charter-financial-institutions.

Easterbrook, Frank. 1983. “Antitrust and the Economics of Federalism.” *Journal of Law and Economics* 26 (1): 23–50.

———. 2013. “Federalism and Commerce.” *Harvard Journal of Law and Public Policy* 36 (1): 935–40.

Easterbrook, Gregg. 1986. “Ideas Move Nations - 86.01.” 1986. https://www.theatlantic.com/past/docs/politics/polibig/eastidea.htm.

Eckerly, Susan. 1995. “Time for a Moratorium on New Regulations.” The Heritage Foundation. 1995. www.heritage.org/government-regulation/report/time-moratorium-new-regulations.

EcoBuilding. 2012. “European Union Moves Toward a Uniform Sustainability Standard.” EcoBuilding Pulse. June 27, 2012. http://www.ecobuildingpulse.com/vision-2020/codes-standards-and-rating-systems/european-union-moves-toward-a-uniform-sustainability-standard_o.

Economist, The. 2016a. “From Clout to Rout. Why European Companies Have Become a Fading Force in Global Business,” 2016. https://www.economist.com/news/business/21701480-why-european-companies-have-become-fading-force-global-business-clout-rout.

———. 2016b. “The Rise of the Superstars.” *The Economist*, September 17, 2016. https://www.economist.com/news/special-report/21707048-small-group-giant-companiessome-old-some-neware-once-again-dominating-global.

———. 2017. “America’s Uncompetitive Markets Harm Its Economy.” *The Economist*, July 27, 2017. https://www.economist.com/news/finance-and-economics/21725552-new-research-suggests-too-little-competition-deters-investment-americas.

Edlin, Aaron, and Rebecca Haw. 2014. “Cartels By Another Name: Should Licensed Occupations Face Antitrust Scrutiny?” *University of Pennsylvania Law Review* 162 (April): 201–79.

Edsall, Thomas B. 2007. *Building Red America: The New Conservative Coalition and the Drive for Permanent Power*. New York, NY: Basic Books.

Edwards, Chris, ed. 2005. *The Republican Revolution 10 Years Later: Smaller Government or Business as Usual?* Washington, DC: Cato Institute.

Edwards, Chris, and The Institute CATO. 2017. “Downsizing the Federal Government.” Text. Downsizing the Federal Government. 2017. https://www.downsizinggovernment.org/.

Edwards, George C., and Desmond King. 2007. *The Polarized Presidency of George W. Bush*. Oxford, UK: Oxford University Press.

Edwards, Jeremy, and Michael Keen. 1996. “Tax Competition and Leviathan.” *European Economic Review* 40 (1): 113–34.

Egan, Michelle. 2001. *Constructing a European Market : Standards, Regulation, and Governance*. Oxford, UK: Oxford University Press.

———. 2015. *Single Market. Economic Integration Europe and the United States*. Oxford, UK: Oxford University Press.

Egan, Paul. 2017. “State Democrats Seek Price Preferences for Michigan Firms.” Detroit Free Press. July 17, 2017. https://www.freep.com/story/news/local/michigan/2017/07/17/democrats-michigan-firms-contracts/483753001/.

Egeberg, Morten. 1999. “Transcending Intergovernmentalism? Identity and Role Perceptions of National Officials in EU Decision-Making.” *Journal of European Public Policy* 6 (3): 456–74. https://doi.org/10.1080/135017699343621.

Ehrenfreund, Max. 2017. “Is Paul Ryan a Policy Guy, or Does He Just Play One on TV?” *Washington Post*, March 29, 2017. https://www.washingtonpost.com/news/wonk/wp/2017/03/29/is-paul-ryan-a-policy-guy-or-does-he-just-play-one-on-tv/.

Ehrman, John. 1996. *The Rise of Neoconservatism: Intellectuals and Foreign Affairs, 1945-1994*. New Haven, CT: Yale University Press.

Eisinger, Peter K. 1988. *The Rise of the Entrepreneurial State : State and Local Economic Development Policy in the United States*. La Follette Public Policy Series. Madison, WI: University of Wisconsin Press.

Eisner, Marc Allen. 2014. *The American Political Economy: Institutional Evolution of Market and State*. New York, NY: Routledge.

———. 2017. *Regulatory Politics in an Age of Polarization and Drift: Beyond Deregulation*. New York, NY: Routledge.

Electrical Contractor. 2000. “Untangling Licensing Law Confusion.” 2000. https://www.ecmag.com/section/your-business/untangling-licensing-law-confusion.

Elman, Colin, and Diana Kapiszewski. 2014. “Data Access and Research Transparency in the Qualitative Tradition.” *PS: Political Science and Politics* 47 (1): 43–47. https://doi.org/10.1017/S1049096513001777.

Energy Tariff Experts. 2017. “The Only Correct Deregulated States Map.” Energy Tariff Experts. 2017. http://energytariffexperts.com/blog/2013/5/29/the-only-correct-deregulated-states-map.

Engdahl, David. 2011. “Not so Sweeping after All: The Limits of the Necessary and Proper Clause.” The Heritage Foundation. 2011. www.heritage.org/the-constitution/report/not-so-sweeping-after-all-the-limits-the-necessary-and-proper-clause.

England, Catherine. 1994. “Two Cheers for the Banking Reform Bill.” The Heritage Foundation. 1994. www.heritage.org/budget-and-spending/report/two-cheers-the-banking-reform-bill.

ENR, Engineering News-Record. 2016. “ENR 2015 Top 400 Contractors.” 2016. https://www.enr.com/toplists/2015_Top_400_Contractors1.

Epstein, Richard. 1992. “Exit Rights Under Federalism.” *Law and Contemporary Problems* 55 (1): 147–65.

Epstein, Richard, and Michael Greve. 2007. “Federal Preemption: Principles and Politics.” AEI. 2007. https://www.aei.org/publication/federal-preemption-principles-and-politics/.

Epstein, Richard, and Mario Loyola. 2014. “Saving Federalism.” *National Affairs*, Summer 2014. https://www.nationalaffairs.com/publications/detail/saving-federalism.

Erixon, Fredrik, and Rositsa Georgieva. 2016. “What Is Wrong with the Single Market?” 1/2016. ECIPE Working Paper. http://ecipe.org/publications/wrong-single-market/.

Esty, Daniel. 1996. “Revitalizing Environmental Federalism.” 450. Faculty Scholarship Series. Yale Law School. http://digitalcommons.law.yale.edu/fss_papers/450.

Esty, Daniel, and Damien Geradin. 2001. *Regulatory Competition and Economic Integration: Comparative Perspectives*. Oxford, UK: Oxford University Press.

European Commission. 2007. “United States Barriers to Trade and Investment.” Brussels, BE: European Union. http://trade.ec.europa.eu/doclib/docs/2009/july/tradoc_144160.pdf.

———. 2013. “Transatlantic Trade and Investment Partnership.” http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151787.pdf.

———. 2015. “Harmonised Standards.” 2015. http://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/index_en.htm.

———. 2018a. “New Legislative Framework.” Growth. 2018. /growth/single-market/goods/new-legislative-framework_en.

———. 2018b. “Public Procurement Websites.” Growth. 2018. /growth/single-market/public-procurement_en.

———. 2018c. “The European Commission Websites on the Eurocodes.” 2018. http://eurocodes.jrc.ec.europa.eu/showpage.php?id=332.

———. 2018d. “Websites Explaining Scope and Application of Service and Qulification Directives.” Growth. 2018. /growth/single-market/services/services-directive_en.

Eurostat. 2015. “Business Economy - Size Class Analysis - Statistics Explained.” 2015. http://ec.europa.eu/eurostat/statistics-explained/index.php/Archive:Business_economy_-_size_class_analysis.

———. 2017. “International Trade in Goods - Statistics Explained.” 2017. http://ec.europa.eu/eurostat/statistics-explained/index.php/International_trade_in_goods#Intra-EU_trade_in_goods.

Fabbrini, Sergio. 2005. *Democracy and Federalism in the European Union and the United States : Exploring Post-National Governance*. London, UK: Routledge.

———. 2010. *Compound Democracies: Why the United States and Europe Are Becoming Similar*. Oxford, UK: Oxford University Press.

———. 2015. *Which European Union?: Europe after the Euro Crisis*. Cambridge, UK: Cambridge University Press.

Fagerberg, Jan, Maryann P. Feldman, and Martin Srholec. 2014. “Technological Dynamics and Social Capability: US States and European Nations.” *Journal of Economic Geography* 14 (2): 313–37. https://doi.org/10.1093/jeg/lbt026.

Fairfield, Tasha, and Andrew E. Charman. 2017a. “A Dialogue with the Data: The Methodological Foundations of Iterative Research.” http://docs.wixstatic.com/ugd/9ce28d_9e8ff2ae14764062927b817ecd668295.pdf.

———. 2017b. “Explicit Bayesian Analysis for Process Tracing: Guidelines, Opportunities, and Caveats.” *Political Analysis* 25 (3): 363–80. https://doi.org/10.1017/pan.2017.14.

Fallon, Richard. 2002. “The ‘Conservative’ Paths of the Rehnquist Court’s Federalism Decisions.” *University of Chicago Law Review* 69 (2): 429–94.

Faturechi, Robert. 2016. “The Fire Sprinkler War, State by State.” Text/html. ProPublica. June 22, 2016. https://www.propublica.org/article/the-fire-sprinkler-war-state-by-state.

Faubert, Michael, and Amy Wood. 2016. “Regulatory Harmonization in International Trade: A Categorical or Conditional Imperative?” *Global Policy* (blog). July 26, 2016. http://www.globalpolicyjournal.com/blog/26/07/2016/regulatory-harmonization-international-trade-categorical-or-conditional-imperative.

Feld, Lars P. 2014. “James Buchanan’s Theory of Federalism: From Fiscal Equity to the Ideal Political Order.” *Constitutional Political Economy* 25 (3): 231–52. https://doi.org/10.1007/s10602-014-9168-9.

Feldstein, Martin. 1994. *American Economic Policy in the 1980s*. Chicago, IL: University of Chicago Press.

Felice, Flavio. 2016. “Beyond Brexit to a Liberal Renaissance.” AEI. August 23, 2016. https://www.aei.org/publication/beyond-brexit-to-a-liberal-renaissance/.

Felice, Flavio, and Massimiliano Vatiero. 2014. “Ordo and European Competition Law.” In *A Research Annual*, edited by Luca Fiorito, 147–57. Bingley, UK: Emerald Group Publishing. https://doi.org/10.1108/S0743-415420140000032006.

Felten, Eric. 1993. *The Ruling Class: Inside the Imperial Congress*. Washington, DC: Regnery Gateway.

Feulner, Edwin. 1986. “Waging and Winning the War of Ideas.” The Heritage Foundation. 1986. www.heritage.org/political-process/report/waging-and-winning-the-war-ideas.

———. 2016. “Why ‘Brexit’ Makes Sense.” The Heritage Foundation. 2016. www.heritage.org/global-politics/commentary/why-brexit-makes-sense.

Fiatech. 2018. “About-Websites.” 2018. http://www.fiatech.org/about/.

Finiello, Philip. 2014. “TTIP Stakeholder Presentation Round 5: Procurement.” U.S. Chamber of Commerce. May 21, 2014. https://www.uschamber.com/speech/ttip-stakeholder-presentation-round-5-procurement.

Firey, Thomas A. 2017. “And Don’t Blame Houston’s Building Codes, Either.” Cato Institute. September 3, 2017. https://www.cato.org/blog/dont-blame-houstons-building-codes-either.

Fischel, William A. 1995. *Regulatory Takings: Law, Economics, and Politics*. Cambridge, MA: Harvard University Press.

Fischer, Frank. 1998. “Beyond Empiricism: Policy Inquiry in Post Positivist Perspective.” *Policy Studies Journal* 26 (1): 129–46. https://doi.org/10.1111/j.1541-0072.1998.tb01929.x.

Flavelle, Christopher. 2016. “The Politics of Safety, Affordability and Building Codes: Viewpoint.” Insurance Journal. July 10, 2016. https://www.insurancejournal.com/news/national/2016/07/10/419607.htm.

Fligstein, Neil. 2001. *The Architecture of Markets : An Economic Sociology of Twenty-First-Century Capitalist Societies*. Princeton, NJ: Princeton University Press.

———. 2008. *Euroclash : The EU, European Identity, and the Future of Europe*. EU, European Identity, and the Future of Europe. Oxford, UK: Oxford University Press.

Fligstein, Neil, and Luke Dauter. 2007. “The Sociology of Markets.” *Annual Review of Sociology* 33 (1): 105–28. https://doi.org/10.1146/annurev.soc.33.040406.131736.

Flyvbjerg, Bent. 2001. *Making Social Science Matter: Why Social Inquiry Fails and how It Can Succeed again*. Cambridge, UK: Cambridge University Press.

FNST Editors, Friedrich Nauman Stiftung. 2016. “Bitte kein Brexit!” Friedrich-Naumann-Stiftung für die Freiheit. June 10, 2016. https://www.freiheit.org/bitte-kein-brexit.

Forte, David. 2011. “Commerce, Commerce, Everywhere: The Uses and Abuses of the Commerce Clause.” The Heritage Foundation. 2011. www.heritage.org/the-constitution/report/commerce-commerce-everywhere-the-uses-and-abuses-the-commerce-clause.

Fox, Eleanor M. 2014. “Monopolization and Abuse of Dominance: Why Europe Is Different.” *The Antitrust Bulletin* 59 (1): 129–52. https://doi.org/10.1177/0003603X1405900106.

Frank, Robert. 1988. “Bureaucratic Turfbuilding in a Rational World.” *European Journal of Political Economy* 4 (Supplementary Issue): 65–75.

Freedman, David. 1999. “From Association to Causation: Some Remarks on the History of Statistics.” *Statistical Science* 14 (3): 243–58. https://doi.org/10.1214/ss/1009212409.

———. 2010. *Statistical Models and Causal Inference: A Dialogue with the Social Sciences*. Cambridge, MA: Cambridge University Press.

Freund, Caroline, and Sarah Oliver. 2015. “Gains from Convergence in US and EU Auto Regulations Under the Transatlantic Trade and Investment Partnership.” 2015/59. Robert Schuman Centre for Advanced Studies Research Paper. https://papers.ssrn.com/abstract=2663554.

Frieden, Jeffry A. 2002. “Real Sources of European Currency Policy: Sectoral Interests and European Monetary Integration.” *International Organization* 56 (4): 831–60. https://doi.org/10.2307/3078650.

Friedman, Banjamin. 2009. “The Economic System.” In *Understanding America: The Anatomy of an Exceptional Nation*, edited by Peter H. Schuck and James Q. Wilson. New York, NY: PublicAffairs.

Friedman, Barry D. 1995. *Regulation in the Reagan-Bush Era: The Eruption of Presidential Influence*. Pitt Series in Policy and Institutional Studies. Pittsburgh, PA: University of Pittsburgh Press.

Friedman, Milton. 1951. “Neoliberalism and Its Prospects.” *Farmand* Februrary 17: 89–93.

———. 1962. *Capitalism and Freedom*. Chicago, IL: University of Chicago Press.

Friedman, Thomas. 2006. *The World Is Flat: A Brief History of the Twenty-First Century*. New York, NY: Macmillan.

Fries-Tersch, Elena, Tugce Tugran, and Harriet Bradley. 2017. “2016 Annual Report on Intra-EU Labour Mobility.” European Commission.

Frydenlund, John. 2001. “At the Federal Trough: Farm Subsidies for the Rich and Famous.” The Heritage Foundation. 2001. www.heritage.org/agriculture/report/the-federal-trough-farm-subsidies-the-rich-and-famous.

FTC, Federal Trade Commission. 2007. “Public Procurement and the Role of Competition Authorities in Promoting Competition.” Submission to the OECD Working Party No. 3 on Co-operation and Enforcement. OECD. https://www.ftc.gov/sites/default/files/attachments/us-submissions-oecd-and-other-international-competition-fora/pubproc.pdf.

———. 2010. “Public Procurement and Bid-Rigging Issues.” Submission to the OECD Working Party No. 3 on Co-operation and Enforcement. OECD. https://www.ftc.gov/sites/default/files/attachments/us-submissions-oecd-and-other-international-competition-fora/usbidrigging.pdf.

———. 2013. “State Action Task Force Report - Stateactionreport_0.Pdf.” 2013. https://www.ftc.gov/sites/default/files/documents/reports/report-state-action-task-force-recommendations-clarify-and-reaffirm-original-purposes-state-action/stateactionreport_0.pdf.

———. 2014. “Prepared Statement of the Federal Trade Commission On Competition and the Potential Costs and Benefits of Professional Licensure, Presented by Andrew Gavil, Director of the Office of Policy Planning, Before the Committee On Small Business of the United States House Of.” https://www.ftc.gov/system/files/documents/public_statements/568171/140716professionallicensurehouse.pdf.

———. 2016. “Testimony.” https://www.ftc.gov/system/files/documents/public_statements/912743/160202occupationallicensing.pdf.

———. 2017. “Economic Liberty.” Federal Trade Commission. March 10, 2017. https://www.ftc.gov/policy/advocacy/economic-liberty.

Fullerton, Don. 1994. “Tax Policy.” In *American Economic Policy in the 1980s*, edited by Martin Feldstein. Chicago, IL: University of Chicago Press.

Furth, Salim. 2016. “Understanding the Data on Occupational Licensing.” The Heritage Foundation. 2016. /jobs-and-labor/report/understanding-the-data-occupational-licensing.

Gamble, Andrew. 1988. *The Free Economy and the Strong State : The Politics of Thatcherism*. Durham, NC: Duke University Press.

GAO, General Accounting Office. 1982. “Improved Quality, Adequate Resources, and Consistent Oversight Needed If Regulatory Analysis Is to Help Control Costs of Regulation.” US General Accounting Office. https://www.gao.gov/assets/140/139014.pdf.

Garcia, Gillian. 2009. “Sovereignty versus Soundness.” *Contemporary Economic Policy* 27 (1): 109–29.

Gardiner, Nile. 2016. “Butt out of Brexit.” The Heritage Foundation. 2016. /europe/commentary/butt-out-brexit.

Gayner, Jeffrey. 1996. “The Contract with America: Implementing New Ideas in the U.S.” The Heritage Foundation. 1996. /political-process/report/the-contract-america-implementing-new-ideas-the-us.

Gaziano, Todd. 2011. “Expansion of National Power at Expense of Individual Liberty.” The Heritage Foundation. 2011. /conservatism/commentary/expansion-national-power-expense-individual-liberty.

Genschel, Philipp, and Markus Jachtenfuchs. 2011. “How the European Union Constrains the State: Multilevel Governance of Taxation.” *European Journal of Political Research* 50 (3): 293–314. https://doi.org/10.1111/j.1475-6765.2010.01939.x.

———. 2014. *Beyond the Regulatory Polity? : The European Integration of Core State Powers*. 1st ed.. Oxford: Oxford University Press.

Geradin, Damien, and Joseph McCahery. 2004. "Regulatory Co-Opetion." In *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*, edited by Jacint Jordana and David Levi-Faur. Northampton, MA: Edward Elgar Publishing.

Gerring, John, and Jason Seawright. 2007. "Techniques for Choosing Cases." In *Case Study Research: Principles and Practices*, edited by John Gerring, 86–150. Cambridge, UK: Cambridge University Press.

Geunther, Kenneth. 1985. "Interstate Banking: How Much, How Fast?" www.heritage.org/government-regulation/report/interstate-banking-how-much-how-fast.

Gilder, George. 2012. *Wealth and Poverty: A New Edition for the Twenty-First Century*. Washington, DC: Regnery Publishing.

Gilens, Martin, and Benjamin I. Page. 2014. "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens." *Perspectives on Politics* 12 (3): 564–81. https://doi.org/10.1017/S1537592714001595.

Gilman, Michele E. 2011. "Presidents, Preemption, and the States." *Constitutional Commentary* 26 (March): 339–84.

Gingrich, Newt. 1998. *Lessons Learned the Hard Way: A Personal Report*. New York, NY: Harper Collins.

———. 2005. "The GOP Revolution." In *The Republican Revolution 10 Years Later: Smaller Government or Business as Usual?*, edited by Chris Edwards. Washington, DC: Cato Institute.

Gingrich, Newt, Richard K. Armey, Ed Gillespie, and Bob Schellhas. 1994. *Contract with America: The Bold Plan by Rep. Newt Gingrich, Rep. Dick Armey and the House Republicans to Change the Nation*. New York, NY: Times Books.

Giocoli, Nicola. 2015. "Old Lady Charm: Explaining the Persistent Appeal of Chicago Antitrust." *Journal of Economic Methodology* 22 (1): 96–122. https://doi.org/10.1080/1350178X.2015.1005394.

Glass, Andrew. 2012. "Senate Balanced-Budget Amendment Fails by 4 Votes." Politico. March 1, 2012. https://www.politico.com/news/stories/0212/73472.html.

Goertz, Gary, and James Mahoney. 2012. *A Tale of Two Cultures : Qualitative and Quantitative Research in the Social Sciences*. Princeton, NJ: Princeton University Press.

Goldberg, David Theo. 2009. *Threat of Race: Reflections on Racial Neoliberalism*. Chicester, UK: Wiley. http://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=416546.

Goldstein, Judith. 1993. *Ideas, Interests, and American Trade Policy*. Ithaca, NY: Cornell University Press.

Goldstein, Leslie Friedman. 2001. *Constituting Federal Sovereignty: The European Union in Comparative Context*. Baltimore, MD: Johns Hopkins University Press.

Goodnow, Natalie. 2015. "Your Barber Faces Stricter Licensing Requirements than an EMT." AEI. January 27, 2015. https://www.aei.org/publication/barber-stricter-licensing-emt/.

Gore, Al. 1996. *The Best Kept Secrets in Government: How the Clinton Administration Is Reinventing the Way Washington Works*. New York, NY: Random House.

Gorski, Philip S. 2013. "What Is Critical Realism? And Why Should You Care?" *Contemporary Sociology* 42 (5): 658–70. https://doi.org/10.1177/0094306113499533.

Gotbaum, Betsy. 2003. "Procurement in New York City." Public Advocate for the City of New York. http://www.nyc.gov/html/records/pdf/govpub/2674procurement_in_nyc__a_strategy_for_local_economic_developmen.pdf.

Grace Commission. 1984. "Grace Commission Recommendations." Senate Finance Committee. https://www.finance.senate.gov/imo/media/doc/HRG98-744.pdf.

Graddy, Elizabeth. 1991. "Toward a General Theory of Occupational Regulation." *Social Science Quarterly* 72 (4): 676–95.

Graham, John D. 2010. *Bush on the Home Front: Domestic Policy Triumphs and Setbacks*. Bloomington, IN: Indiana University Press.

Granovetter, Mark. 1985. "Economic Action and Social Structure: The Problem of Embeddedness." *American Journal of Sociology* 91 (3): 481–510.

Greene, John Robert. 2000. *The Presidency of George Bush*. Lawrence, KA: Kansas University Press.

Greenhut, Steven. 2016. "State Watchdog Agency Pushes for Occupational Licensing Reform." *CalWatchdog.Com* (blog). October 18, 2016. https://calwatchdog.com/2016/10/18/state-watchdog-agency-pushes-licensing-reform/.

———. 2017. “California Democrats Kill Licensing Reform.” Reason.Com. May 12, 2017. https://reason.com/archives/2017/05/12/california-democrats-kill-licensing-refo.

Greszler, Rachel. 2017. “Biggest Threat to ‘Gig Economy’? Crony Capitalism and Excessive Regulation.” The Heritage Foundation. 2017. www.heritage.org/jobs-and-labor/commentary/biggest-threat-gig-economy-crony-capitalism-and-excessive-regulation.

Greve, Michael. 1999. *Real Federalism: Why It Matters, How It Could Happen*. Washington, DC: American Enterprise Institute.

———. 2000a. “The AEI Federalism Project.” AEI. June 1, 2000. https://www.aei.org/publication/the-aei-federalism-project/.

———. 2000b. “Cooperation Does Not Work.” AEI. September 1, 2000. http://www.aei.org/publication/cooperation-does-not-work/.

———. 2001. “Big Government Federalism.” AEI. March 1, 2001. https://www.aei.org/publication/big-government-federalism/.

———. 2002a. “Federalism’s Frontier.” *Texas Review of Law & Politics* 7: 93–126.

———. 2002b. “Commerce and the Constitution.” AEI. December 1, 2002. https://www.aei.org/publication/commerce-and-the-constitution/.

———. 2003. “The Term the Constitution Died.” AEI. August 1, 2003. https://www.aei.org/publication/the-term-the-constitution-died/.

———. 2004. “Liability Reform.” AEI. December 1, 2004. https://www.aei.org/publication/liability-reform/.

———. 2005a. “How to Think about Constitutional Change, Part I.” AEI. June 7, 2005. https://www.aei.org/publication/how-to-think-about-constitutional-change-part-i/.

———. 2005b. “How to Think about Constitutional Change, Part II.” AEI. August 2, 2005. https://www.aei.org/publication/how-to-think-about-constitutional-change-part-ii/.

———. 2011. “Conservatives and the Courts.” In *Crisis of Conservatism?: The Republican Party, the Conservative Movement, and American Politics After Bush*, edited by Joel D. Aberbach and Gillian Peele. Oxford, UK: Oxford University Press.

Grieco, Joseph M. 1990. *Cooperation Among Nations : Europe, America, and Non-Tariff Barriers to Trade*. Ithaca, NY: Cornell University Press.

———. 1995. “The Maastricht Treaty, Economic and Monetary Union and the Neo-Realist Research Programme.” *Review of International Studies* 21 (01): 21–40.

Grier, Jean Heilman. 2006. “Recent Developments in International Developments in International Trade Agreements Covering Government Procurement.” *Public Contract Law Journal* 35 (3): 385–407.

Gross, Neil, Thomas Medvetz, and Rupert Russell. 2011. “The Contemporary American Conservative Movement.” *Annual Review of Sociology* 37 (1): 325–54. https://doi.org/10.1146/annurev-soc-081309-150050.

Gruber, Lloyd. 2001. “Power Politics and the Free Trade Bandwagon.” *Comparative Political Studies* 34 (7): 703–41.

Haas, Ernst B. 1958. *The Uniting of Europe: Political, Economic and Social Forces, 1950–1957*. Notre Dame, IN: University of Notre Dame Press.

Haas, Ernst B., and Philippe C. Schmitter. 1964. “Economics and Differential Patterns of Political Integration: Projections About Unity in Latin America.” *International Organization* 18 (4): 705–37. https://doi.org/10.1017/S0020818300025297.

Habermas, Jürgen. 2014. *The Crisis of the European Union: A Response*. Hoboken, NY: John Wiley & Sons.

Hackbarth, Sean. 2017. “How Regulations at Every Level Hold Back Small Business.” U.S. Chamber of Commerce. March 28, 2017. https://www.uschamber.com/series/above-the-fold/how-regulations-every-level-hold-back-small-business.

Haibach, Georg. 1999. “The Interpretation of Article 30 of the EC Treaty and the ‘Dormant’ Commerce Clause by the European Court of Justice and the US Supreme Court.” *International & Comparative Law Quarterly* 48 (1): 155–67. https://doi.org/10.1017/S0020589300062916.

Hakan Yilmazkudayy. 2011. “Understanding Interstate Trade Patterns.” Florida International University.

Halberstam, Daniel. 2001. “Comparative Federalism and the Issue of Commandeering.” In *The Federal Vision: Legitimacy and Levels of Governance in the US and the EU*, edited by Nicolaidis Kalypso and Robert Howse. Oxford, UK: Oxford University Press.

Hall, Peter A. 1989. *The Political Power of Economic Ideas: Keynesianism Across Nations*. Princeton, NJ: Princeton University Press.

Hallstein, Walter, Hans Herbert Götz, and Karl-Heinz Narjes. 1969. *Der Unvollendete Bundesstaat. Europäische Erfahrungen Und Erkenntnisse*. München: Econ-Verlag.

Hamermesh, Daniel S. 1993. “Labor Demand and the Source of Adjustment Costs.” Working Paper 4394. Cambridge, MA: National Bureau of Economic Research. https://doi.org/10.3386/w4394.

Han, Lori Cox. 2011. *Presidency Upstaged: The Public Leadership of George H. W. Bush*. College Station, TX: Texas A&M University Press.

Hankla, Charles. 2017. “Economic History Shows Why Trump’s ‘America First’ Tariff Policy Is so Dangerous.” *The Conversation* (blog). November 15, 2017. http://theconversation.com/economic-history-shows-why-trumps-america-first-tariff-policy-is-so-dangerous-92715.

Hannan, Daniel. 2017. “Brexit Explained.” Cato Unbound. 2017. https://www.cato-unbound.org/2017/09/11/daniel-hannan/brexit-explained.

Hart, Jeffrey. 2006. *The Making of the American Conservative Mind: National Review and Its Times*. Wilmington, DE: Intercollegiate Studies Institute.

Hartz, Louis. 1991. *The Liberal Tradition in America*. Boston, MA: Houghton Mifflin Harcourt.

Harvey, David. 2005. *A Brief History of Neoliberalism*. Oxford, UK: Oxford University Press.

Haskins, Ron. 2005. “Welfare Reform: The Biggest Accomplishment of the Revolution.” In *The Republican Revolution 10 Years Later: Smaller Government or Business as Usual?*, edited by Chris Edwards. Washington, DC: Cato Institute.

Hay, Colin. 2010. “Ideas and the Construction of Interests.” In *Ideas and Politics in Social Science Research*, edited by Daniel Beland and Robert Cox. Oxford, UK: Oxford University Press.

Hayek, Friedrich August. 1939. “The Economic Conditions of Interstate Federalism.” *New Commonwealth Quarterly* 5 (2): 131–49.

———. 2001. *The Road to Serfdom*. London, UK: Psychology Press.

Heatherly, Charles L. 1981. *Mandate for Leadership: Policy Management in a Conservative Administration*. Washington, DC: Heritage Foundation.

Heclo, Hugh. 2014. “George Bush and American Conservatism.” In *41: Inside the Presidency of George H. W. Bush*, edited by Michael Nelson and Barbara A. Perry. Ithaca, NY: Cornell University Press.

Hedström, Peter, and Petri Ylikoski. 2010. “Causal Mechanisms in the Social Sciences.” *Annual Review of Sociology* 36: 49–67.

Heritage Foundation. 2017a. “Heritage Experts Advocated for Brexit From the Very Beginning.” The Heritage Foundation. 2017. /global-politics/impact/heritage-experts-advocated-brexit-the-very-beginning.

———. 2017b. “Search of Web Archive by Author.” The Heritage Foundation. 2017. http://www.heritage.org/.

Hess, Frederick. 2008. “Fulfilling the Promise of School Choice.” AEI. September 25, 2008. https://www.aei.org/publication/fulfilling-the-promise-of-school-choice/.

Hinarejos, Alicia. 2012. “Free Movment, Federalism and Institutional Choice: A Canada-EU Comparison.” *The Cambridge Law Journal* 71 (03): 537–66. https://doi.org/10.1017/S0008197312000815.

Hirschman, Albert O. 1970. *Exit, Voice, and Loyalty; Responses to Decline in Firms, Organizations, and States*. Cambridge, MA: Harvard University Press.

Hix, S. 2007. “The European Union as a Polity.” In *Handbook of European Union Politics*, 141–58. London, UK: Sage.

Hoffer, Adam, and Russel Sobel. 2015. “Protectionism among the States: How Preference Policies Undermine Competition.” Mercatus Working Paper. Mercatus Center. https://www.mercatus.org/publication/protectionism-among-states-how-preference-policies-undermine-competition.

Hoffmann, Leiff. 2011. “Land of the Free, Home of the (Un)Regulated: A Look at Market-Building and Liberalization in the EU and the US.” Dissertation, Eugene, OR: University of Oregon.

Hohle, Randolph. 2015. *Race and the Origins of American Neoliberalism*. New York, NY: Routledge.

———. 2018. *Racism in the Neoliberal Era: A Meta History of Elite White Power*. New York, NY: Routledge.

Holden, Constance. 1981. “Heritage Foundation: Court Philosophers.” *Science* 211 (4486): 1019–20. https://doi.org/10.1126/science.211.4486.1019.

Holden, Mark V. 2015. “Occupational Licenses Are an Unnecessary Burden for Workers.” San Francisco Chronicle. December 30, 2015. https://www.sfchronicle.com/opinion/openforum/article/Occupational-licenses-are-an-unnecessary-burden-6728618.php.

Holen, Arlene. 1978. “The Economics of Dental Licensing.” CRC-344. Alexandria, VA: Public Research Institute. http://www.dtic.mil/docs/citations/ADA075961.

Holt, Enterprises of Leesburg, Inc. 2018a. “Electrical CEU Courses.” 2018. http://www.mikeholt.com.

———. 2018b. “Multiple CEU License Quote Request.” 2018. http://www.mikeholt.com.

HomeAdvisor. 2016. “State by State Contractor License Requirements.” *Home Improvement Tips & Advice from HomeAdvisor* (blog). April 4, 2016. https://www.homeadvisor.com/r/state-by-state-licensing-requirements/.

Höpner, Martin, and Armin Schäfer. 2012. “Embeddedness and Regional Integration: Waiting for Polanyi in a Hayekian Setting.” *International Organization* 66 (3): 429–55.

Horwitz, Morton. 1980. “Law and Economics: Science or Politics?” *Hofstra Law Review* 8 (4): 905–12.

Horwitz, Steven, and George Selgin. 1987. “Interstate Banking: The Reform That Won’t Go Away.” 97. CATO Institute Policy Analysis. https://object.cato.org/sites/cato.org/files/pubs/pdf/pa097.pdf.

House Republicans. 2016a. “Health Care.” A Better Way. Our Vision for a Confident America. www.better.gop.

———. 2016b. “Poverty, Opportunity, and Upward Mobility.” A Better Way. Our Vision for a Confident America. www.better.gop.

———. 2016c. “The Constitution.” A Better Way. Our Vision for a Confident America. www.better.gop.

———. 2016d. “The Economy.” A Better Way. Our Vision for a Confident America. www.better.gop.

Hsieh, Lawrence. 2017. “States’ Rights, Federal Preemption and Mandatory Arbitration Provision.” *Reuters*, October 24, 2017. https://www.reuters.com/article/bc-finreg-insurance-arbitration/states-rights-federal-preemption-and-mandatory-arbitration-provisions-in-insurance-contracts-idUSKBN1CS2LS.

Hubbard, Glen, and Kevin Hassett. 2016. “Brexit and Economic Competition.” AEI. July 26, 2016. https://www.aei.org/publication/brexit-and-economic-competition/.

HUD, Department of Housing and Urban Development. 2018. “Manufactured Home Construction and Safety Standards.” 2018. https://www.ecfr.gov/cgi-bin/text-idx?SID=a2c5655a37054c584f7dd6a0ed240fb8&node=pt24.5.3280&rgn=div5.

Hufbauer, Gary, and Tyler Moran. 2015. “What Can TTIP Accomplish to Liberalize Government Procurement?” Cato Institute. September 24, 2015. https://www.cato.org/publications/cato-online-forum/what-can-ttip-accomplish-liberalize-government-procurement.

Hultin, Suzanne. 2017. “The State of Occupational Licensing: Research, State Policies and Trends.” 2017. http://www.ncsl.org/Portals/1/HTML_LargeReports/occupationallicensing_final.htm.

Humphreys, Macartan, and Alan M. Jacobs. 2015. “Mixing Methods: A Bayesian Approach.” *American Political Science Review* 109 (4): 653–73. https://doi.org/10.1017/S0003055415000453.

Huyghe, Cathy. 2014. “Breaking Into Sweden’s Wine Monopoly: Ecommerce and The Free Market.” Forbes. 2014. https://www.forbes.com/sites/cathyhuyghe/2014/09/16/breaking-into-swedens-wine-monopoly-ecommerce-and-the-free-market/.

ICC, International Code Council. 2011. “How States Adopt Codes.” 2011. https://www.iccsafe.org/gr/Documents/AdoptionToolkit/HowStatesAdopt_I-Codes.pdf.

———. 2017. “International Codes Adoption by State.” July 2017. https://www.iccsafe.org/wp-content/uploads/Master-I-Code-Adoption-Chart-latest.pdf.

———. 2018. “About ICC.” 2018. https://www.iccsafe.org/about-icc/overview/about-international-code-council/.

Ikenson, Daniel. 2012. “Giving Florida Firms First Dibs on Bids Stifles Competition, Quality.” Cato Institute. September 20, 2012. https://www.cato.org/publications/commentary/giving-florida-firms-first-dibs-bids-stifles-competition-quality.

Illinois, Division of Building Codes and Regulations. 2016. “Code Directory.” 2016. https://www2.illinois.gov/cdb/business/codes/Documents/Code%20Directory.pdf.

Ilzkovitz, Fabienne, Adriaan Dierx, Viktoria Kovacs, and Nuno Sousa. 2007. “Steps Towards a Deeper Economic Integration: The Internal Market in the 21st Century.” Montreal, CA: Archive of European Integration. http://aei.pitt.edu/7797/.

Inman, Robert P., and Daniel L. Rubinfeld. 1996. “Designing Tax Policy in Federalist Economies: An Overview.” *Journal of Public Economics* 60 (3): 307–34.

———. 1997. “Rethinking Federalism.” *Journal of Economic Perspectives* 11 (4): 43–64. https://doi.org/10.1257/jep.11.4.43.

Isaac, William. 1994. “Financial Regulation.” In *American Economic Policy in the 1980s*, edited by Martin Feldstein. Chicago, IL: University of Chicago Press.

Jabko, Nicolas. 2012. *Playing the Market : A Political Trategy for Uniting Europe, 1985-2005*. Ithaca, NY: Cornell University Press.

Jabko, Nicolas, and Craig Parsons. 2005. *With US or against US? : European Trends in American Perspective*. Oxford, UK: Oxford University Press,.

Jachtenfuchs, Markus, Thomas Diez, and Sabine Jung. 1998. "Which Europe? Conflicting Models of a Legitimate European Political Order." *European Journal of International Relations* 4 (4): 409–45. https://doi.org/10.1177/1354066198004004002.

Jackson, Patrick Thaddeus. 2011. *The Conduct of Inquiry in International Relations. Philosophy of Science and Its Implications for the Study of World Politics*. The New International Relations. London, UK: Routledge.

Jacobs, Alan. 2011. "Process Tracing and Ideational Arguments." In *The Committe on Concepts and Methods*. Vol. November. https://ssrn.com/abstract=1902136.

Jacoby, Jacob. 2000. "Is It Rational to Assume Consumer Rationality? Some Consumer Psychological Perspectives on Rational Choice Theory." *Roger Williams University Law Review* 6 (1): 81–162.

James M. Buchanan, and Institute of Economic Affairs. 1989. *Reaganomics and After*. IEA Readings ; 28. London, UK: Institute of Economic Affairs.

Jiang Weiyan, Hu Xin, Ye Kunhui, and Wong Johnny K. W. 2016. "Market Structure of International Construction Professional Services: Evidences from Top Design Firms." *Journal of Management in Engineering* 32 (1): 04015033. https://doi.org/10.1061/(ASCE)ME.1943-5479.0000395.

Johnson, Christian, and Tara Rice. 2008. "Assessing a Decade of Interstate Bank Branching." *Washington and Lee Law Review* 65 (1): 73127.

Johnson, Janna, and Morris M. Kleiner. 2017. "Is Occupational Licensing a Barrier to Interstate Migration?" NBER Working Paper 24107. https://papers.ssrn.com/abstract=3087047.

Jones, Daniel Stedman. 2012. *Masters of the Universe : Hayek, Friedman, and the Birth of Neoliberal Politics*. Princeton, NJ: Princeton University Press.

Jones, Gordon S., and John A. Marini. 1988. *The Imperial Congress: Crisis in the Separation of Powers*. New York, NY: Pharos Books.

Jordana, Jacint, and David Levi-Faur. 2004. *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*. Northampton, MA: Edward Elgar Publishing.

Jørgensen, Marianne W., and Louise J. Phillips. 2002. *Discourse Analysis as Theory and Method*. London, UK: Sage.

Joskow, Paul, and Roger Noll. 1994. "Deregulation and Regulatory Reform in the 1980s." In *American Economic Policy in the 1980s*, edited by Martin Feldstein. Chicago, IL: University of Chicago Press.

Kane, Edward J. 1996. "De Jure Interstate Banking: Why Only Now?" *Journal of Money, Credit and Banking* 28 (2): 141–61. https://doi.org/10.2307/2078020.

Karen, Orren, and Karen Orren. 2004. *The Search for American Political Development*. Cambridge, UK: Cambridge University Press.

Kelemen, Daniel. 2009. *The Rules of Federalism: Institutions and Regulatory Politics in the EU and Beyond*. Cambridge, MA: Harvard University Press.

———. 2011. *Eurolegalism : The Transformation of Law and Regulation in the European Union*. Cambridge, MA: Harvard University Press.

———. 2013. "Building the New European State? Federalism, Core State Powers, and European Integration." In *Beyond the Regulatory Polity?*, edited by Philipp Genschel and Markus Jachtenfuchs, 211–29. Oxford, UK: Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199662821.003.0011.

Kelley, Donald R., and Todd G. Shields. 2013. *Taking the Measure: The Presidency of George W. Bush*. College Station, TX: Texas A&M University Press.

Kemp, Jack. 1979. *An American Renaissance : A Strategy for the 1980s*. Falls Church, VA: Conservative Press.

Kendall, Douglas T. 2004. *Redefining Federalism: Listening to the States in Shaping "Our Federalism."* Washington, DC: Environmental Law Institute.

Keohane. 1996. *Internationalization and Domestic Politics*. Cambridge, UK: Cambridge University Press.

Kernell, Samuel, Gary C. Jacobson, Thad Kousser, and Lynn Vavreck. 2017. *The Logic of American Politics*. Thousand Oaks, CA: CQ Press.

Kettl, Donald F. 1983. "The Uncertain Brides: Regulatory Reform in Reagan's New Federalism." *Publius* 12: 19–34. https://doi.org/10.2307/3329877.

Khemlani, Lachmi. 2015. "Automating Code Compliance in AEC: AECbytes Feature." *AEC Bytes* (blog). October 22, 2015. http://www.aecbytes.com/feature/2015/AutomatingCodeCompliance.html.

King, Desmond S., and Rogers M. Smith. 2005. "Racial Orders in American Political Development." *The American Political Science Review* 99 (1): 75–92.

King, Desmond S., and Stewart Wood. 1999. “The Political Economy of Neoliberalism.” In *Continuity and Change in Contemporary Capitalism*, edited by Herbert Kitschelt. Cambrdige, UK: Cambridge University Press.

King, Gary, Robert O. Keohane, and Sidney Verba. 1994. *Designing Social Inquiry : Scientific Inference in Qualitative Research*. Princeton, NJ: Princeton University Press.

Kirk, Russell. 1987. “Ten Conservative Principles.” The Heritage Foundation. 1987. www.heritage.org/political-process/report/ten-conservative-principles.

Kleiner, Morris M. 2005. *Licensing Occupations: Ensuring Quality or Restricting Competition?* Kalamazoo, MI: WEUpjohn Institute for Employment Research.

———. 2013. *Stages of Occupational Regulation : Analysis of Case Studies*. Kalamazoo, MI: WEUpjohn Institute for Employment Research.

Kleiner, Morris M., Robert S. Gay, and Karen Greene. 1982. “Licensing Migration, and Earnings: Some Empirical Insights.” *Policy Studies Review* 1 (3): 510–22.

Kleiner, Morris M., and Alan B. Krueger. 2013. “Analyzing the Extent and Influence of Occupational Licensing on the Labor Market.” *Journal of Labor Economics* 31 (2): S173–202. https://doi.org/10.1086/669060.

Kleiner, Morris M., and Robert T. Kudrle. 2000. “Does Regulation Affect Economic Outcomes? The Case of Dentistry.” *Journal of Law and Economics* 43 (2): 547–82. https://doi.org/10.1086/467465.

Knop, Karen, Sylvia Ostry, Richard Simeon, and Katherine Swinton. 1994. *Rethinking Federalism: Citizens, Markets, and Governments in a Changing World*. Vancouver, CA: University of British Columbia Press.

Koenig, Gaspard. 2016. “Brexit : le bon débat – GenerationLibre.” 2016. https://www.generationlibre.eu/medias/presse/nos-tribunes/brexit-le-bon-debat/.

Kogler, Dieter F., Jürgen Essletzbichler, and David L. Rigby. 2017. “The Evolution of Specialization in the EU15 Knowledge Space.” *Journal of Economic Geography* 17 (2): 345–73. https://doi.org/10.1093/jeg/lbw024.

Kousser, Thad, and Justin H. Phillips. 2012. *The Power of American Governors: Winning on Budgets and Losing on Policy*. Cambridge, UK: Cambridge University Press.

Kovacic, William. 1991. “Reagan’s Judicial Appointees and Antitrust in the 1990s.” *Fordham Law Review* 60 (1): 49–124.

Kovacic, William, and Carl Shapiro. 2000. “Antitrust Policy: A Century of Economic and Legal Thinking.” *Journal of Economic Perspectives* 14 (1): 43–60.

Krasnokutskaya, Elena, and Katja Seim. 2011. “Bid Preference Programs and Participation in Highway Procurement Auctions.” *The American Economic Review* 101 (6): 2653–86.

Kreutzer, David. 2012. “Subsidies and Costs in the Solar Industry.” The Heritage Foundation. 2012. www.heritage.org/environment/commentary/subsidies-and-costs-the-solar-industry.

Krislov, Samuel. 1997. *How Nations Choose Product Standards and Standards Change Nations*. Pittsburgh, PA: University of Pittsburgh Press.

Krugman, Paul. 1991. *Geography and Trade*. Cambridge, MA: MIT Press.

———. 2010. “The Flimflam Man.” *The New York Times*, August 5, 2010, sec. Opinion. https://www.nytimes.com/2010/08/06/opinion/06krugman.html.

Ladinsky, Jack. 1967. “Occupational Determinants of Geographic Mobility among Professional Workers.” *American Sociological Review* 32 (2): 253–64. https://doi.org/10.2307/2091815.

Larkin, Paul. 2015. “North Carolina Dental Board and the Reform of State-Sponsored Protectionism.” The Heritage Foundation. 2015. www.heritage.org/government-regulation/report/north-carolina-dental-board-and-the-reform-state-sponsored.

———. 2016. “A Public Choice Analysis of Occupational Licensing.” The Heritage Foundation. 2016. www.heritage.org/government-regulation/report/public-choice-analysis-occupational-licensing.

———. 2017. “A Positive Step Toward Occupational Licensing Reform: The ALLOW Act.” The Heritage Foundation. 2017. www.heritage.org/government-regulation/report/positive-step-toward-occupational-licensing-reform-the-allow-act.

LaVecchia, Olivia. 2015. “Procurement Can Be a Powerful Tool for Local Economies, but Takes More Than a Policy Change to Work.” August 27, 2015. https://ilsr.org/procurement-more-than-a-policy-change/.

LeBoeuf, Jacques. 1994. “The Economics of Federalism and the Proper Scope of the Federal Commerce Power.” *San Diego Law Review* 31: 555–616.

Leff, Arthur Allen. 1974. “Economic Analysis of Law: Some Realism about Nominalism.” 2820. Faculty Scholarship Series. Yale Law School.

Leitner, Helga, Jamie Peck, and Eric S. Sheppard. 2007. *Contesting Neoliberalism: Urban Frontiers*. New York, NY: Guilford Press.

Lempert, Phil. 2016. “Sorry Food Industry, the Historic GMO Food Labeling Bill Is Anything But.” *Forbes*, August 1, 2016. https://www.forbes.com/sites/phillempert/2016/08/01/sorry-food-industry-the-historic-gmo-food-labeling-bill-is-anything-but/#59ade5ad6926.

Lester, Spence. 2015. *Knocking the Hustle: Against the Neoliberal Turn in Black Politics*. New York, NY: Punctum Books.

Levinson, Daryl J. 2005. “Empire-Building Government in Constitutional Law.” *Harvard Law Review* 118 (3): 915–72.

Levy, Jonah. 1999. *Tocqueville’s Revenge: State, Society, and Economy in Contemporary France*. Cambridge, MA: Harvard University Press.

Lewis, David E. 2003. *Presidents and the Politics of Agency Design: Political Insulation in the United States Government Bureaucracy, 1946-1997*. Stanford, CA: Stanford University Press.

Lieberman, Evan S. 2005. “Nested Analysis as a Mixed-Method Strategy for Comparative Research.” *The American Political Science Review* 99 (3): 435–52.

Lindberg, Leon N., and Stuart A. Scheingold. 1970. *Europe’s Would-Be Polity: Patterns of Change in the European Community*. Englewood Cliffs, NJ: Prentice-Hall.

Lindsey, Brink. 1993. “The Re-Regulation Explosion: Costs and Consequences.” The Heritage Foundation. 1993. www.heritage.org/government-regulation/report/the-re-regulation-explosion-costs-and-consequences.

Lindsey, Lawrence. 1990. *The Growth Experiment : How the New Tax Policy Is Transforming the U.S. Economy*. New York, NY: Basic Books.

Lipman, Melissa. 2015. “A Brief History Of The FTC’s State Action Battles.” *Law360*, February 26, 2015. https://www.law360.com/articles/625576/a-brief-history-of-the-ftc-s-state-action-battles.

Lipset, Seymour Martin. 1979. *The First New Nation: The United States in Historical and Comparative Perspective*. New York, NY: Norton.

Lipsett, Owen. 2008. “The Failure of Federalism: Does Competitive Federalism Actually Protect Individual Rights?” *University of Pennsylvania Journal of Constitutional Law* 10 (3): 643.

Lipsitz, George. 2006. *The Possessive Investment in Whiteness: How White People Profit from Identity Politics*. Philadelphia, PA: Temple University Press.

Lirette, Ryan, and Alan Viard. 2016. “Putting the Commerce Back in the Dormant Commerce Clause: State Taxes, State Subsidies, and Commerce Neutrality.” *Journal of Law and Policy* 24 (2): 467–549.

Lissovoy, Noah De. 2013. “Conceptualizing the Carceral Turn: Neoliberalism, Racism, and Violation.” *Critical Sociology* 39 (5): 739–55. https://doi.org/10.1177/0896920512452162.

Litan, Robert. 1994. “US Financial Markets and Institutions in the 1980s: A Decade of Turbulence.” In *American Economic Policy in the 1980s*, edited by Martin Feldstein. Chicago, IL: University of Chicago Press.

Litman, Gary. 2003. “U.S. Chamber of Commerce. Statement before the Subcommittee on European Affairs of the Senate Committee on Foreign Relations for the U.S. Chamber of Commerce.” U.S. Chamber of Commerce. October 15, 2003. https://www.uschamber.com/testimony/us-eu-regulatory-affairs.

Little, Daniel, ed. 1998. *Microfoundations, Method, and Causation: On the Philosophy of the Social Science*. New Brunswick, NJ: Routledge.

Lo, Cyh. 1982. “Counter-Movements and Conservative Movements in the Contemporary United-States.” *Annual Review of Sociology* 8: 107–34. https://doi.org/10.1146/annurev.so.08.080182.000543.

Lowi, Theodore. 2006. “Eurofederalism: What Can the European Union Learn from the United States.” In *Comparative Federalism: The European Union and the United States in Comparative Perspective*, edited by Michael Burgess and Alain Gagnon. Toronto, CA: University of Toronto Press.

Lowndes, Joseph E. 2008. *From the New Deal to the New Right : Race and the Southern Origins of Modern Conservatism*. New Haven, CT: Yale University Press.

Lynch, Julia. 2013. “Aligning Sampling Strategies with Analytical Goals.” In *Interview Research in Political Science*, edited by Layna Mosley. Ithaca, NY: Cornell University Press.

Lynch, Timothy. 2005. “A Smooth Transition: Crime, Federalism, and the GOP.” In *The Republican Revolution 10 Years Later: Smaller Government or Business as Usual?*, edited by Chris Edwards. Washington, DC: Cato Institute.

Mahoney, Christine. 2008. *Brussels Versus the Beltway: Advocacy in the United States and the European Union*. Washington, DC: Georgetown University Press.

Majone, Giandomenico. 1994. “The Rise of the Regulatory State in Europe.” *West European Politics* 17 (3): 77–101. https://doi.org/10.1080/01402389408425031.

Manheim, Karl. 1990. “New-Age Federalism and the Market Participant Doctrine.” *Arizona State Law Journal* 22: 559–624.

Maraniss, David. 1996. *Tell Newt to Shut up!: Prizewinning Washington Post Journalists Reveal How Reality Gagged the Gingrich Revolution*. New York, NY: Simon & Schuster.

Marcussen, Martin, Thomas Risse, Daniela Engelmann-Martin, Hans Joachim Knopf, and Klaus Roscher. 1999. "Constructing Europe? The Evolution of French, British and German Nation State Identities." *Journal of European Public Policy* 6 (4): 614–33. https://doi.org/10.1080/135017699343504.

Mariniello, Mario. 2014. "Antitrust Risk in EU Manufacturing: A Sector-Level Ranking." Bruegel. http://bruegel.org/2014/07/antitrust-risk-in-eu-manufacturing-a-sector-level-ranking/.

Marion, Justin. 2007. "Are Bid Preferences Benign? The Effect of Small Business Subsidies in Highway Procurement Auctions." *Journal of Public Economics* 91 (7–8): 1591–1624.

Marks, Gary, Fritz Scharpf, Philippe Schmitter, and Wolfgang Streeck. 1996. *Governance in the European Union*. London, UK: Sage. https://doi.org/10.4135/9781446279328.

Martin, Cathie J., and Duane Swank. 2012. *The Political Construction of Business Interests: Coordination, Growth, and Equality*. Cambridge Studies in Comparative Politics. Cambridge, UK: Cambridge University Press.

Martin, José Maria Fernández. 1996. *The EC Public Procurement Rules: A Critical Analysis*. Wotton-under-Edge, UK: Clarendon Press.

Mattei, Ugo. 1998. *Comparative Law and Economics*. Ann Arbor, MI: University of Michigan Press.

Mayer, Matt. 2016. "The Parallel Between Brexit And U.S. Federalism." AEI. June 20, 2016. https://www.aei.org/publication/the-parallel-between-brexit-and-us-federalism/.

McCombs, Phil. 1983. "Building a Heritage in the War of Ideas." *Washington Post*, October 3, 1983. https://www.washingtonpost.com/archive/lifestyle/1983/10/03/building-a-heritage-in-the-war-of-ideas/94b4f088-c527-4629-89a6-b394ceb7c85c/.

McCurdy, Charles W. 1978. "American Law and the Marketing Structure of the Large Corporation, 1875- 1890." *The Journal of Economic History* 38 (3): 631–49.

McGarity, Thomas O. 2008. *The Preemption War: When Federal Bureaucracies Trump Local Juries*. New Haven, CT: Yale University Press.

McGirr, Lisa. 2002. *Suburban Warriors: The Origins of the New American Right*. Princeton, NJ: Princeton University Press.

McKay, David H. 2001. *Designing Europe : Comparative Lessons from the Federal Experience*. Oxford, UK: Oxford University Press.

McKenzie, Richard B. 1995. *What Went Right in the 1980s*. New York, NY: Books on Tape.

McNamara, Kathleen R. 1998. *The Currency of Ideas : Monetary Politics in the European Union*. Ithaca, NY: Cornell University Press.

Medvetz, Thomas. 2012. *Think Tanks in America*. Chicago, IL: The University of Chicago Press.

Meese, Edwin. 1992. *With Reagan: The inside Story*. Washington, DC: Regnery Gateway.

Menon, Anand. 2013. "Defence Policy and the Logic of 'High Politics.'" In *Beyond the Regulatory Polity?*, edited by Philipp Genschel and Markus Jachtenfuchs, 66–84. Oxford, UK: Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199662821.003.0004.

Menon, Anand, and Martin Schain, eds. 2006. *Comparative Federalism : The European Union and the United States in Comparative Perspective*. Oxford, UK: Oxford University Press.

Mérand, Frédéric, and Kathleen Angers. 2013. "Military Integration in Europe." In *Beyond the Regulatory Polity?*, edited by Philipp Genschel and Markus Jachtenfuchs, 46–65. Oxford, UK: Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199662821.003.0003.

Mesquita, Ethan Bueno De, and Matthew C. Stephenson. 2007. "Regulatory Quality Under Imperfect Oversight." *American Political Science Review* 101 (3): 605–20. https://doi.org/10.1017/S0003055407070359.

Metzenbaum, Howard M. 1981. "Is William Baxter Anti-Antitrust?" *The New York Times*, October 18, 1981. http://www.nytimes.com/1981/10/18/business/is-william-baxter-anti-antitrust.html.

MHI, Manufactured Housing Institute. 2011. "What Is a Manufactured Home?" 2011. https://web.archive.org/web/20120323074714/http://www.mhcommunities.org/cm/lib/showtemp_detail.asp?id=63&cat=consumer_resos.

Midelfart-Karvik, K. H., and H. G. Overman. 2000. "The Location of European Industry." Report prepared for the Directorate General for Economic and Financial Affairs, European Commission. http://www.princeton.edu/~reddings/papers/dgII_loc.pdf.

Miksch, Leonhard. 1937. *Wettbewerb Als Aufgabe. Grundsätze Einer Wettbewerbsordnung,*. Stuttgart, DE: W. Kohlhammer.

Miller, John Jos. 2005. *A Gift of Freedom: How the John M. Olin Foundation Changed America*. San Francisco, CA: Encounter Books.

Milliken, J. 1999. “The Study of Discourse in International Relations:: A Critique of Research and Methods.” *European Journal of International Relations* 5 (2): 225–54. https://doi.org/10.1177/1354066199005002003.

Millimet, Daniel L., and Thomas Osang. 2007. “Do State Borders Matter for US Intranational Trade? The Role of History and Internal Migration.” *Canadian Journal of Economics/Revue Canadienne d’économique* 40 (1): 93–126.

Mirowski, Philip, and Dieter Plehwe, eds. 2009. *The Road from Mont Pelerin: The Making of the Neoliberal Thought Collective*. Cambridge, MA: Harvard University Press.

Mises, Ludwig von. 1969. *Bureaucracy: The Economist*. New Rochelle, NY: Arlington House.

Mitchell, Daniel. 1991. “Tax Rates, Fairness, and Economic Growth: Lessons from the 1980s.” The Heritage Foundation. 1991. www.heritage.org/taxes/report/tax-rates-fairness-and-economic-growth-lessons-the-1980s.

Mitchener, Kris James. 2001. “Supervision, Regulation, and Financial Instability: The Political Economy of Banking during the Great Depression.” Ph.D Dissertation, Berkeley, CA: University of Berkeley.

———. 2004. “Bank Supervision, Regulation, and Instability During the Great Depression.” *Journal of Economic History* 65 (1): 152–185.

———. 2007. “Are Prudential Supervision and Regulation Pillars of Financial Stability? Evidence from the Great Depression.” *Journal of Law and Economics* 50 (2): 273–302.

Moeschel, Wernhard. 2007. “US versus EU Antirust Law.” ZEW Policy Paper. ftp://ftp.zew.de/pub/zew-docs/veranstaltungen/rnic/papers/WernhardMoeschel.pdf.

Moore, Cassandra. 1990. “Housing Policy in New York: Myth and Reality.” 132. CATO Institute Policy Analysis. https://www.cato.org/publications/policy-analysis/housing-policy-new-york-myth-reality.

Moore, Ryan T., and Christopher T. Giovinazzo. 2012. “The Distortion Gap: Policymaking under Federalism and Interest Group Capture.” *Publius* 42 (2): 189–210. https://doi.org/10.1093/publius/pjr037.

Moore, Stephen. 2005. “The Federal Budget 10 Years Later.” In *The Republican Revolution 10 Years Later: Smaller Government or Business as Usual?*, edited by Chris Edwards. Washington, DC: Cato Institute.

Moravcsik, Andrew. 1998. *The Choice for Europe : Social Purpose and State Power from Messina to Maastricht*. Ithaca, NY: Cornell University Press.

———. 2013. “Did Power Politics Cause European Integration? Realist Theory Meets Qualitative Methods.” *Security Studies* 22 (4): 773–90. https://doi.org/10.1080/09636412.2013.844511.

Mork, Jonas Clausen, and Sven Ove Hansson. 2007. “Eurocodes and Reach: Differences and Similarities.” *Risk Management* 9 (1): 19–35.

Mosley, Layna. 2003. *Global Capital and National Governments*. Cambrdige, UK: Cambridge University Press.

Mulholland, Sean E., and Andrew T. Young. 2016. “Occupational Licensing and Interstate Migration.” *Cato Journal; Washington* 36 (1): 17–31.

Mullin, Joe. 2017. “If You Publish Georgia’s State Laws, You’ll Get Sued for Copyright and Lose.” *Ars Technica*, March 30, 2017. https://arstechnica.com/tech-policy/2017/03/public-records-activist-violated-copyright-by-publishing-georgia-legal-code-online/.

Mulloy, Patrick, and Cynthia Lasker. 1995. “The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994: Responding to Global Competition.” *Journal of Legislation* 21: 255–74.

Muris, Timothy. 2001. “Competition and Intellectual Property Policy: The Way Ahead.” Prepared Remarks of before American Bar Association, Antitrust Section Fall Forum. FTC. https://www.ftc.gov/public-statements/2001/11/competition-and-intellectual-property-policy-way-ahead.

Murphy, John. 2018. “Gutting NAFTA’s Procurement Rules Could Cost Americans Billions.” U.S. Chamber of Commerce. January 24, 2018. https://www.uschamber.com/series/modernizing-nafta/gutting-nafta-s-procurement-rules-could-cost-americans-billions.

Myers, Todd. 2017. “Remove Obstacles to American Dream, Including Absurd Professional Licensing Laws.” *The Seattle Times*, March 27, 2017. https://www.seattletimes.com/opinion/remove-obstacles-to-american-dream-including-absurd-professional-licensing-laws/.

NASPO, National Association of Public Procurement Officers. 2012. “Instate Preference Brief.” National Association of Public Procurement Officers.

Nathan, Laurie. 2005. “‘The Frightful Inadequacy of Most of the Statistics’: A Critique of Collier and Hoeffler on Causes of Civil War.” Monograph. September 2005. http://www.crisisstates.com/Publications/publications.htm.

National Performance Review. 1993. “From Red Tape to Results.” Washington, DC: U.S. Government. https://govinfo.library.unt.edu/npr/library/nprrpt/annrpt/redtpe93/2342.html.

———. 1994. “Common Sense Government Works Better and Costs Less.” Washington, DC: U.S. Government. https://govinfo.library.unt.edu/npr/library/nprrpt/annrpt/pdf/com01.pdf.

———. 1996. “Reinvention’s Next Steps: Governing in a Balanced Budget World.” Washington, DC: U.S. Government. https://govinfo.library.unt.edu/npr/library/papers/bkgrd/balbud.html.

———. 1997a. “Access America Introduction by Vice President Al Gore.” Washington, DC: U.S. Government. https://clintonwhitehouse2.archives.gov/WH/New/html/Access.html.

———. 1997b. “The Blair House Papers.” Washington, DC: U.S. Government. https://govinfo.library.unt.edu/npr/library/papers/bkgrd/blair.html.

Nava, Pedro. 2016. “Jobs for Californians: Strategies to Ease Occupational Licensing Barriers.” 234. Little Hoover Commission. http://www.lhc.ca.gov/sites/lhc.ca.gov/files/Reports/234/Report234.pdf.

NCSL, National Conference of State Legislatures. 2013. “Free Trade and Federalism.” 2013. http://www.ncsl.org/ncsl-in-dc/standing-committees/labor-and-economic-development/free-trade-and-federalism.aspx.

———. 2015. “Healthy Housing: State Policies, State Responses.” January 16. http://www.ncsl.org/documents/environ/NCSL_HealthyHousing115.pdf.

———. 2016. “Direct Shipment of Alcohol State Statutes.” 2016. http://www.ncsl.org/research/financial-services-and-commerce/direct-shipment-of-alcohol-state-statutes.aspx.

NECA, National Electrical Contractors Association. 2017. “NECA Government Affairs.” 2017. http://www.necanet.org/docs/default-source/2017LegCong/neca-legislative-paper---procurement-reform-2017.pdf?sfvrsn=2.

Neily, Clark. 2017. “Occupational Licensing Should Not Be Used to Keep Honest Americans out of Work.” Cato Institute. August 8, 2017. https://www.cato.org/publications/commentary/occupational-licensing-should-not-be-used-keep-honest-americans-out-work.

Nelson, Travis. 2011. “Preemption Under Title X of the Dodd-Frank Act.” American Bar Association. https://www.americanbar.org/content/dam/aba/publications/blt/2010/11/inside-buslaw-preemption-201011.authcheckdam.pdf.

NGA, National Governors Association. 2018. “NGA Policy Positions.” 2018. https://www.nga.org/cms/ogr/policy-positions.

NIBS, National Institute of Building Sciences. 2003. “Minimum Property Standards for One- and Two- Family Dwellings.” U.S. Department of Housing and Urban Development Office of Policy Development and Research. https://www.huduser.gov/portal/publications/mps_report.pdf.

Nicolaidis, and Howse. 2002. *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*. Oxford, UK: Oxford University Press.

Niemann, Arne, and Philippe C. Schmitter. 2009. “Neofunctionalism.” In *European Integration Theory*, edited by Antje. Wiener and Thomas Diez, 45–65. Oxford, UK: Oxford University Press.

Nieto, Maria, and Larry Wall. 2015. “Cross-Border Banking on the Two Sides of the Atlantic: Does It Have an Impact on Bank Crisis Management?” Federal Reserve Bank of Atlanta Working Paper Series 11. https://www.frbatlanta.org/-/media/documents/research/publications/wp/2015/11.pdf.

NIGP, Institute for Publice Procurement. 2015. “Local Preference Position Paper.” http://engage.nigp.org/acton/attachment/24793/f-01ab/1/-/-/-/-/LocalPreferencePositionPaper2015CAP.pdf.

Niskanen, William A. 1988. *Reaganomics: An Insider’s Account of the Policies and the People*. Oxford, UK: Oxford University Press.

———. 1994. “Regulation.” In *American Economic Policy in the 1980s*, edited by Martin Feldstein. Chicago, IL: University of Chicago Press.

Niskanen, William A., and Stephen Moore. 1996. “Supply Side Tax Cuts and the Truth about the Reagan Economic Record.” 261. CATO Institute Policy Analysis. https://object.cato.org/sites/cato.org/files/pubs/pdf/pa261.pdf.

Nitsch, Volker. 2000. “National Borders and International Trade: Evidence from the European Union.” *Canadian Journal of Economics/Revue Canadienne d’économique* 33 (4): 1091–1105. https://doi.org/10.1111/0008-4085.00055.

Norman, Geoffry. 1979. “The Godfather of Neoconservatism (And His Family).” *Esquire*, February 13, 1979. http://archive.esquire.com/issue/19790213.

North, Douglass C. 1981. *Structure and Change in Economic History*. New York, NY: Norton.

———. 1991. “Institutions.” *The Journal of Economic Perspectives* 5 (1): 97–112.

NR Editors, National Review. 2015. “Paul Ryan Should Run.” *National Review*, October 9, 2015. http://www.nationalreview.com/republicans-need-paul-ryan-speaker.

———. 2016. “Brexit Vote: Restore British Democracy & Vote Leave.” *National Review*, June 20, 2016. http://www.nationalreview.com/article/436853/brexit-vote-restore-british-democracy-vote-leave.

NYCEDC, New York City Economic Development Corporation. 2018. “Workforce and Local Business Programs.” NYCEDC. 2018. https://www.nycedc.com/program/hirenyc.

NYT Editorial Board, New York Times. 2017. “Paul Ryan, Brought down to Size.” *The New York Times*, March 27, 2017, sec. Opinion. https://www.nytimes.com/2017/03/27/opinion/paul-ryan-brought-down-to-size.html.

Oates, Wallace E. 2005. “Toward a Second-Generation Theory of Fiscal Federalism.” *International Tax and Public Finance* 12 (4): 349–73. https://doi.org/10.1007/s10797-005-1619-9.

Oates, Wallace E., and Robert M. Schwab. 1988. “Economic Competition among Jurisdictions: Efficiency Enhancing or Distortion Inducing?” *Journal of Public Economics* 35 (3): 333–54. https://doi.org/10.1016/0047-2727(88)90036-9.

OCC, Office of the Controller of the Comptroller of the Currency. 2003. “National-Banks-and-the-Dual-Banking-System.Pdf.” https://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/national-banks-and-the-dual-banking-system.pdf.

OECD, Organisation for Economic Cooperation and Development. 1998. *Harmful Tax Competition*. Paris, FR: Organisation for Economic Cooperation and Development.

———. 2017. “Government at a Glance 2017 Database.” 2017. http://www.oecd.org/gov/government-at-a-glance-2017-database.htm.

Ohlhausen, Maureen. 2017. “The Elusive Role of Competition in the Standard-Setting Antitrust Debate.” *Stanford Technology Law Review* 20 (1): 93–142.

Olson, Erik D. 1984. “The Quiet Shift of Power: Office of Management and Budget Supervision of EPA Rulemaking under Executive Order 12,291.” *Virginia Journal of Natural Resources Law* 4 (1): 1–80.

Olson, Mancur. 1965. *The Logic of Collective Action : Public Goods and the Theory of Groups*. Cambridge, MA: Harvard University Press.

———. 2000. *Power and Prosperity : Outgrowing Communist and Capitalist Dictatorships*. New York, NY: Basic Books.

Olufs, Dick. 1999. *The Making of Telecommunications Policy*. Boulder, CO: Lynne Rienner Publishers.

Omi, Michael. 1994. *Racial Formation in the United States: From the 1960s to the 1990s*. New York, NY: Routledge.

Oppenheimer, Margaret, and Nicholas Mercuro. 2015. *Law and Economics: Alternative Economic Approaches to Legal and Regulatory Issues*. New York, NY: Routledge.

Oregon Legislative Information. 2009. "HB 2763 2009 Regular Session." 2009. https://olis.leg.state.or.us/liz/2009R1/Measures/Overview/HB2763.

O'Reilly, Kenneth. 1995. *Nixon's Piano: Presidents and Racial Politics from Washington to Clinton*. New York, NY: Free Press.

Pacchioli, Consuelo. 2011. "Is the EU Internal Market Suffering from an Integration Deficit? Estimating the 'Home-Bias Effect.' CEPS Working Document No. 348, May 2011." Working Paper. http://shop.ceps.eu/book/eu-internal-market-suffering-integration-deficit.

Parakkal, Raju. 2016. "Ordoliberalism in European Competition Policy: The Logic of Democratic Capitalism in Talbot's Essay." *The Antitrust Bulletin* 61 (2): 290–92. https://doi.org/10.1177/0003603X16644119.

Parker, Richard, and Alberto Alemanno. 2014. "Towards Effective Regulatory Cooperation under TTIP: A Comparative Overview of the EU and US Legislative and Regulatory Systems." Brussels, BE: European Commission.

Parsley, David C., and Shang-Jin Wei. 2002. "Currency Arrangements and Goods Market Integration: A Price Based Approach." Working Paper. Washington, DC: Brookings. http://www.brookings.edu/~/media/research/files/papers/2002/8/15globaleconomics-wei/20020815.pdf.

Parsons, Craig. 2003. *A Certain Idea of Europe*. Ithaca, NY: Cornell University Press.

———. 2007. "Neoliberalism Isn't Enough. On the Interaction of Neoliberal and Europeanist Shared Mental Models in the European Union." In *Neoliberalism : National and Regional Experiments with Global Ideas*, edited by Ravi K. Roy, Arthur Denzau, and Thomas D. Willett. London, UK: Routledge.

———. 2013. "Power, Patterns, and Process in European Union History." *Security Studies* 22 (4): 791–801. https://doi.org/10.1080/09636412.2013.844512.

———. 2015. "Before Eclecticism: Competing Alternatives in Constructivist Research." *International Theory* 7 (3): 501–38. https://doi.org/10.1017/S1752971915000135.

———. 2016. "Ideas and Power: Four Intersections and How to Show Them." *Journal of European Public Policy* 23 (3): 446–63. https://doi.org/10.1080/13501763.2015.1115538.

Pashigian, B. Peter. 1979. “Occupational Licensing and the Interstate Mobility of Professionals.” *Journal of Law and Economics* 22 (1): 1–25.

Pataki, Zsolt. 2014. “The Cost of Non-Europe in the Single Market Cecchni Revisited.” European Added Value Unit, European Commission. http://www.europarl.europa.eu/RegData/etudes/STUD/2014/510981/EPRS_STU(2014)510981_REV1_EN.pdf.

Peccora Commission. 1934. “Stock Exchange Practices.” U.S. Senate Report 1355. https://www.senate.gov/artandhistory/history/common/investigations/pdf/Pecora_FinalReport.pdf.

Pelkmans, Jacques. 1988. *The Internal Markets of North America : Fragmentation and Integration in the US and Canada*. Brussels, BE: Office for Official Publications of the European Communities.

Pepinsky, Thomas B. 2013. “Defining Neoliberalism.” *Tom Pepinsky* (blog). December 4, 2013. http://tompepinsky.com/2013/12/04/defining-neoliberalism/.

Perry, Mark. 2007. “Competition and ‘Capitalized Medicine’ Work.” AEI. October 26, 2007. https://www.aei.org/publication/competition-and-capitalized-medicine-work/.

———. 2008. “Michigan: $3 Billion in Business Subsidies.” AEI. December 17, 2008. https://www.aei.org/publication/michigan-3-billion-in-business-subsidies/.

———. 2010. “Funding Electrics Is a Battery-Dead Idea.” AEI. July 22, 2010. https://www.aei.org/publication/funding-electrics-is-a-battery-dead-idea/.

———. 2011. “How to Increase New Home Prices by $4,000 in CA.” AEI. March 26, 2011. https://www.aei.org/publication/how-to-increase-new-home-prices-by-4000-in-ca/.

———. 2012. “Should It Really Be Illegal to Braid Hair Without First Getting a License from the Government?” AEI. June 13, 2012. https://www.aei.org/publication/should-it-really-be-illegal-to-braid-hair-without-first-getting-a-license-from-the-government/.

———. 2013. “Who’d a-Thunk It? Without Taxpayer Subsidies, Market-Based Megabus Has Revitalized Inter-City Bus Travel in the US.” AEI. November 3, 2013. https://www.aei.org/publication/whod-a-thunk-it-without-taxpayer-subsidies-market-based-megabus-has-revitalized-inter-city-bus-travel-in-the-us/.

Personal Interview, Abbott, Alden. 2017. Phone Interview by Author. Heritage Foundation.

Personal Interview, AGC, American General Contractors. 2016. Phone Interview by Author. Person Anonymized.

Personal Interview, Alliance, Residential Group. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Architecture I. 2017. Phone Interview by Author. Firm Anonymized.

Personal Interview, Architecture III. 2017. Email Interview by Author. Firm Anonymized.

Personal Interview, Austin, Company. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview Baccile, Rosemarie. 2017. Phone Interview by Author. New Jersey State Board of Examiners of Master Plumbers.

Personal Interview, Brown, Maria. 2016. Phone Interview by Author. Oregon Board of Architect Examiners.

Personal Interview, Brubeck, Ben. 2017. Phone Interview by Author. Associated Builders and Contractors (ABC).

Personal Interview, BSAV. 2018. Interview by Author. Building Safety Association of Vermont. Person Anonymized.

Personal Interview, Buildrite. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, CAB, California Architects Board. 2016. Phone Interview by Author. Person Anonymized.

Personal Interview, Caroll, Cathrine. 2017. Phone Interview by Author. Maine Plumbers' Examining Board.

Personal Interview, Carter, Jerry. 2016. Phone Interview by Author. National Council of Examiners for Engineering and Surveying.

Personal Interview, Coleman, James. 2017. Phone Interview by Author. Colorado State Legislature Representative, House.

Personal Interview, Construction I. 2017. Phone Interview by Author. Firm Anonymized.

Personal Interview, Construction II. 2017. Phone Interview by Author. Firm Anonymized.

Personal Interview, Construction IV. 2017. Phone Interview by Author. Firm Anonymized.

Personal Interview, Crossland, Construction. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Crowder, Construction Company. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, CSI, Construction Specification Institute. 2016. Phone Interview by Author. Person Anonymized.

Personal Interview, Cyr, Jeffrey. 2017. Phone Interview by Author. Mechanical Safety & Licensing , Office of the New Hampshire State Fire Marshal.

Personal Interview, Dekker, Perich Sabatini. 2017. Email Interview by Author. Person Anonymized.

Personal Interview, Dennis, Group. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Denno, James. 2016. Phone Interview by Author. Oregon Construction Contractors Board.

Personal Interview, DSLD, Home. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Eissler, Nancy. 2016. Phone Interview by Author. California Engineering Board.

Personal Interview, EYP, Architecture & Engineering. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Fortis, Construction Inc. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Fred, Olivieri Construction. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Fulcrum, Construction. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Gem, Plumbing & Heating. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Gensler. 2017. Email Interview by Author. Person Anonymized.

Personal Interview, Gray, Corporation. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Green Brick, Partners. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Greve, Michael. 2017. Phone Interview by Author. George Mason University.

Personal Interview, Hacker, Architects. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Haselden, Construction. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Hays, Construction Company Inc. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, HBA, National Association of Home Builders. 2016. Phone Interview by Author.

Personal Interview, Hines, Real Estate Development. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Hoffmann, Robert. 2016. Phone Interview by Author. American Institue of Architects Oregon (AIA).

Personal Interview, Hord, Koplan Macht. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Hovanian, Enterprises Inc. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Jahn, Cheri. 2017. Phone Interview by Author.

Personal Interview, Joeris, Genral Contractors. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Kilb, Charles. 2017. Phone Interview by Author. Massachusetts Board of State Examiners of Plumbers and Gas Fitters.

Personal Interview, Kraus, Anderson Construction Company. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Lister, Tom. 2018. Personal Interview. Maine Building Officials Inspectors Association.

Personal Interview, Little. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Lopes, Rick. 2016. Phone Interview by Author. California Contractors Board.

Personal Interview, Lothrop, Associates LLP Architects. 2017. Email Interview by Author. Person Anonymized.

Personal Interview, Macgregor, Associated Architects. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Mage, Robert. 2017. Phone Interview by Author. Albany Department of Buildings & Regulatory Compliance.

Personal Interview, Martin, Harris Construction. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Mata, Selso. 2017. Phone Interview by Author. Building Officials Association of Texas.

Personal Interview, MCA, Architecture. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, McGrady, Michael. 2017. Phone Interview by Author. Colorado State Legislature, Representative Dave Williams, Staff.

Personal Interview, McKinney, William. 2018. Interview by Author. New Hampshire Building Officials Association.

Personal Interview, Metropolitan, Contracting. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Miller, Shawn. 2017. Phone Interview by Author. Associated Builders and Contractors Oregon (ABC).

Personal Interview, Miller, Thomas. 2017. Phone Interview by Author.

Personal Interview, Moore, Robert. 2016. Phone Interview by Author. Retail Contractors Association.

Personal Interview, Murphy, Company. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, National Retail Chain. 2017. Phone Interview by Author. Company Anonymized.

Personal Interview, NCARB, National Council of Architectural Registration Boards. 2016. Phone Interview by Author.

Personal Interview, Neville, Tim. 2017. Phone Interview by Author. Colorado State Legislature, Senate.

Personal Interview, NTS, National Trench Safety. 2016. Phone Interview by Author. Person Anonymized.

Personal Interview, OHBA, Oregon Home Builders Association. 2016. Phone Interview by Author.

Personal Interview, Olson, Kundig. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, O'Toole, Randal. 2017. Phone Interview by Author. CATO Institute.

Personal Interview, OZ, Architecture. 2017. Email Interview by Author. Person Anonymized.

Personal Interview, Rectenwald, Construction Inc. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Retail Construction, Service Inc. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Richardson, Wayne. 2018. Interview by Author. New Hampshire Building Officials Association.

Personal Interview, Rosser, International. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Roto-Rooter, Services Company. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Rouleau-Cote, Carrie. 2018. Interview by Author. New Hampshire Building Officials Assocition.

Personal Interview, Rusco, Inc. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Salsgiver, Mike. 2017. Phone Interview by Author. Associated General Contractors Oregon (AGC).

Personal Interview, Schnaidawind, John. 2017. Phone Interview by Author. American Institute of Architects (AIA).

Personal Interview, SGA, Design Group. 2017. Email Interview by Author. Person Anonymized.

Personal Interview, Shames, Construction Company. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Shiel, Sexton Company. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Shrader, and Martinez Construction. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Sink, Combs Dethlfs Architects. 2017. Email Interview by Author. Person Anonymized.

Personal Interview, Somin, Ilya. 2017. Phone Interview by Author.

Personal Interview, STV. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Sundt, Construction Inc. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Taylor, Bros. Construction. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Taylor, Morrison. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Triad, Retail Construction. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, VanDoren, Peter. 2017. Email Interview by Author.

Personal Interview Veuger, Stan. 2017. Phone Interview by Author.

Personal Interview, WABO. 2018. Interview by Author. Washington Association of Building Officials. Person Anonymized.

Personal Interview, Warwick, Construction Inc. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Webcor, Builders. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Wexler, Robert. 2017. Phone Interview by Author. Department of Licenses & Inspections, Mechanical Service, Philadelphia, PA.

Personal Interview, Whalen, George. 2017. Phone Interview by Author. Rhode Island Contractor Licensing Board.

Personal Interview, Wible, Robert. 2017. Phone Interview by Author. Fiatech.

Personal Interview, Widney, Jonathan. 2017. Phone Interview by Author. Solibri.

Personal Interview, Wilberscheid, Jacquie. 2017. Phone Interview by Author. National Association of State Contractors Licensing Agencies (NASCLA).

Personal Interview, William, A. Randolph Inc. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Wolverine, Building Group. 2017. Phone Interview by Author. Person Anonymized.

Personal Interview, Yerkes, Sara. 2016. Phone Interview by Author. International Code Council (ICC).

Personal Interview, Zettersten, Garry. 2017. Phone Interview by Author. Fiatech.

Peterson, Brenton D., Sonal S. Pandya, and David Leblang. 2014. “Doctors with Borders: Occupational Licensing as an Implicit Barrier to High Skill Migration.” *Public Choice* 160 (1/2): 45–63.

Peterson, George. 1984. “Federalism and the States.” In *The Reagan Record: An Assessment of America’s Changing Domestic Priorities*, edited by John Logan Palmer and Isabel V. Sawhill. Urban Institute Study. Cambridge, MA: Ballinger PubCo.

Peterson, Paul, and John Chubb. 1989. *Can the Government Govern?* Washington, DC: Brookings.

Peterson, Paul E. 2012. *The Price of Federalism*. Washington, DC: Brookings Institution Press.

Pethokoukis, James. 2014a. “The Terrible Economic Burden of Occupational Licensing.” AEI. April 21, 2014. http://www.aei.org/publication/the-terrible-economic-burden-of-occupational-licensing/.

———. 2014b. “The 9 States That Are the Corporate Welfare Kings of America.” AEI. October 15, 2014. https://www.aei.org/publication/9-states-corporate-welfare-kings-america/.

———. 2016. “What Modern, Pro-Competition Deregulation Might Look Like.” AEI. February 18, 2016. https://www.aei.org/publication/what-modern-pro-competition-deregulation-might-look-like/.

PHC, Plumbing Hydronic Contractor News. 2012. “TOP 100 Specialty Contractors.” *PHC News* 12 (4).

Pierson, Paul. 1996. “The Path to European Integration: A Historical Institutionalist Analysis.” *Comparative Political Studies* 29 (2): 123–63. https://doi.org/10.1177/0010414096029002001.

———. 2004. *Politics in Time : History, Institutions, and Social Analysis*. Princeton, NJ: Princeton University Press.

Pierson, Paul, and Theda Skocpol. 2011. *The Transformation of American Politics: Activist Government and the Rise of Conservatism*. Princeton, NJ: Princeton University Press.

Polanyi-Levitt, Kari. 2012. “The Power of Ideas: Keynes, Hayek, and Polanyi.” *International Journal of Political Economy* 41 (4): 5–15. https://doi.org/10.2753/IJP0891-1916410401.

Polletta, Francesca, and James M. Jasper. 2001. “Collective Identity and Social Movements.” *Annual Review of Sociology* 27 (1): 283–305. https://doi.org/10.1146/annurev.soc.27.1.283.

Ponnuru, Ramesh. 2017a. “Neil Gorsuch: A Worthy Heir to Scalia.” AEI. January 31, 2017. https://www.aei.org/publication/neil-gorsuch-a-worthy-heir-to-scalia/.

———. 2017b. “Gorsuch’s Test: 3 Legal Issues That Divide Conservatives.” AEI. February 1, 2017. https://www.aei.org/publication/gorsuchs-test-3-legal-issues-that-divide-conservatives/.

Ponnuru, Ramesh, and Reiham Salam. 2015. “A Constitutionalist Agenda for the GOP.” AEI. May 7, 2015. https://www.aei.org/publication/a-constitutionalist-agenda-for-the-gop/.

Popper, Karl Raimund. 1952. *The Open Society and Its Enemies: The Spell of Plato*. New York, NY: Routledge.

Posner, Paul L. 1997. “Unfunded Mandates Reform Act: 1996 and Beyond.” *Publius* 27 (2): 53–71. https://doi.org/10.1093/oxfordjournals.pubjof.a029914.

Posner, Richard A. 1973. *Economic Analysis of Law*. Boston, MA: Little, Brown.

———. 2006. “A Review of Steven Shavell’s ‘Foundations of Economic Analysis of Law.’” *Journal of Economic Literature* 44 (2): 405–14.

Powell, Walter W., and Paul DiMaggio. 1991. *The New Institutionalism in Organizational Analysis*. Chicago, IL: Chicago : University of Chicago Press.

Prasad, Monica. 2006. *The Politics of Free Markets : The Rise of Neoliberal Economic Policies in Britain, France, Germany, and the United States*. Chicago, IL: University of Chicago Press.

———. 2012. “The Popular Origins of Neoliberalism in the Reagan Tax Cut of 1981.” *Journal of Policy History* 24 (3): 351–83.

Pratt, Leila J. 1980. “Occupational Licensing And Interstate Mobility.” *Business Economics* 15 (3): 78–80.

Pryor, William H. Jr. 2001. “The Demand for Clarity; Federalism, Statutory Construction, and the 2000 Term.” *Cumberland Law Review* 32: 361–74.

Pyle, David. 1986. “Financial Deregulation.” In *Contemporary Economic Problems, 1986,* edited by Philip Cagan. Washington, DC: AEI Press.

Qiao, Yuhua, Khi V. Thai, and Glenn Cummings. 2009. “State and Local Procurement Preferences: A Survey.” *Journal of Public Procurement* 9 (3/4): 371–410. https://doi.org/10.1108/JOPP-09-03-04-2009-B003.

Rasmussen, Nicolas. 2011. “Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA (Review).” *Bulletin of the History of Medicine* 85 (1): 162–63. https://doi.org/10.1353/bhm.2011.0004.

RCA, Retail Contractors Association. 2017. “Websites.” 2017. http://www.retailcontractors.org/.

Reagan, Ronald. 1980. “Address Accepting the Presidential Nomination at the Republican National Convention in Detroit.” The American Presidency Project. http://www.presidency.ucsb.edu/ws/?pid=25970.

———. 1981a. “Inaugural Address.” The American Presidency Project. http://www.presidency.ucsb.edu/ws/?pid=43130.

———. 1981b. “White House Report on the Program for Economic Recovery.” White House. http://www.presidency.ucsb.edu/ws/?pid=43427.

———. 1982. “Ronald Reagan: Address Before a Joint Session of the Congress Reporting on the State of the Union.” 1982. http://www.presidency.ucsb.edu/ws/index.php?pid=42687.

———. 1983. “Ronald Reagan: Address Before a Joint Session of the Congress on the State of the Union.” 1983. http://www.presidency.ucsb.edu/ws/?pid=41698.

———. 1984. “Ronald Reagan: Address Before a Joint Session of the Congress on the State of the Union.” 1984. http://www.presidency.ucsb.edu/ws/?pid=40205.

———. 1985. “Ronald Reagan: Address Before a Joint Session of the Congress on the State of the Union.” 1985. http://www.presidency.ucsb.edu/ws/index.php?pid=38069.

———. 1986. “Ronald Reagan: Address Before a Joint Session of Congress on the State of the Union.” 1986. http://www.presidency.ucsb.edu/ws/index.php?pid=36646.

———. 1987a. “Executive Order 12612 - Federalism.” National Archives. 1987. https://www.archives.gov/federal-register/codification/executive-order/12612.html.

———. 1987b. “Ronald Reagan: Address Before a Joint Session of Congress on the State of the Union.” 1987. http://www.presidency.ucsb.edu/ws/?pid=34430.

———. 1988. “Ronald Reagan: Address Before a Joint Session of Congress on the State of the Union.” 1988. http://www.presidency.ucsb.edu/ws/index.php?pid=36035.

Redbird, Beth. 2017. “The New Closed Shop? The Economic and Structural Effects of Occupational Licensure.” *American Sociological Review* 82 (3): 600–624. https://doi.org/10.1177/0003122417706463.

Regan, Aidan. 2016. “Ordoliberalism Was the Main Inspiration behind EU Competition Law.” *Dublin European Institute* (blog). 2016. http://europedebate.ie/ordoliberalism-main-inspiration-behind-eu-competition-law/.

Regan, Donald. 1988. *For the Record : From Wall Street to Washington*. San Diego, CA: Harcourt Brace Jovanovich.

Republican National Convention. 1980. “Republican Party Platforms: Republican Party Platform of 1980.” http://www.presidency.ucsb.edu/ws/?pid=25844.

———. 1984. “Republican Party Platform of 1984.” 1984. http://www.presidency.ucsb.edu/ws/index.php?pid=25845.

———. 1988. “Republican Party Platforms: Republican Party Platform of 1988.” 1988. http://www.presidency.ucsb.edu/ws/index.php?pid=25846.

———. 1992. “Republican Party Platforms: Republican Party Platform of 1992.” 1992. http://www.presidency.ucsb.edu/ws/?pid=25847.

———. 1996. “Republican Party Platforms: Republican Party Platform of 1996.” 1996. http://www.presidency.ucsb.edu/ws/?pid=25848.

———. 2000. “Republican Party Platforms: 2000 Republican Party Platform.” 2000. http://www.presidency.ucsb.edu/ws/index.php?pid=25849.

———. 2004. “Republican Party National Platform.” 2004. http://www.presidency.ucsb.edu/papers_pdf/25850.pdf.

———. 2008. “Republican Party Platforms: 2008 Republican Party Platform.” 2008. http://www.presidency.ucsb.edu/ws/index.php?pid=78545.

———. 2012. “Republican Party Platforms: 2012 Republican Party Platform.” 2012. http://www.presidency.ucsb.edu/ws/?pid=101961.

Reus-Smit, Christian. 2013. “Beyond Metatheory?” *European Journal of International Relations* 19 (3): 589–608. https://doi.org/10.1177/1354066113495479.

Revesz, Richard L. 1995. “Rehabilitating Interstate Competition: Rethinking the ‘Race to the Bottom’ Rational for Federal Environmental Regulation.” *Administrative & Regulatory Law News* 20 (2): 1–16.

Rhode, Paul W., and Koleman S. Strumpf. 2003. “Assessing the Importance of Tiebout Sorting: Local Heterogeneity from 1850 to 1990.” *American Economic Review* 93 (5): 1648–77. https://doi.org/10.1257/000282803322655482.

Ribstein, Larry E., and Erin O’Hara. 2009. *The Law Market*. Oxford, UK: Oxford University Press.

Ricci, David M. 1993. *The Transformation of American Politics: The New Washington and the Rise of Think Tanks*. New Haven, CT: Yale University Press.

Rich, Andrew. 2004. *Think Tanks, Public Policy, and the Politics of Expertise*. Cambridge, UK: Cambridge University Press.

Richardson, J. David. 1994. "US Trade Policy in the 1980s: Turn - and Roads Not Taken." In *American Economic Policy in the 1980s*, edited by Martin Feldstein. Chicago, IL: University of Chicago Press.

Rickard, Lisa. 2009. "White House Anti-Preemption Memo Is a Trial Lawyer Ticket to More Lawsuits." U.S. Chamber of Commerce. 2009. https://www.uschamber.com/press-release/white-house-anti-preemption-memo-trial-lawyer-ticket-more-lawsuits.

Rieder, Jonathan. 1990. "The Rise of the Silent Majority." In *The Rise and Fall of the New Deal Order, 1930-1980*, edited by Steve Fraser and Gary Gerstle. Princeton, NJ: Princeton University Press.

Riker, William H. 1964. *Federalism: Origin, Operation, Significance*. Boston, MA: Little, Brown.

Riley, Bryan. 2015. "Needed: A Congressional Mandate for Economic Freedom." The Heritage Foundation. 2015. www.heritage.org/trade/report/needed-congressional-mandate-economic-freedom.

Rizzo, Mario. 1980. "The Mirage of Efficiency." *Hofstra Law Review* 8 (3): 641–58.

Roback, Herbert. 1943. "Legal Barriers to Interstate Migration." *Cornell Law Review* 28 (4): 483–312.

Robert J. Mackay, James Clifford Miller, and Bruce Yandle. 1987. *Public Choice and Regulation: A View from inside the Federal Trade Commission*. Stanford, CA: Hoover Institution Press.

Roberts, Donna. 1999. "Analyzing Technical Trade Barriers in Agricultural Markets: Challenges and Priorities." *Agribusiness* 15 (3): 335–54.

Roberts, Paul Craig. 1984. *The Supply-Side Revolution : An Insider's Account of Policymaking in Washington*. Cambridge, MA: Harvard University Press.

Robertson, David Brian. 2012. *Federalism and the Making of America*. New York, NY: Routledge.

Rodrik, Dani. 2002. "Feasible Globalizations." Working Paper 9129. Cambridge, MA: National Bureau of Economic Research. http://www.nber.org/papers/w9129.

Roger E. Meiners, and Bruce Yandle. 1989. *Regulation and the Reagan Era: Politics, Bureaucracy, and the Public Interest*. Independent Studies in Political Economy. New York, NY: Holmes & Meier.

Rohac, Dalibor. 2016. “I Used to Be Euroskeptic. Here’s Why I Changed My Mind.” AEI. March 30, 2016. https://www.aei.org/publication/i-used-to-be-euroskeptic-heres-why-i-changed-my-mind/.

Rollinger, Mark D. 1996. “Interstate Banking and Branching under the Riegle-Neal Act of 1994.” *Harvard Journal on Legislation* 33: 183–270.

Romano, Roberta. 1993. *The Genius of American Corporate Law*. Washington, DC: AEI Press.

Rosato, Sebastian. 2011. *Europe United : Power Politics and the Making of the European Community*. Ithaca, NY: Cornell University Press.

Roy, Ravi K., Arthur T. Denzau, and Thomas D. Willett, eds. 2007. *Neoliberalism: National and Regional Experiments with Global Ideas*. London, UK: Routledge.

Rubinfeld, Daniel L. 2005. “Anti-Trust Encyclopedia.” 2005. https://www.law.berkeley.edu/files/antitrust_intl.encyclopedia.pdf.

Rucker, Philip. 2009. “Obama Curtails Bush Policy That Let Federal Rules Override State Laws.” *Washington Post*, May 22, 2009. http://www.washingtonpost.com/wp-dyn/content/article/2009/05/21/AR2009052104016.html.

Russello, Gerald J. 2004. “Russell Kirk and Territorial Democracy.” *Publius* 34 (4): 109–24. https://doi.org/10.1093/oxfordjournals.pubjof.a005044.

Rüstow, A. 1932. “Die StaatspolitischenVorraussetzngen Des Wirtschaftspolitischen Liberalismus.” In *Rede Und Antwort*, edited by A. Rüstow, 249–58. Ludwigsburg: Hoch.

Ryan, Paul. 2011. “The Path to Prosperity. Restoring America’s Promise.” Fiscal Year 2012 Budget Resolution. House Budget Committee.

———. 2012. “The Path to Prosperity. A Blueprint for American Renewal.” Fiscal Year 2013 Budget Resolution. House Budget Committee.

Saad-Filho, Alfredo, and Deborah Johnston, eds. 2005. *Neoliberalism: A Critical Reader*. London, UK: Pluto Press.

Saiyid, Amena. 2017. “How About One Rule for Ballast Water Instead of Many, Shippers Ask.” *Bloomberg*, March 14, 2017. https://www.bna.com/one-rule-ballast-n57982085188/.

Sally, Razeen. 1996. “Ordoliberalism and the Social Market: Classical Political Economy from Germany.” *New Political Economy* 1 (2): 233–57. https://doi.org/10.1080/13563469608406254.

Sanderson, Joseph. 2014. “Don’t Bury the Competition: The Growth of Occupational Licensing and a Toolbox for Reform.” *Yale Journal on Regulation* 31 (2): 455–91.

Sandholtz, Wayne, Neil Fligstein, and Alec Stone Sweet. 2001. *The Institutionalization of Europe*. Oxford, UK: Oxford University Press.

Sandholtz, Wayne, and Alec Stone Sweet, eds. 1998. *European Integration and Supranational Governance*. Oxford, UK: Oxford University Press.

Sandholtz, Wayne, and John Zysman. 1989. “1992: Recasting the European Bargain.” *World Politics* 42 (1): 95–128. https://doi.org/10.2307/2010572.

Santagostino, Angelo. 2017. *The Single European Market and Trade Policy*. Cambridge, UK: Cambridge Scholars Publishing.

Savitch-Lew, Abigail. 2016. “Cost and Legal Concerns Raised Amid Push for Local Hiring, Union Jobs in De Blasio Rezonings.” City Limits. 2016. https://citylimits.org/2016/12/01/cost-and-legal-concerns-raised-amid-push-for-local-hiring-union-jobs-in-de-blasio-rezonings/.

Sawyer, Erin N., William A. Kerr, and Jill E. Hobbs. 2008. “Consumer Preferences and the International Harmonization of Organic Standards.” *Food Policy*, Food Product Composition, Consumer Health, and Public Policy, 33 (6): 607–15. https://doi.org/10.1016/j.foodpol.2008.04.006.

Sbragia. 2005. “Territory, Electorates, and Markets in the US.” In *Democracy and Federalism in the European Union and the United States : Exploring Post-National Governance*, edited by Sergio Fabbrini. London, UK: Routledge.

Sbragia, Alberta, ed. 1992. *Euro-Politics: Institutions and Policymaking in the “New” European Community*. Washington, DC: Brookings Institution Press.

———. 2008. “American Federalism.” In *The Oxford Handbook of Political Institutions*, edited by Sarah A. Binder, R. A. W. Rhodes, and Bert A. Rockman. Oxford, UK: Oxford University Press.

Schakel, Arjan H., Liesbet Hooghe, and Gary Marks. 2015. “Multilevel Governance and the State.” In *The Oxford Handbook of Transformations of the State*, edited by Stephan Leibfried, Evelyne Huber, and John Stephens. Oxford, UK: Oxford University Press.

Scharpf, Fritz. 1996. “Negative and Positive Integration in the Political Economy of European Welfare States.” In *Governance in the European Union*, edited by Gary Marks. London, UK: Sage.

Schepel, Harm. 2005. *The Constitution of Private Governance: Product Standards in the Regulation of Integrating Markets*. Oxford, UK: Hart Publishing.

Schmidt, Vivien A. 2008. “Discursive Institutionalism: The Explanatory Power of Ideas and Discourse.” *Annual Review of Political Science* 11 (1): 303–26.

Schragger, Richard. 2008. “Cities, Economic Development, and the Free Trade Constitution.” *Virginia Law Review* 94 (5): 1091–1164.

Schuck, Peter H, and James Q Wilson. 2008. *Understanding America : The Anatomy of an Exceptional Nation*. New York, NY: PublicAffairs.

Schulman, Bruce J., and Julian E. Zelizer, eds. 2008. *Rightward Bound: Making America Conservative in the 1970s*. Cambridge, MA: Harvard University Press.

Scott, Hal S. 2007. “Federalism and Financial Regulation.” In *Federal Preemption: States’ Powers, National Interests*, edited by Richard Epstein and Michael Greve. Washington, DC: AEI Press.

Seawright, Jason. 2005. “Qualitative Comparative Analysis Vis-à-Vis Regression.” *Studies in Comparative International Development* 40 (1): 3–26.

Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge, UK: Cambridge University Press.

Serkin, Christopher. 2007. “Local Property Law: Adjusting the Scale of Property Protection.” *Columbia Law Review* 107: 883–948.

Shapiro, Carl. 1986. “Investment, Moral Hazard, and Occupational Licensing.” *Review of Economic Studies* 53 (5): 843–62.

Shapiro, Ilya. 2017. “Fresh Thinking on Occupational Licensing.” Cato Institute. August 3, 2017. https://www.cato.org/blog/occupational-licensing-bad.

Shapiro, Ilya, Elliott Engstrom, and Julio Colomba. 2015. “Vong v. Aune.” 2015. https://www.cato.org/publications/legal-briefs/vong-v-aune.

Shapiro, Ilya, and David McDonald. 2017. “In Support of Occupational Licensing Reform and SB-247.” Cato Institute. April 14, 2017. https://www.cato.org/publications/public-comments/support-occupational-licensing-reform-sb-247.

Shapiro, Martin. 2005. “Rights in the European Union: Convergent with the USA.” In *With US or against US? : European Trends in American Perspective*, edited by Nicolas Jabko and Craig Parsons. Oxford, UK: Oxford University Press,.

Shepard, Lawrence. 1978. “Licensing Restrictions and the Cost of Dental Care.” *Journal of Law and Economics* 21 (1): 187–201.

Sherk, James. 2014. “Creating Opportunity in the Workplace.” The Heritage Foundation. 2014. www.heritage.org/jobs-and-labor/report/creating-opportunity-the-workplace.

———. 2016. “Creating Opportunity in the Workplace.” The Heritage Foundation. 2016. www.heritage.org/jobs-and-labor/report/creating-opportunity-the-workplace.

Sil, Rudra, and Peter J. Katzenstein. 2010. *Beyond Paradigms: Analytic Eclecticism in the Study of World Politics*. New York, NY: Palgrave.

Sileoni, Serena. 2015. “The European Market is a Common Market.” Istituto Bruno Leoni. 2015. http://www.brunoleoni.it/the-european-market-is-a-common-market.

Silver-Greenberg, Jessica. 2012. “Small Banks Shift Charters to Avoid U.S. as Regulator.” *The New York Times*, April 2, 2012, sec. Business Day. https://www.nytimes.com/2012/04/03/business/small-banks-shift-charters-to-avoid-us-as-regulator.html.

Simmons, Beth. 2001. “The International Politics of Harmonization: The Case of Capital Market Regulation.” *International Organization* 55 (3): 589–620.

Simply Exit Signs. 2018. “Exit Signs by State - Comply with Your State and Local Regulation.” 2018. https://www.simplyexitsigns.com/california-exit-signs.

Singh, Dalvinder. 2015. “The Centralisation of European Financial Regulation and Supervision: Is There a Need for a Single Enforcement Handbook?” *European Business Organization Law Review* 16 (3): 439–65. https://doi.org/10.1007/s40804-015-0025-8.

Skocpol, Theda. 1992. *Protecting Soldiers and Mothers : The Political Origins of Social Policy in the United States*. Cambridge, MA: Belknap Press.

Skowronek, Stephen. 1982. *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920*. Cambridge, UK: Cambridge University Press.

Sloan, John W. 1999. *The Reagan Effect : Economics and Presidential Leadership*. Lawrence, KA: University Press of Kansas.

Smith, Andy. 2010. “Industries as Spaces for the Politics of Territory: The Case of Scotch Whisky.” *Regional & Federal Studies* 20 (3): 389–407. https://doi.org/10.1080/13597566.2010.484580.

———. 2016. *The Politics of Economic Activity*. Oxford, UK: Oxford University Press.

Smith, Eugene. 2014. “The Influence of Conservative Think Tanks: 1970s Capitalism and the Rise of Conservative Think Tanks.” New Brunswick, NJ: Rutgers University. https://doi.org/10.7282/T3BP012D.

Smith, James Allen. 1991. *The Idea Brokers: Think Tanks and the Rise of the New Policy Elite*. New York, NY: The Free Press.

Smith, Mark. 2011. "Economic Insecurity, Party Reputations, and the Republican Ascendance." In *The Transformation of American Politics: Activist Government and the Rise of Conservatism*, edited by Paul Pierson and Theda Skocpol. Princeton, NJ: Princeton University Press.

Snow, David, Steven Worden, Burke Rochford, and Robert Benford. 1986. "Frame Alignment Processes, Micromobilization, and Movement Participation." *American Sociological Review* 51 (4): 464–81. https://doi.org/10.2307/2095581.

Somin, Ilya. 2010. "Creation, Consent, and Government Power over Property Rights." Cato Unbound. December 13, 2010. https://www.cato-unbound.org/2010/12/13/ilya-somin/creation-consent-government-power-over-property-rights.

———. 2013. *Democracy and Political Ignorance: Why Smaller Government Is Smarter*. Stanford, CA: Stanford University Press.

———. 2015. *The Grasping Hand: "Kelo v. City of New London" and the Limits of Eminent Domain*. Chicago, IL: University of Chicago Press.

———. 2017. "No More Fair-Weather Federalism." Cato Institute. August 18, 2017. https://www.cato.org/publications/commentary/no-more-fair-weather-federalism.

———. 2018. "Uncapturing the Economy Requires Limiting Government." Cato Unbound. January 12, 2018. https://www.cato-unbound.org/2018/01/12/ilya-somin/uncapturing-economy-requires-limiting-government.

Soss, Joe, Richard Fording, and Sanford Schram. 2011. *Disciplining the Poor: Neoliberal Paternalism and the Persistent Power of Race*. Chicago, IL: University of Chicago Press.

Spangler, Todd. 2017. "Would New Ship Rules Put Great Lakes at Risk?" *Detroit Free Press*, May 18, 2017. https://www.freep.com/story/news/2017/05/18/ballast-water-discharge-great-lakes/329956001/.

Spruyt, Hendrik. 1994. "Institutional Selection in International Relations: State Anarchy as Order." *International Organization* 48 (4): 527–57. https://doi.org/10.2307/2706895.

Stahl, Jason M. 2016. *Right Moves: The Conservative Think Tank in American Political Culture since 1945*. Chapel Hill, NC: The University of North Carolina Press.

Stange, Christina DePasquale and Kevin. 2014. “Labor Supply Effects of Occupational Regulation: Evidence from the Nurse Licensure Compact.” 1414. Emory Economics. Department of Economics, Emory University (Atlanta). https://ideas.repec.org/p/emo/wp2003/1414.html.

Starr, Paul. 2008. *The Social Transformation of American Medicine: The Rise of a Sovereign Profession and the Making of a Vast Industry*. New York, NY: Basic Books.

Steger, Manfred, and Ravi K. Roy. 2010. *Neoliberalism: A Very Short Introduction*. Oxford, UK: Oxford University Press.

Stein, Herbert. 1994. *Presidential Economics: The Making of Economic Policy From Roosevelt to Clinton*. Washington, DC: AEI Press.

Steinmo, Sven, Kathleen Ann Thelen, and Frank Longstreth. 1992. *Structuring Politics : Historical Institutionalism in Comparative Analysis*. Cambridge, UK: Cambridge University Press.

Stewart, Richard B. 1977. “Pyramids of Sacrifice? Problems of Federalism in Mandating State Implementation of National Environmental Policy.” *The Yale Law Journal* 86 (6): 1196–1272. https://doi.org/10.2307/795705.

Stigler, George J. 1971. “The Theory of Economic Regulation.” *The Bell Journal of Economics and Management Science* 2 (1): 3–21. https://doi.org/10.2307/3003160.

Stockman, David. 1981. “How to Avoid an Economic Dunkirk.” *Challenge* 24 (1): 17–21.

———. 1986. *The Triumph of Politics : How the Reagan Revolution Failed*. New York, NY: Harper & Row.

Stráský, Jan. 2016. “Priorities for Completing the European Union’s Single Market.” OECD Economics Department Working Papers 1315. https://papers.ssrn.com/abstract=3033741.

Streeck, Wolfgang, and Kathleen Ann Thelen. 2005. *Beyond Continuity : Institutional Change in Advanced Political Economies*. Oxford, UK: Oxford University Press.

Strunk, Norman, Frederick E. Case, and United States League of Savings Associations. 1988. *Where Deregulation Went Wrong: A Look at the Causes behind Savings and Loan Failures in the 1980s*. Washington, DC: United States League of Savings Institutions.

Svorny, Shirley. 2017. “Liberating Telemedicine: Options to Eliminate the State-Licensing Roadblock.” 826. CATO Institute Policy Analysis. https://www.cato.org/publications/policy-analysis/liberating-telemedicine-options-eliminate-state-licensing-roadblock.

Swarts, Jonathan. 2013. *Constructing Neoliberalism : Economic Transformation in Anglo-American Democracies*. Toronto, CA: University of Toronto Press.

Swope, Christopher. 2006. “The Code War.” January 2006. http://www.governing.com/topics/transportation-infrastructure/Code-War.html.

Tannenwald, Nina. 2005. “Ideas and Explanation: Advancing the Theoretical Agenda.” *Journal of Cold War Studies* 7 (2): 13–42.

Teles, Steven Michael. 2008. *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*. Princeton, NJ: Princeton University Press.

Tenn, Steven. 2001. “Three Essays on the Relationship between Migration and Occupational Licensing.” University of Chicago. Department of Economics.

Teske, Paul. 2004. *Regulation in the States*. Washington, DC: Brookings Institution Press.

———. 2005. “Checks, Balances, and Thresholds: State Regulatory Re-Enforcement and Federal Preemption.” *PS: Political Science and Politics* 38 (3): 367–370.

Teske, Paul, and Andrey Kuljiev. 2000. “Federalism, Preemption, and Implementation of the 1996 Telecommunications Act.” *Publius* 30 (1): 53–67. https://doi.org/10.2307/3331121.

Test.com. 2018. “State Plumbing Codes, Study Plumbing Codes for Plumbing License Exam.” Tests.Com. 2018. https://www.tests.com/State-Plumbing-Codes-License.

Texas. 2017. “State Senate, Intergovernmental Relations Committee Hearing.” http://www.legis.state.tx.us/tlodocs/85R/witlistmtg/html/C5202017041909001.HTM.

The New York Times. 1986. “Big-Truck Accidents Spur Safety Experts’ Debate,” April 8, 1986. http://www.nytimes.com/1986/04/08/us/big-truck-accidents-spur-safety-experts-debate.html.

Thierer, Adam. 1997. “Why Congress Must Save the Internet From State and Local Taxation.” The Heritage Foundation. 1997. www.heritage.org/taxes/report/why-congress-must-save-the-internet-state-and-local-taxation.

———. 1999. “Federalism Reform: Seven Options for Congress.” The Heritage Foundation. 1999. www.heritage.org/report/federalism-reform-seven-options-congress.

Thistle, Scott. 2017. “Bill Would Require State to Give Preference to Maine Companies in Government Contracts.” *Press Herald* (blog). March 27, 2017. https://www.pressherald.com/2017/03/27/bill-requiring-state-give-preference-to-maine-companies-up-for-review/.

Thompson, Fred. 1998. “Big-Government Power Grab.” *The Washington Post*, August 7, 1998, sec. OP-ED.

Thomson, Fred. 2007. “For the Defense.” AEI. April 23, 2007. https://www.aei.org/publication/for-the-defense/.

Thorne, Melvin J. 1990. *American Conservative Thought Since World War II: The Core Ideas*. New York, NY: Praeger.

Tiebout, Charles M. 1956. “A Pure Theory of Local Expenditures.” *Journal of Political Economy* 64 (5): 416–24.

Tilly, Charles. 1990. *Coercion, Capital, and European States, AD 990-1990*. Studies in Social Discontinuity. Cambridge, MA: B. Blackwell.

Tkachuk, David, and Joseph Day. 2016. “Tear Down These Walls, Dismantling Canada’s Internal Trade Barriers.” Report of the Standing Senate Committee on Banking, Trade, and Commerce. Government of Canada. https://sencanada.ca/content/sen/committee/421/BANC/reports/2016-06-13_BANC_FifthReport_SS-2_tradebarriers(FINAL)_E.pdf.

Tomer, Adie, and Joseph Kane. 2016. “Mapping Fright.” Brookings. https://www.brookings.edu/wp-content/uploads/2016/06/Srvy_GCIFreightNetworks_Oct24.pdf.

Toplin, Robert Brent. 2006. *Radical Conservatism: The Right’s Political Religion*. Lawrence, KA: University Press of Kansas.

Trionfetti, Federico. 2000. “Discriminatory Public Procurement and International Trade.” *The World Economy* 23 (1): 57–76.

Tullock, Gordon. 1969. “Federalism: Problems of Scale.” *Public Choice* 6: 19–29.

Tupy, Marian. 2016. “The European Union: A Critical Assessment.” Cato Institute. June 22, 2016. https://www.cato.org/publications/economic-development-bulletin/european-union-critical-assessment.

Turner, Grace-Marie. 2007. “Toward Free-Market Health Care.” The Heritage Foundation. 2007. www.heritage.org/health-care-reform/report/toward-free-market-health-care.

Turner, Julia, and Dahlia Lithwick. 2010. “The Big Red Word vs. the Little Green Man.” *Slate*, March 8, 2010. http://www.slate.com/articles/life/signs/2010/03/the_big_red_word_vs_the_little_green_man.html.

Tushnet, Mark. 1997. “Law, Science, and Law and Economics.” *Harvard Journal of Law & Public Policy* 21 (1): 47–52.

———. 2009. “What Consequences Do Ideas Have?” *Texas Law Review* 87 (March): 447–62.

U.S. Census Bureau. 2016a. “Building Permits Survey.” 2016. https://www.census.gov/construction/bps/.

———. 2016b. “State-to-State Migration.” https://www.census.gov/topics/population/migration/guidance/state-to-state-migration-flows.html.

———. 2018. “US Census Bureau Construction Spending Survey.” 2018. https://www.census.gov/construction/c30/c30index.html.

U.S. Chamber of Commerce. 2008. “U.S. Chamber Praises EBRI Paper on ERISA Preemption.” U.S. Chamber of Commerce. 2008. https://www.uschamber.com/press-release/us-chamber-praises-ebri-paper-erisa-preemption.

———. 2017. “US Chamber Pens Letter to House in Support of Self Driving Car Legislation on Floor Today.” U.S. Chamber of Commerce. 2017. https://www.uschamber.com/letter/us-chamber-pens-letter-house-support-self-driving-car-legislation-floor-today.

———. 2018. “Standards.” U.S. Chamber of Commerce. 2018. https://www.uschamber.com/standards.

U.S. Congress. 1987. *International Competition in Services: Banking Building Software Know-How*. Washington, DC: U.S. Government Printing Office.

Vagstad, Steinar. 1995. “Promoting Fair Competition in Public Procurement.” *Journal of Public Economics* 58 (2): 283–307. https://doi.org/10.1016/0047-2727(94)01472-Z.

Valentine, Debra. 1988. “Industry Self-Regulation and Antitrust Enforcement: An Evolving Relationship.” FTC General Councal Public Remarks. Washington, DC: FTC. https://www.ftc.gov/public-statements/1998/05/industry-self-regulation-and-antitrust-enforcement-evolving-relationship.

VanNatta, Fred. 2013. “Local Building Department Newsletter.” June 13, 2013. https://digital.osl.state.or.us/islandora/object/osl:13759/datastream/OBJ/view.

Verdant Labs. 2018. “Democratic vs. Republican Occupations.” 2018. http://verdantlabs.com/politics_of_professions/index.html.

Viard, Alan. 2007. “Free the Munis!” AEI. May 29, 2007. https://www.aei.org/publication/free-the-munis/.

———. 2012. “Use Tax Collection on Interstate Sales: The Need for Federal Legislation.” AEI. November 26, 2012. https://www.aei.org/publication/use-tax-collection-on-interstate-sales-the-need-for-federal-legislation/.

Viscusi, Kip. 1994. “The Misspecified Aganda: The 1980s Reforms of Health, Safety, and Environmental Regulation.” In *American Economic Policy in the 1980s*, edited by Martin Feldstein. Chicago, IL: University of Chicago Press.

Vock, Daniel. 2016. “How Obama Changed the Relationship Between Washington, the States and the Cities.” *Governing the States and Localities*, June 2016. http://www.governing.com/topics/politics/gov-obama-federalism.html.

Vogel, David. 1978. “Why Businessmen Distrust Their State: The Political Consciousness of American Corporate Executives.” *British Journal of Political Science* 8 (1): 45–78. https://doi.org/10.1017/S0007123400001216.

———. 1995. *Trading up: Consumer and Environmental Regulation in a Global Economy*. Cambridge, MA: Harvard University Press.

Vogel, Steven Kent. 1996. *Freer Markets, More Rules : Regulatory Reform in Advanced Industrial Countries*. Cornell Studies in Political Economy. Ithaca, NY: Cornell University Press.

Walker, David Bradstreet. 1995. *The Rebirth of Federalism : Slouching toward Washington*. Chatham, NJ: Chatham House Publishers.

Wallis, John Joseph. 2000. “American Government Finance in the Long Run: 1790 to 1990.” *The Journal of Economic Perspectives* 14 (1): 61–82.

Wallison, Peter. 2005. “Why Do We Regulate Banks?” AEI. August 1, 2005. http://www.aei.org/publication/why-do-we-regulate-banks/.

———. 2015. “A Regulatory Death Spiral for Banks.” AEI. December 15, 2015. http://www.aei.org/publication/a-regulatory-death-spiral-for-banks/.

———. 2016a. “Decentralization, Deference, and the Administrative State - AEI.” 2016. https://www.aei.org/publication/decentralization-deference-and-the-administrative-state/.

———. 2016b. “Britain Will Be the Big Winner from Brexit.” AEI. September 19, 2016. https://www.aei.org/publication/britain-will-have-been-the-big-winner/.

Walsh, Cliff. 2012. “Australia.” In *Internal Markets and Multi-Level Governance : The Experience of the European Union, Australia, Canada, Switzerland, and the United States,* edited by George Anderson. Don Mills, CA: Oxford University Press.

Walton, Thomas, and James Langenfeld. 1989. “Regulatory Reform.” In *Regulation and the Reagan Era: Politics, Bureaucracy, and the Public Interest*, edited by Roger E. Meiners and Bruce Yandle. Independent Studies in Political Economy. New York, NY: Holmes & Meier.

Wanniski, Jude. 1974. “‘It’s Time to Cut Taxes.’” *Wall Street Journal*, December 11, 1974. http://www.polyconomics.com/ssu/ssu-970613.htm.

———. 1975. “The Mundell-Laffer Hypothesis.” *Public Interest*, Spring 1975. http://studyres.com/doc/17285625/the-mundell-laffer-hypothesis---a-new-view-of-the.

———. 1978a. “Taxes, Revenues, and the Laffer Curve.” *The Public Interest* 50 (Winter): 3–16.

———. 1978b. *The Way the World Works : How Economies Fail and Succeed*. New York, NY: Basic Books.

Weber, Max. 1976. *The Protestant Ethic and the Spirit of Capitalism*. Upper Saddle River, NJ: Prentice-Hall.

Weidenbaum, Murray. 1988. *Rendezvous With Reality: The American Economy After Reagan*. New York, NY: Basic Books.

Weiler, Conrad. 2012. “Addressing Internal Market Barriers and Integration: The United States of America.” In *Internal Markets and Multi-Level Governance : The Experience of the European Union, Australia, Canada, Switzerland, and the United States,* edited by George Anderson. Don Mills, CA: Oxford University Press.

Weiler, Joseph. 1993. “Journey to an Unknown Destination: A Retrospective and Prospective of the European Court of Justice in the Arena of Political Integration.” *JCMS: Journal of Common Market Studies* 31 (4): 417–46. https://doi.org/10.1111/j.1468-5965.1993.tb00475.x.

———. 2012. “In the Face of Crisis: Input Legitimacy, Output Legitimacy and the Political Messianism of European Integration.” *Journal of European Integration* 34 (7): 825–41. https://doi.org/10.1080/07036337.2012.726017.

Weingast, Barry. 1995. “The Economic Role of Political Institutions - Market-Preserving Federalism and Econoic Development.” *Journal of Law, Economics & Organization* 11 (1): 1–31.

Weiss, Linda, and Elizabeth Thurbon. 2006. “The Business of Buying American: Public Procurement as Trade Strategy in the USA.” *Review of International Political Economy* 13 (5): 701–24. https://doi.org/10.1080/09692290600950597.

Weissert, Carol S. 2011. “Beyond Marble Cakes and Picket Fences: What U.S. Federalism Scholars Can Learn from Comparative Work.” *The Journal of Politics* 73 (4): 965–79. https://doi.org/10.1017/s0022381611000855.

Weisskopf, Michael, and David Maraniss. 1995. “Forging an Alliance for Deregulation.” *Washington Post*, March 12, 1995.

Weissmann, Jordan. 2012. “Think We’re the Most Entrepreneurial Country In the World? Not So Fast.” *The Atlantic*, October 2, 2012. https://www.theatlantic.com/business/archive/2012/10/think-were-the-most-entrepreneurial-country-in-the-world-not-so-fast/263102/.

Wendt, Alexander E. 1987. “The Agent-Structure Problem in International Relations Theory.” *International Organization* 41 (3): 335–70.

Weyrich, Paul. 1984. “What Conservatives Think of Reagan: A Symposium.” 19. Heritage Policy Review.

Whalen, Gary. 2010. “Why Do De Novo Banks Choose a National Charter?” 2. OCC Econoimcs Working Paper. Washington, DC: Office of the Comptroller of the Currency. https://www.occ.treas.gov/publications/publications-by-type/occ-working-papers/2012-2009/wp2010-2.pdf.

White House. 2013. “The Fast Track to Civilian Employment: Streamlining, Credentialing, and Licensing for Service Members, Veterans, and Their Spouses.” http://www.credentialingexcellence.org/d/do/771.

———. 2015. “Occupational Licensing: A Framework for Policymakers.” https://www.leg.state.nv.us/Session/79th2017/Exhibits/Senate/CLE/SCLE633H.pdf.

Whitehouse, Elizabeth. 2017. “Washington State’s Innovative Alternative to Occupational Licensing.” 2017. http://www.csg.org/pubs/capitolideas/enews/cs101_1.aspx.

Wible, Robert C. 2006. *Architectural Security Codes and Guidelines: Best Practices for Today’s Construction Challenges*. New York, NY: McGraw-Hill.

———. 2012. “Overview of the Need for Regulatory Streamlining and Fiatech’s Role.” January 6. http://www.natlpartnerstreamline.org/documents/FIATECH-Template-RSC-GENERIC-Overview-122711.pptx.

Wight, Colin. 2006. *Agents, Structures and International Relations: Politics as Ontology*. Cambridge, UK: Cambridge University Press.

Wilkinson, Harvey. 2001. “Is There a Distinctive Conservative Jurisprudence?” AEI. March 5, 2001. https://www.aei.org/publication/is-there-a-distinctive-conservative-jurisprudence/.

Will, George. 1995. “The Cultural Contradictions of Conservatism.” AEI. December 6, 1995. https://www.aei.org/publication/the-cultural-contradictions-of-conservatism/.

Williamson, Richard S. 1986. “A New Federalism: Proposals and Achievements of President Reagan’s First Three Years.” *Publius* 16 (1): 11–28. https://doi.org/10.2307/3330174.

Wills, Garry. 2002. *A Necessary Evil: A History of American Distrust of Government*. New York, NY: Simon & Schuster.

Wilson, James. 1980. *The Politics of Regulation*. New York, NY: Basic Books.

———. 1991. *Bureaucracy: What Government Agencies Do and Why They Do It*. New York, NY: Basic Books.

Winneset, Matt. 2017. “To Boost Job Growth, Target These Regulations.” AEI. October 19, 2017. https://www.aei.org/publication/will-to-boost-job-growth-target-these-regulations/.

Wolf, Holger C. 2000. “Intranational Home Bias in Trade.” *Review of Economics and Statistics* 82 (4): 555–63. https://doi.org/10.1162/003465300559046.

Woll, Cornelia. 2005. “Learning to Act on World Trade. Preference Formation of Large Firms in the United States and the European Union.” https://hal-sciencespo.archives-ouvertes.fr/hal-01065571/document.

———. 2008. *Firm Interests : How Governments Shape Business Lobbying on Global Trade*. Ithaca, NY: Cornell University Press.

Wood, B. Dan. 1994. *Bureaucratic Dynamics: The Role Of Bureaucracy In A Democracy*. Boulder, CO: Routledge.

Woods, Neal D. 2006. “Interstate Competition and Environmental Regulation: A Test of the Race-to-the-Bottom Thesis.” *Social Science Quarterly* 87 (1): 174–89. https://doi.org/10.1111/j.0038-4941.2006.00375.x.

Wozniak, Raven Molloy, Christopher L. Smith, Riccardo Trezzi, and Abigail. 2016. “Understanding Declining Fluidity in the U.S. Labor Market.” https://www.brookings.edu/bpea-articles/understanding-declining-fluidity-in-the-u-s-labor-market/.

WTO, World Trade Organization. 2012. “Regional Trade Agreements.” 2012. http://wto.org/english/tratop_e/region_e/regfac_e.htm.

———. 2017. “Technical Barriers to Trade - Technical Information.” 2017. https://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm.

Yandle, Bruce. 1986. “Regulatory Activities.” In *Contemporary Economic Problems, 1986*, edited by Philip Cagan. Washington, DC: AEI Press.

Yanow, Dvora. 2006. “Thinking Interpretively: Philosophical Presuppositions and the Human Sciences.” In *Interpretation and Method: Empirical Research Methods and the Interpretive Turn*, edited by Dvora Yanow and Peregrine Schwartz-Shea, 5–26. Armonk, NY: M.E. Sharpe.

Yanow, Dvora, and Peregrine Schwartz-Shea. 2006. *Interpretation and Method: Empirical Research Methods and the Interpretive Turn*. Armonk, NY: M.E. Sharpe.

Yee, Albert S. 1996. “The Causal Effects of Ideas on Policies.” *International Organization* 50 (1): 69–108.

Yellen, Janet L. 1989. “Symposium on the Budget Deficit.” *The Journal of Economic Perspectives* 3 (2): 17–21.

Young, Brigitte. 2013. “Ordoliberalismus – Neoliberalismus – Laissez-Faire-Liberalismus.” In *Theorien Der Internationalen Politischen Ökonomie*, edited by J. Wullberger and M. Behrens. Wiesbaden, DE: Springer VS.

Your Europe. 2017. “Admission and Entry to University.” Your Europe - Citizens. 2017. http://europa.eu/youreurope/citizens/education/university/admission-entry-conditions/index_en.htm.

Zhong, Ke, Yong Cao, and Yixi Ning. 2008. “The Deregulatory Effects of the Telecommunications Act of 1996 on the Broadcasting Industry: Expectations vs. Reality.” *Journal of Accounting and Public Policy* 27 (3): 238–61. https://doi.org/10.1016/j.jaccpubpol.2008.02.003.

Zhou, Xueguang. 1993. “Occupational Power, State Capacities, and the Diffusion of Licensing in the American States: 1890 to 1950.” *American Sociological Review* 58 (4): 536–52. https://doi.org/10.2307/2096075.

Zhu, Alissa. 2018. “Springfield Company Irked after Losing City Contract to Texas Firm, Asks Council to Shop Local.” Springfield News-Leader. 2018. https://www.news-leader.com/story/news/local/ozarks/2018/02/11/springfield-company-irked-after-losing-city-contract-texas-firm-asks-council-shop-local/313497002/.

Ziblatt, Daniel. 2006. *Structuring the State: The Formation of Italy and Germany and the Puzzle of Federalism*. Princeton, NJ: Princeton University Press.

Zimmerman, Joseph. 1991. “Federal Preemption under Reagan’s New Federalism.” *Publius* 21 (1): 7–28. https://doi.org/10.2307/3330530.

———. 2002. *Interstate Cooperation: Compacts and Administrative Agreements*. Westport, CT: Greenwood Publishing Group.

———. 2003. “How Perfect Is the U.S. Economic Union? Interstate Trade Barriers.” In . Philadelphia, PA.

———. 2005. *Congressional Preemption: Regulatory Federalism*. Albany, NY: State University of New York Press.

———. 2007. “Congressional Preemption during the George W. Bush Administration.” *Publius* 37 (3): 432–52.

———. 2008. *Contemporary American Federalism: The Growth of National Power*. Albany, NY: State University of New York Press.

Zind, Tom. 2006. “License Overload.” Electrical Construction & Maintenance (EC&M) Magazine. June 1, 2006. http://www.ecmweb.com/content/license-overload.

Zuluaga, Diego. 2016. “Hayek Would Have Voted to Remain.” Institute of Economic Affairs. 2016. https://iea.org.uk/blog/hayek-would-have-voted-to-remain/.