HAYEK, POLANYI, AND SINGLE MARKETS (OR HOW EUROPE'S SINGLE MARKET SURPASSED AMERICA'S)

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DRAFT – PLEASE DO NOT CITE.

Prepared for presentation at conference of the European Union Studies Association, Miami, FL, May 4-7, 2017.

A common refrain in European politics equates fears of savage market competition with "Americanization." This language connects to widespread views that the United States is the world's leading manifestation of classical-liberal-style market principles—a familiar image that extends back to the origins of the American polity. As Harvard sociologist Frank Dobbin summarizes American economic history, "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). More recently, in the late 1970s and 1980s, we know from both academics and common wisdom that Ronald Reagan's America led the "neoliberal" recommitment to such principles. Today most Republicans in the US employ neoliberal rhetoric that elevates markets and belittles governments to a degree rarely heard elsewhere. Of course Europe's "Single Market" program has taken strides in neoliberal directions, but experts note that it has retained "many kinds of firewalls against all-out competition *à l'americaine*" (Nicolaïdis 2007, 687). Europe remains far less internally fluid than the US market, as its would-be liberalizers often remark. In the words of EU Commission Vivian Reding (which Michelle Egan uses to open her recent book on US and EU single markets): "We could learn a lot from America about how to utilize and develop a single market" (Egan 2015, 1).[1]

For scholars studying Europe today, this common-wisdom comparison to the United States is quite important. Discussions of the European Union constantly take this American image as a foil to highlight what the EU is like, frequently describing it as lacking both American fervor for markets and the centralized authority to pry open the veiled (or not-so-veiled) protectionism of lower-level jurisdictions. The United States provides a model of a real, complete single market and the polity to match. As Sergio Fabbrini put it a decade ago, "The United States past and present might still help Europeans to better envision their future" (Fabbrini 2004, 165). Given that Europe lacks the kind of institutional authority held by the US federal government—still looking mostly like an "intergovernmental confederation of states," in one recent and representative characterization (Schakel, Hooghe and Marks 2015, 2)—Europe's would-be neoliberals have not gotten as far as their American peers.

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[1]Egan got the original Reding quote from Kevin O'Brien, "Europe Explores Passage of Consumer Rights Bill," *New York Times*, 8 July 2011.

[2]They borrow the metaphor from Liebfried et al 2009.

This paper challenges this common wisdom in ways that up-end our images of both the EU and the US. We build on some hints that even a casual observer could see that seem not to fit with our traditional sense of the EU chasing an American federal-single-market model. Consider: US universities routinely triple the fees charged to "out-of-state" (and foreign) students; European universities must treat all EU citizens as part of the same market for higher education.[3] US states and cities can legally favor local providers in public procurement as much as they want; all public European entities must tender all but the smallest contracts EU-wide. US service providers, from lawyers to hairdressers, generally hold state-based qualifications and cannot legally offer their services in other states *at all*, even for one day; most EU service providers can operate quite freely across borders unless a member-state enters an elaborate process to justify why they constitute a threat. Expanding on these observations, this paper argues that the predominant views about markets and federal power in the US and the EU are misleading to a very significant degree. With respect to market regulation it is plausible to argue that the EU today has both more centralized authority and more liberalized core rules that the US. The trend of single-market building, moreover, is clearly still upward in the EU and flat in the US.

The first part of the paper, which is built on the research of Leif Hoffmann, advances this descriptive recharacterization with a focus on the two huge areas of public procurement and services. The second part, building on work by Craig Parsons and ongoing research by Benedikt Springer, attempts to explain what we have described. Our redescription poses major challenges to practically all theoretical accounts of political and economic development on either side of the Atlantic. Whether we look at materialist arguments that explain federal market authority as a reaction to incentives from potential gains from free-flowing exchange, institutionalist accounts that track path-dependent expansions on initial delegations of central authority, or ideational accounts that emphasize the ideological resonance of market ideas and discourse, the United States should have far more of a single market than Europe. To explain why it does not in major respects, we offer an argument that centers on the intersection of ideas about markets with ideas about federal authority.

Focusing on the neoliberal era since the 1970s, we suggest that particular conceptions of institutional authority in the US and the EU channeled neoliberalism in very different directions. In the United States, where the ostensibly-market-friendly Right was almost uniformly opposed

[3]With a partial exception for Scotland.

to federal action in the economy, neoliberalism took the form of a project to limit federal authority. It became a fiscal project to cut government spending, flanked with erratic attention to issue-specific deregulation that was similarly conceived as wiping away federal intrusions. The notion of state- or city-based protectionism never came up, and at no point was there any hint whatsoever of aspiring to establish general market principles. We call this a "Hayekian fusion" of ideas about institutional authority and markets, since Hayek and the Chicago School rationalized this agenda with political-economic theorizing in which moves to limit central-government authority naturally produce flourishing markets.

In Europe, where federal fiscal power was non-existent but a diverse "Europeanist" group of elites hoped that federalizing steps could help them pursue a variety of agendas that faced constraints in national politics, neoliberalism took the form of a project to increase federal authority. A systematic market-building effort elaborated general EU rules as the default framework for most of the economy, progressively barring subfederal government from a vast array of discretionary and discriminatory policies. We call this a "Polanyian fusion" of ideas about institutional authority and markets, since Polanyi's political-economic theorizing looms behind arguments that strong central-government authority is necessary to establish market dynamics.

One introductory qualification is important. We do not mean for this paper to sound like a clarion call to further pursue single markets in either polity. Rather than seeking normative goals, we seek analytically to understand the forms neoliberalism has taken and the extent to which meaningful single-market rules and authority have been constructed. Our attention to the absence of single-market thinking and "progress" in the United States should be read not as a complaint but as a puzzle: why have single-market rules in Europe surpassed those in America?

Recharacterizing Single Markets

It is important to underscore that the objects of our study are political-legal outcomes of market rules, not economic behavior on the ground. In behavioral terms US markets are far more integrated across state boundaries than EU markets. Exchange and people flow across states with much higher fluidity.[4] Yet there are many non-governmental reasons why integration on the

[4] We need to find updated studies to this effect.

ground should be higher in the US than in Europe, so such flows do not obviously reflect more market-friendly governing rules. Americans have a shared language, a more consciously shared history and culture, and traditions of nationally-framed mobility. It is not only common but expected that successful young Americans will move around the country. Less well known, but unsurprising on reflection, is that US states have more specialized economies than European countries (Krugman 1991, 58-76). Over time, US states have constructed more of a division of labor, while most European states have maintained relatively broad economies. For all these reasons, measures of cross-border flows are not directly relevant to our question, which concerns how much American and European single market regulations are centralized and liberal.[5]

We are interested in the degree to which formal institutional rules in these polities encourage non-discriminatory cross-border flows, as opposed to permitting or even endorsing regulatory differences and discriminatory treatment of market actors from other subfederal units. Our goal in this section is to show that at this level, important US rules are less centralized and liberal than EU ones, arguably to the point that the overall pattern puts Europe in front of the US in constructing a cross-jurisdictional market in political terms. We now give brief summaries of EU and US economic rules with respect to public procurement (which is 15-20% of modern economies) and services (60-80%). In both areas the EU has unambiguously centralized and liberalized core rules and the US has unambiguously decentralized rules that are explicitly illiberal in practice. In each case the EU has moved systematically to liberalize rules in the past several decades and there is no sign of any mobilization or discussion in the US. Yet so few people have concrete knowledge of both polities that their relationship continues to be profoundly mischaracterized. As these liberalizing changes have taken place in Europe, both their leaders and opponents have frequently thought that they were fighting over "Americanization."

Public procurement in the EU

Consider first the origins and current state of EU regulation of public procurement. Despite rather inauspicious beginnings, liberal principles were established quite early. Procurement went

[5]If the regulations did not matter *at all* for cross-border flows, that would be a problem for our study: our dependent variable wouldn't matter. As far as we know no one makes the argument that the regulations we track are irrelevant.

unmentioned in the EEC treaty, and legal interpreters generally agreed that the principle of non-discrimination by nationality announced in Article 12 was not intended to apply to public procurement (Fernández Martín 1996, 5). Already in 1964, however, the European Commission proposed this extension. In slow discussions marked by low political attention and little conflict, the EEC passed three directives in the 1970s that prohibited national discrimination in public procurement (Fernández Martín 1996, 33). Above certain thresholds, and with exceptions for military purchasing and utilities, public tenders had to be published in the EEC's official journal and awarded according to explicit selection criteria.[6]

It would take another two decades for these principles to have significant effect on procurement practices. As of the early 1980s governments did not have to justify their selections and there was basically no enforcement. The deeper shift, then, came when the Commission made procurement a central focus of the 1984 "White Paper on the Completion of the Single Market" that led to the Single European Act (SEA). Building on Commission studies that found that only 1% of contracts in 1982 were awarded across borders, the White Paper called procurement "one of the most evident barriers to the achievement of a real internal market" ((COM) 85 310 fin, 1985, p. 23). The celebrated Cecchini Report on the "cost of non-Europe" devoted an entire chapter to procurement and estimated the costs of national discrimination in billions of ECU.[7] Around the same time the Commission's Internal Market directorate created an office specifically on procurement and began a campaign of over 300 seminars and conferences targeted at contracting authorities and firms (Fernández Martín 1996, 24–25). In the SEA, though no new procurement-specific language was added, the new Article 100a extended qualify majority voting to this domain. Two new directives (respectively on "public supplies" and "public works") passed quickly in the late 1980s. Though utilities remained subject to special rules, other contracting authorities were now subject to pre- and post-selection obligations that the Commission could verify. Authorities had to publish advance notices of how much total procurement they planned to award each year, publish all selection results in the Official Journal, prepare detailed reports on applications and justifications of winners and losers, and justify rejections directly to losing firms. Another round of Commission proposals and directives from

[6] An important note that still applies today is that authorities can still be sued if they discriminate on contracts below the thresholds. Small contracts are absolved of most process requirements but not of the principle of non-discrimination.

[7] WS Atkins Management Consultants, "Research on the Cost of Non-Europe: Basic Findings on the Cost of Non-Europe in Public-Sector Procurement," Vol. 5, Part A: European Communities, 1988.

the mid-1990s to mid-2000s further consolidated these rules and added a "standstill period" after awards. It gives non-selected competitors time to contest initial decisions, putting more pressure on authorities to respect all the process requirements.

Is the result on the ground that public procurement has been transformed? Not really. As of 2004 roughly 30% of proposals crossed borders, but only 3% of contracts were awarded "out of state."[8] A majority of public contracts fall below the thresholds, and several exceptions qualify the basic openness of the system. For our purposes, though, the key point is that the core rule of public procurement in the EU is clearly a liberal one of open competition that is legislated and overseen by EU-level authorities. And when one of us interviewed European officials involved in the elaboration of the procurement regime over time, they also often insisted that the EU regime must be roughly similar to American rules. When presented with the claim that this is not the case, Sir Andrew Cahn, a former member of Lord Cockfield's cabinet that originated the procurement push in the 1980s (and more recently Chief Executive of UK Trade & Investment, an exports-promotion agency), insisted:

> … I am sure there are some distortions [in the US], just as there are lots of distortions in Europe as well. But what I am saying as a generality in America if you are in California you cannot require that your motor vehicles bought by public authorities have to have been manufactured in California. As a generality I don't believe you for a moment that you are right. I don't believe that in the state of Delaware you can only buy, you know, the state authorities, city authorities could only buy stuff produced in the state of Delaware. I just don't believe it.

But Sir Andrew was mostly wrong, as the next section will show. When his remarks were reported to Vernon Jones, another interviewee who was Chief Procurement Officer for the state of Alaska (and past president of the National Association of State Procurement Officials, NASPO), Mr. Jones replied, "We could send that guy our procurement statutes and he would be a believer, I guess."

Public procurement in the US

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[8]Commission 2004, cited in Hoffmann p. 139. Need more up to date info.

As Mr. Jones' comment suggests, the American procurement story is simpler. The main development in recent history is that the US Supreme Court confirmed the legitimacy of discriminatory practices long in place. Since the origins of the US its states, counties, and cities often explicitly steered contracts to local firms. As more of a single US market developed, Americans never portrayed such practices as discriminatory impediments to interstate commerce as did the EU. Instead they paid them no direct attention for a century or so, and then clarified in the 1970s that they were a legitimate exception to the single market. Since then the number of discriminatory laws in public procurement has increased.

A long stream of American jurisprudence from the early 19th century distinguished between state laws or actions that directly impair interstate commerce in discriminatory ways or only in "incidental" ways. The former could be struck down even if Congressional statutes had not specifically addressed them, since they conflicted with the "dormant commerce clause" of the Constitution; the latter could only be struck down if Congress had explicitly legislated that they were an impediment to interstate commerce (Bogen 2006). Though the Supreme Court invoked the interstate commerce clause (Section 1, Art. 8) more and more powerfully invoked in the late 19th and early 20th century, culminating in rulings in the late 1930s and early 1940s that many saw as removing practically all limits on its applications, its relationship to public contracts did not come up explicitly until the 1976 decision *Hughes v. Alexandria Scrap Corp*. The Court found that the State of Maryland could legitimately run a car-recycling program in which in-state processers received higher payments than out-of-state processers. The logic became known the "market participant exemption" from the commerce clause, and was reaffirmed in a string of other cases. It holds that states (and lower-level authorities) only violate the clause when acting as discriminatory *regulators* (Manheim 1990; Julander 2003; Bogen 2006). When acting as *participants*—buying goods or services—states are free to favor their own citizens, much as a private actor can buy all goods and services in Oregon if they choose. The majority found that "[n]othing in the purposes animating the Commerce Clause prohibits a State, in the absence of congressional action, from participating in the market and exercising the right to favor its own citizens over others."[9]

What rules do US states actually apply in public procurement today? Our survey in 2009

[9] Cite Powell's decision, Hoffmann p. 89.

found 47 states with at least one statute on the books giving preferential treatment to in-state products or companies —the same number identified in a survey in 1940 (Melder 1940, 58).[10] Well beyond tie-bid preferences, many laws give preferences of up to 15% on cost to in-state bidders. Some are blanket preferences across all purchases, like Wyoming's statute W.S. 16-6-105, which requires all purchases by state agencies to grant an in-state preference of up to 5%. Some states even have outright bans on out-of-state suppliers for certain goods or services: Georgian authorities must buy Georgian mulch and compost, Pennsylvanian authorities must heat public buildings with Pennsylvanian coal, and Oregon authorities must do their printing in Oregon (Oregon State Procurement Office 2009; North Carolina Department of Administration 2006; Zimmerman 2003, 6).

Far from being vestiges of another era, many such statutes passed recently. No database tracks their numbers over time, and they are so numerous and varied that they are difficult for us to count, but a 2009 survey by the National Association of State Procurement Officials (NASPO) expressed concern that "[t]he use and breath of preference policies seem to be increasing." One example we tracked is an Oregon bill in 2010 (HB2763) that created a 10% cost preference to in-state providers of agricultural goods. The story behind the bill suggests how broadly in-state preferences are perceived as legitimate in American politics. The bill's author, Kathleen West, is Sustainability Manager of Multnomah County. She began with the idea of a 5% preference that would be justified as a "local foods" bill to reduced the environmental impact of shipping goods from further away. West recounted in an interview, however, that "…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 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." With the preference doubled to 10% the new law passed *unanimously* in both Oregon legislative chambers.

As this anecdote hints, the consistent justification for these rules is a direct assertion of democratic logic over economic liberalism: that states should serve *their* citizens and *their* economy, not others, and that taxpayer money should stay at home. This is known in legal circles as the "sowing and reaping" argument. As Connecticut State Senator Edith Prague (Democrat) put it in sessions on a 2008 bill, "…we have contracts in this state that go out of state" and

[10]The exceptions are New Hampshire, Oklahoma, and Rhode Island.

"…we should give any job we can to an in-state company."[11] As Oregon State Representative Bill Garrard (Republican) told us in interview, "Oregon taxpayers would like to have tax money stay within the state of Oregon." In addition, Garrard—a Republican with a business background from conservative eastern Oregon—volunteered that preferences were justified by quality concerns. "It's not about the cheapest, but the best," he said. We "first have to see for a while if the [out-of-state] providers are reliable." We heard similar things from other interviewees, and in our view the addition of dubious quality arguments highlights that some of these actors are simply fumbling around to justify simple protectionism. Why anyone would think that Oregon's agricultural products are more reliable or higher quality than those from other American states is hard to say.

US public procurement preferences are not without critics, but their arguments seem to have no political power today. Many legal scholars reject that the "market participant exemption" is consistent with the commerce clause, especially in a modern economy where government procurement is so extensive.[12] One 2007 study estimated that total annual procurement by state and local governments at $1.5 trillion to $2.4 trillion—a wide estimate because no one gathers such data—and remarked that "[d]uring difficult financial times where governments are looking for ways to reduce expenditures, the procurement process may be one area ripe for cost savings" (McCue et al 2007, 253). Also generally critical, unsurprisingly, are procurement officials. The former NASPO president, Alaskan official Vernon Jones, told us, "…without doubt if you would poll the members they would overwhelmingly not be supportive of in-state preferences." Yet neither NASPO nor any other significant agency or organization has ever done a notable study on this issue. Even more striking, in the late 2000s NASPO quietly revoked its official stance against in-state preference laws. The reason appears to have been its recognition that state legislators share a strong cross-party consensus in favor of such laws. A 2009 statement by the National Conference of State Legislatures (NCSL) presented 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 2009).

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[11] Connecticut Senate Session Transcript May 2, 2008.
[12] For a list of seven law review articles criticizing the exemption, see Bogen 2006, 554.

In terms of how we can describe possibilities in cross-jurisdictional markets, then, the US public procurement rules in force today are roughly the opposite of those in Europe. Authority is lodged at the subunit level. Discrimination is explicitly condoned and seemingly almost universally supported for reasons that it makes sense to call illiberal, since they ignore or effectively reject obvious arguments about the virtues of open market exchange.

Services in the EU

Services comprise a large majority of the EU economy, of course, and are regulated in many different ways. EU officials regularly remark that the Single Market project still has much work to do in this vast space, having concentrated its first several decades mainly on free movement of goods. Still, the EU does have general default rules for a wide range of services without their own specific regimes, mainly in the services directive (2006/123/EC) and the contemporary qualifications directive (2005/36/EC). To sketch them we focus on the concrete example of hairdressers. Political and scholarly discussions of EU services rules often use this example ((Badré et al 2004-05; Broussolle 2010; Chang et al. 2010; Hohn 2006; House of Lords 2005; Saint-Paul 2007).

To what extent can hairdressers freely provide services across borders in Europe? Despite huge variation in national-level regulations, they are very free to do so. In Germany, where hairdressing is a "regulated profession" (thus placing it under the qualifications directive, which governs a list of qualified professions designated by each member-state) licensed practice requires five years' education and training. In the UK, where hairdressing is an unregulated profession (placing it under the general services directive) anyone can pay a fee to register as a hairdresser and practice right away. To practice in the UK on a temporary basis, a German hairdresser need not notify anyone or do anything at all; their German license is automatically sufficient for temporary practice. More striking is the reverse rule: for a British hairdresser to practice temporarily in regulated Germany, he must only have worked in the profession for two of the past ten years, and must register (for free) on a website once per year.[13] Importantly, "temporary" provision of services "does not mean that the provider of services…may not equip

[13]If coming into Germany from a country where hairdressing is a regulated profession, the two years are not required—just a license to practice in that country.

himself with some form of infrastructure in the host Member State (including an office, chambers or consulting rooms) in so far as such infrastructure is necessary for the purpose of performing the services in question" (Commission 2010).

There are higher levels of scrutiny for *establishment* in another country in a regulated profession for an indefinite period of time. Still, the basic EU principle is free movement, and the onus is on the receiving country to justify whatever it demands of incoming providers. All member-states must have online Point of Single Contact systems where service providers apply for approval of their qualifications. Commission officials review national requirements for each regulated profession against the services directive standard, which is that establishment can only be denied for specific reasons of public policy, public security, public health, or environmental protection. That may seem a wide opening for barriers, but requirements must also be related and proportional to the identified threat. As a Commission official told us, in areas like hairdressing, member-states often "will try to justify the possibility to ask for a test and to restrict many professions" because of national views of health issues or hygiene standards. But "to be able to impose this test they would have to notify the Commission that for hairdressers according to the risk for health and security for the recipient they want to maintain the possibility" and then it "will be my colleague who will say yes or no" about the proportionality of the requested requirement (interview 2010).

In sum, despite extremely diverse national standards for many jobs, the EU today has practically no barriers to temporary provision of most services across borders. It has a rather simple and centralized online system for verifying qualifications for establishment that requires a denying state to make a case to federal regulators. This does not mean, admittedly, that European cross-border trade in services flows in giant volumes. Services comprise over 50 per cent of EU GDP, 70 per cent of employment, but only about 20 per cent of intra-EU cross-border trade (EESC, 2007). The market *rules*, though, are centralized and liberal.

Strikingly, the dominant political narrative on this services regime is that it remains unimpressive. Much of the literature about it is set up to explain "why and how the EU enjoys only the current, unambitious level of integration in the services sector" (Chang et al. 2010, 98). Most Europe-watchers know the tale of how the original draft of the services directive, widely called the Bolkestein directive, was ostensibly watered down due to massive political resistance, resulting in a "relative failure" that was only somewhat "better than no directive at all"

(Schioppa 2007; Barnard 2008, 324).[14] Europe-watchers will also be aware that mobilization against the Bolkestein directive was widely cast as opposition to its threat of "Americanization." Demonstrators in Brussels carried crossed-out US flags and signs that suggested that the Dutch Commissioner Frits Bolkestein should "go home" to America.

Yet as we will see in the next section, these narratives in the politics of EU services are deeply ironic. The US has never had services rules remotely as liberal or as centralized as even the "watered down" version of the EU services directive.

Services in the US

While Europeans have general liberal rules for services with exceptions for specific areas, the American market has balkanized state-level regulation of services with specific federal rules that are sometimes liberal. In the vast majority of services where "the feds" have not invoked the commerce clause to step in and impose federal standards or oversight, there is literally no legal temporary cross-border provision of services in the US, and no general or centralized mechanisms for approval of existing qualifications. When Americans cross state borders, whether temporarily or permanently, the default rule is that they must obtain new qualifications, like a lawyer taking a new state bar exam. In many specific areas subsets of states sign reciprocity agreements, and sometimes professional associations set national standards to facilitate such movement, but these amount to a patchwork of incomplete horizontal coordination with no overarching market rules behind them.

Consider the hairdresser example. Like in most areas, Congress has not invoked the commerce clause to pass legislation that "preempts" the US states' responsibility for regulation of this profession, leaving each state to regulate the profession as it sees fit. Given the relatively high homogeneity and mobility across US states, as well as the presence of major haircutting franchise chains across US states like Supercuts or Great Clips, it is not very surprising that states' professional rules are not nearly as different as the German versus the British. Most states' Cosmetology Boards (or Barbers' Boards, which are slightly different) require 1500 to 2100 hours of training and/or apprenticeship, plus written and/or practical exams, to get a license. Some fall lower (1250 hours in Pennsylvania), some higher (2300 in Oregon) or require

[14]For a more insightful characterization, Nicolaidis and Schmidt 2007.

longer on-the-job apprenticeship programs (1500 hours + 3000 hours apprenticeship in Alabama).[15] Yet despite far more similar state-level treatment of these professions than in Europe, far more businesses who are active across these state-level markets, and far higher mobility of employees across US states, the temporary provision of services is simply and frankly illegal, and there is no centralized legal basis whatsoever to ease the possibility of establishment across borders.

The inability to temporarily cut hair in another jurisdiction, even for one day while attending a cosmetology conference (for example), is the most striking contrast to European regulations. As the president of the National Association of Barbers Boards of America (NABBA) and member of Ohio's Barber Board, Howard Warner told us in a 2010 interview, "I don't know of any state where you can walk in" without first getting a license from that state. A staff member at the Texas Department of Licensing and Regulation elaborated to us,

> You need to be licensed through the state in order to cut hair, to do nails, to do facials… even if this is just one day or just on the weekend…. We get people from all over the states who come here or even other countries who already have their licenses, but this is Texas law….in order to work in this state in that type of field it is required that you have a license from this state.

Note that her language categorizes people from other states with those from other countries. Moreover, regulatory officials in Texas, Oregon, and Ohio confirmed to us that these rules are enforced: people practicing haircutting without the correct state's license are routinely fined \$300 to \$500.[16]

In the absence of any possibility of temporary provision of services, all mobility in haircutting becomes a question of establishment. Already-practicing hairdressers who wish to move to a new state can apply to have their previous licenses transferred, and many states have horizontal reciprocity agreements with other states. This is rarely easy, however: few states maintain public lists of reciprocity arrangements, and in our inquiries in several states we

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[15]All states' requirements are listed at http://www.beautyschoolsdirectory.com/faq/license_al.php.
[16]For one example from Texas, see the local TV news report, "Illegal haircut operation found at flea market: State issues violations to men cutting hair at mission flea market," http://www.ksat.com/news/24866210/detail.html#, last updated 3 September 2010, accessed 29 October 2010.

encountered regulators who were not sure they themselves had such a list. In effect they generally look up the other states' requirements and compare them to their own, and approval tends to happen on an "individual case-by-case basis," as Mr. Warner told us. Even once approved, an applicant usually still must take exams and pay fees.[17] Some states only grant a license transfer given a certain number of years of professional experience, a criminal background check, and/or legal exams about state rules unrelated to the profession in question.

Overall, this is the most minimal mutual recognition scheme imaginable, falling close to the simple absence of a cross-border regime. Licenses are transferrable if and only if state regulations happen to be extremely similar, and only once an applicant has gone through a cumbersome approval process, typically with additional exams, fees, and even background checks. Moreover, our interviewees stressed that they see the differences between state regulations as significant and do not just approve anyone, even given many years' experience in the profession. As Mr. Warner further explained,

> If you went to school in Pennsylvania or in Mexico or India or China or wherever, and you only had a 1000 hours [as opposed to Ohio's 1500], it would not be fair…to Ohio Barbers to give this person a license, because they have 1000 hours, they don't know anything about our sanitation nor health rules or our laws and rules….

Here again, unprompted by our questions, an interviewee equates people from other US states with those from outside the United States. From a legal point of view, with respect to the transferability of professional qualifications in services, this equation is correct. People from other US states, like people from other countries, must demonstrate that their qualifications fully meet the stipulations of the individual state in order to provide any services across borders. In regulatory terms there is no single market whatsoever.

Is there any sign of movement in the US towards greater facilitation of cross-border provision of haircutting services? Not that we could find. National intergovernmental and business associations exist—the National-Interstate Council of State Boards of Cosmetology

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[17]In Oregon, those approved must take the "Oregon Laws & Rules" exam, another exam in their field of practice, and pay $100. Ohio recognizes no reciprocity, but applicants from other states with similar requirements can (once approved) pass three different exams and pay fees. Texas has reciprocity with many states and requires a $100 fee once an application is approved.

(NIC), the National Association of Barber Boards of America (NABBA), and the National Hairdressers and Cosmetologists Association, Inc. (NCA)—and in September 1984 NIC and NCA adopted a joint resolution "to actively pursue the enactment of Legislation which will allow the cosmetologists, licensed in good standing in one state, to qualify for licensure to practice in another state without examinations."[18] Today NIC does administer national-level tests that can help people qualify for state licenses, but they are apparently expensive and little used.[19] To our knowledge there has not been any serious discussion since 1984 of federal-level legislative action. Mr. Warner called the national-testing options expensive and "pathetic" in quality, and told us that more federal oversight is not what Americans (or haircutters) want:

> If we took all the identity out of each state, that is not, I think, what people want….. It's like our schools, run by a school board and if they want to do snow days they can do it, but they don't want. In this country right now it appears that there is too much federal government and the American people would like less. And I think if we push on a national level for national testing, I think that probably would be entirely up to the barber administrators, but I think if you went right down to the barbers and ask them, they would still like to see it controlled to where they go to barber school, they cut hair in their state and everybody has to have the same requirement to do it.

This Ohio barber—presumably not the most left-wing kind of person—does not seem to imagine that there would be liberal economic arguments about the benefits from more of a single market in the haircare sector in the US (roughly a $12 billion market[20]). This seems rather remarkable when contrasted to common perceptions of the US political economy and discourse around it, and also to the far more centralized and liberal regime now solidly established in Europe. It seems clear that the arguments Ohio's Barber's Board regularly invokes in worrying about other states' standards would be dismissed as protectionist in Europe, since it stretches credulity to claim that any US state has major problems of hygiene or safety in haircutting. This is even truer for other conditions sometimes attached to cross-state mobility in the US that have

[18]What is source? "NIC 2010."

[19]We say "apparently" because our research has had difficulty tracking NIC down: attempts to contact "it" are referred back to "your state board."

[20]"Hair Care in the US," Euromonitor International Country Report, July 2014 (executive summary available online at http://www.euromonitor.com/hair-care-in-the-us/report).

nothing to do with the profession in question, like criminal background checks.

Our characterization squares with a passing 1982 remark from Mancur Olson, who noted that state-level regulation of professions in the US states "are frequently used to keep out practitioners from other states" (Olson 1982, 143). But if a free-marketeer like Olson might have been especially likely to notice the protectionist implications of state-level services regulation in the US, we imagine he would be extremely surprised to learn that the fractious, socialist-leaning Europeans had somehow managed to build more liberal single-market rules over the same kinds of economic activity. Indeed, as we develop in the next section, all the major explanations of US and EU market-building have difficulty grappling with this counterintuitive pattern of outcomes.

Explaining the Political Construction of Single Markets

How well do existing theoretical arguments about the emergence of cross-jurisdictional markets account for the US-EU contrasts we have highlighted? The simple answer is that they are not of much help. In this section we briefly review the major schools of thought—structural/materialist, institutionalist, and ideational—which all seem to predict that market regulation should be both more liberalized and more centralized in the US than in the EU. Then we highlight reasons to think that the relationship between markets and federal authority is more complex than any of these broad traditions seem to suggest, and show in exploratory cases of the US and the EU from the 1970s to the 1990s that different ideas about federal institutions can lead free-marketeers in radically different directions.

Material, institutional, and ideational expectations: a more marketized America

One major tradition explains "single markets" in rationalist-materialist or "structural" terms.[21] These approaches are generally rooted in liberal commitments that see the liberties and productive dynamism of wide-open markets as beneficial for most producers and all consumers, but see variation over time and space in the incentives to opening markets across existing jurisdictions and the presence and power of actors who seek to impede that process. Under

[21]On why "rationalist" and "structural" should generally be read as related terms, not in opposition as they are frequently understood, see Parsons 2007, 49-55.

conditions of mobility or potential mobility—where technology facilitates exchange, common languages are spoken, geography is bridgeable, etc.—we should see the most competitive actors looking for more opportunities across existing borders. Such moves may threaten political control or stability of existing units, and will also provoke opposition from "concentrated capturers" who enjoy privileged positions in smaller markets, or less competitive "losers" who will do worse in a broader arena.

In the EU context this kind of thinking takes the form of Andrew Moravcsik's "liberal intergovernmentalist" approach, which casts the EU as "normal politics under conditions of globalization" (Moravcsik 1998: 4). Given technological shifts that increased incentives to trade, the most competitive European actors have pursued cross-jurisdictional market-building, limited by hostility from less competitive players (who are often mollified with payoffs, like the Common Agricultural Policy or the Structural Funds) and by national governments' careful defenses of sovereign control. Similar EU-related work comes like Geoffrey Garrett (1991), Walter Mattli (1994), or the historian Alan Milward (1992). In broader comparative politics, we hear related arguments from scholars like Alesina and Spolaore (2003), Douglass North (1990), or Ronald Rogowski (1986): federations are motivated mainly by the underlying beneficial potential of open markets, and are limited by political concerns and losers. Historical accounts of parts of the US case from Alfred Chandler (1977), Samuel Beer (1973) or Richard Bensel (2000) tell similar tales of marketizers gradually overcoming protectionist limits.

Structural-materialist approaches can point to many plausible patterns and processes within either EU or US markets and politics that appear to fit with their analysis, but they have a very hard time with steps that take European single market regulations beyond American ones. As we remarked at the outset, American economic exchange is considerably more integrated than European economic exchange on the ground for all sorts of reasons that we might call "structural" today, like a common language, nationally-connected infrastructure, and high territorial mobility. We also noted that US state-level economies have more of a sectoral division of labor than do European member-states. Also true is that very large businesses (who presumably operate more across state borders) form a considerably larger part of the economy in the US than in Europe. For all these reasons, it seems clear that it is the United States, not Euurope, where we should see more actors with more power who would prefer single-market regulations, and fewer actors with less power who oppose single-market regulations. Perhaps a

more functionalist-minded structural thinker could try to turn this observation around, arguing that Europe "needs" stronger single-market rules to achieve market gains precisely because it has weaker incentives and higher obstacles to free-flowing markets on the ground. But such a move effectively reverses the logic of structural-materialist theorizing, and at some point becomes absurd. It would imply that we should see the most liberal and centralized single-market rules in parts of the world that have the lowest incentives and highest obstacles to market exchange, where the "need" is greatest.

Another major approach to explaining authority and economic regulation in the EU, US and elsewhere is institutionalist. Most scholars in this tradition share some liberal foundations with the structural-materialists, expecting fairly broad gains from openness and mobility across lower-level jurisdictions and bemoaning (explicitly or implicitly) the political inheritances, vested interests or "loser"-based dynamics that impede the realization of such gains. They focus, however, on ways in which early configurations of institutional authority in an arena filter the mobilization and connection of societal interests into change in policies and government. Early decisions to empower new federal agencies allow those agencies to mobilize new support, form new coalitions and frame new arguments to encourage subsequent federalization; early moves to decentralize authority and the machinery of government encourage the accretion of lower-level vested interests, the separate and fragmented framing of policy problems and solutions, and generally make subsequent federalization harder even if incentives to federal steps rise later on.

In the EU context this tradition was born with Ernst Haas's "neofunctionalist" theorizing (Haas 1958). While Haas began from a "functionalist" theory in which economies of scale and the innate interconnectedness of problems in modern economies create growing needs for cross-jurisdictional integration, the truly "neo" part of his theory was the proto-institutionalist hypothesis that initial delegations of power to supranational agencies would additionally feed back to encourage subsequent steps in central institution-building. Later generations updated most of Haas's thinking into mainstream institutionalism, most notably Wayne Sandholtz and Alec Stone Sweet (1998).[22] In broader comparative politics and US politics, similar views tend to emphasize not just reinforcing trajectories of central-government power but how they interact with varying robustness of sub-federal institutions. Daniel Ziblatt, for example, argues that Germany ended up as more decentralized than Italy, despite starting with a stronger central state,

[22]Though also Mattli and Slaughter and Pierson.

because German subunits were much more robustly institutionalized than Italian ones and managed to defend their prerogatives (Ziblatt 2006). In Americanist work, institutionalists have dominated the literature on market-building ever since Stephen Skowronek's *Building a New American State* in 1982 (Skowronek 1979). Skowronek argued that the weak early US federation, held together only courts and party machines, was profoundly ill-suited to manage the national-scale economic, social and political issues that arose as industrialization picked up. As actors of all sorts sought national-level responses to a variety of problems, including more of a single market, they found that state-level vested interests and a lack of central organizational resources limited their success. A central American administrative state did emerge, with increased market authority, but in Skowronek's telling it was still weak in comparative terms—bearing the imprint of its decentralized origins. Scholars like Daniel Carpenter (2001) or Kimberly Johnson (2007) have effectively extended and nuanced Skowronek's approach to American political development.

While Skowronek's emphasis on the enduringly fragmented nature of US federal authority resonates with our descriptions above, the broader expectations of institutionalism do not seem to help explain the EU-US contrasts we have highlighted. If the US began from a decentralized institutional configuration, the EU began from far more decentralized origins. Moreover, following the Ziblatt-style focus on the institutionalization and resources of subfederal units, the EU confronted enormously more robust subfederal governments than the US federal government ever did. The Haasian tradition about the EU draws some of its persuasiveness from effectively comparing the EU to weaker international organizations: the early EU did indeed spring from unusually strong delegations of supranational authority, so it seems to make sense that it then followed this path to garner still more authority. But when we shift to a contrast with the United States, the comparison cuts the other way and the progress of the EU's single market authority becomes a puzzle. If we explain federal market authority as advantaged by strong central foundations and disadvantaged by strong subfederal institutions, it is difficult to avoid the broad expectation that the US should have more single market authority than the EU—and presumably should be on a still-more-integrated trajectory over time.

An important caveat is that institutionalism is a broad school of thought that can be developed into many more concrete arguments, and that one major contribution to institutionalist work on comparative federalism goes partly in another direction. R. Daniel Kelemen's work

(2004) suggests an argument why the EU would hold at least some elements of stronger central authority over its single market than does the US federal government. His treatment of "regulatory federalism" points out that in federations with relatively simple and active central governments, like the parliamentary federalisms of Germany, Canada, or Australia, subunits are often left substantial discretion because the "feds" know they can act when necessary. In federations where authority at the federal level is complex and fragmented (like American presidentialism or, even more so, the EU), federal authorities know they have difficulty exercising active and discretionary control over subunits, so regulations over subunits tend to be tightly defined and legalistic. Since the EU is quite a bit more complex and checked-and-balanced than the US federal government, its regulation of a single market has been even tighter. We see this as a persuasive argument, but one that needs to be appended to a theoretical and empirical account of the motivations to single-market-building. Focusing more on the form that regulatory federalism takes than on what drives it along, Kelemen assumes that federal authorities wish to expand their own authority and also want to "increase interstate commerce by eliminating regulatory barriers to trade" (Kelemen 2004: 13). This may not be a terrible assumption in a broad sense, but it is an assumption rather than a historical claim. Thus if Kelemen gives us reasons to expect the US single market to have taken a somewhat looser regulatory form than the EU one, his work does not seriously contradict broader institutionalist expectations that the US should have taken more of a single-market trajectory than the EU.

The third major explanatory tradition of market authority is a diverse collection of ideational accounts. The basic gist of this scholarship is that the relationships between markets and political authority can be constructed in many ways, depending on the ideas, identities, discourse, or practices about economics and politics that prevail in a given context. From the work of Karl Polanyi on the rise of "market society" (Polanyi 1944) to Frank Dobbin's comparative economic sociology of industrialization (Dobbin 1994) to a large number of works on the more recent movements of neoliberalism, this work emphasizes the role of non-obvious, contextually-specific ideational constructions of market authority. Though our own analysis falls within this theoretical tradition, we break with the substantive thrust of most such scholarship just as much as with structural or institutional accounts, because these scholars consistently seem to suggest that the ideological or broader cultural and discursive power of markets has simply been much stronger in the US than in Europe. An old "American exceptionalism" literature is

centered on an image of America's distinctively pro-market culture (Hartz 1955; Lipset 1996). Later Dobbin argued that in the mid-19th century, the United States' main approaches to economic regulation shifted away from an early emphasis on "community [meaning subfederal] sovereignty" to a model that "transformed the central state into a market referee" and located authority in "market forces" (Dobbin 1994, 214). Peter Gourevitch similarly described a 19th-century American shift from an early "Nippo-Rhenish" form of "densely networked" capitalism to a far more liberalized one, "a decentralized, individualized, loosely coupled, arms-length, shot-term, consumer-oriented, blind-bidding, market-driven system" that is "(relatively) open, permeable, fluid" (Gourevitch 1996, 240). In Europe, meanwhile, a variety of less market-driven arenas emerged for advanced capitalism—with even Britain consistently represented as less imbued with market ideology than the United States.[23] In scholarship on the "neoliberal" period a century later, when both the US and Europe reinvigorated commitments to markets after a variety of paths through Keynesianism and welfare-state construction, the US once again draws scholars' attention as the most market-friendly polity. All accounts see neoliberalism's political emergence as especially forceful and its consequences especially far-reaching in the United States and Britain, where Reagan and Thatcher became the faces of the movement. Even sociologist Monica Prasad, whose provocative main argument is that neoliberalism went so far in the United States because government was actually more progressively adversarial with business than in Europe (inviting a greater neoliberal backlash), allows that the "American exceptionalism" thesis is right about "pro-market dominance" in the background to her story (Prasad 2006, 31). Overall, whether before or after the rise of neoliberalism, 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).

In sum, despite their deep theoretical differences, ideational, institutional, and structural-material theorists all agree that there are powerful reasons to expect that the United States is more "market driven" than Europe. Material, institutional, and ideational conditions should have favored a more genuinely market-style polity on the western side of the Atlantic. Thus this vast literature tends not to help much in explaining the ways in which Europe has constructed more of a single market than the US. This section offers a first attempt at solving that puzzle by exploring how the neoliberal era in the US and the EU did (or did not) shift these polities toward more

[23] Add cites. In Dobbin's treatment, for example…

single-market rules.

Ideas about institutional authority combine with—and trump—ideas about markets

The argument that we are trying to develop departs from the observation that it is not obvious how political support for "free markets" relates to the construction of federal authority over single markets.

Among academic theorists, some hold that the construction of markets in multi-jurisdictional space (like federal polities) depends above all on limiting federal authority. Hayek is the clearest inspiration for this point of view, and many of his ideas were further strengthened (one could say "radicalized") in an anti-government direction by the Chicago School. Future versions of our project will relate this intellectual history in more detail, but for current purposes it is sufficient to jump straight to a political scientist—Barry Weingast—who elaborated a logic built on this perspective. Weingast's famous analysis of "market-preserving federalism" argues that English and American economic success sprang mainly from political moves in both polities that limited the ability of the central state to intervene arbitrarily in the economy (Weingast 1995). To be fair, his argument appears at first to be built around a careful balance of economic authority in multijurisdictional polities. His model of market-preserving federalism has three features: not only must central government be limited in its ability to confiscate wealth, but sub-federal units must be barred from protectionism vis-à-vis each other, and cannot have the prospect of fiscal bailouts by the center. In discussing this second feature in the US, he notes the importance of the Commerce Clause, which "prevented states from regulating interstate markets and from erecting various forms of trade barriers" (Weingast 1995, 8). Crucially for our topic, however, it turns out that Weingast is not particularly concerned with strong legal constraints that prevent subunits from discriminatory meddling in markets. Noting arguments from Hayek and Charles Tiebout about the virtues of competition between local governments, he suggests that given sufficient mobility across subfederal units, subnational protectionism or inefficient interventions will evaporate *by themselves*: "As long as capital and labor are mobile," he writes, "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). In other words, once a multijurisdictional political system limits federal authority (and prevents

fiscal bailouts) and mobility is possible, *a single market eventually appears automatically*. Lower units might never formally cede their rights to enact illiberal policies, and might occasionally experiment with them, but cross-jurisdictional competition will lead them in pro-market directions. Thus the road to free markets passes through a weak center and apparently requires little explicit political action to rein in subunit protectionism. Stepping back, this view fits with the broader Hayekian image of the market as a dynamic, virtuous set of relationships that springs into place once overbearing central government is removed.

Karl Polanyi is the leading spokesperson for the opposite view: that the construction of markets in multi-jurisdictional space (like federal polities) tends to depend on a strengthening of federal authority. In the Polanyian tradition broad markets are distinctive political creations that only arise where strong central authority forces them past lower-level objections. In his words, "The road to the free market was opened and kept open by an enormous increase in continuous, centrally organized and controlled interventionism" (Polanyi 1944, 140). From this perspective the creation and maintenance of market dynamics require the assertion of political power against the market's many enemies. Individuals tend to reject being "commodified" in labor markets, groups of "losers" or privileged-position "winners" oppose open competition, and lower-level political authorities seek or defend discretionary and discriminatory economic powers. Polanyi made this argument about the 19th-century classical liberal period, trying to show the political efforts that went into creating market society during the Industrial Revolution and the many reactions against it, but many other scholars develop similar themes about the neoliberal era. Andrew Gamble, for example, focused on how Thatcher's policies demonstrate that the "free economy" depends on the "strong state" (Gamble 1988). Steven Vogel recharacterized neoliberal-era deregulation as "reregulation," emphasizing that "freer markets" come with "more rules" (Vogel 1996). Nicolas Jabko made similar points by turning the relationship around, showing how selling the appealing but ambiguous notion of "the market" to various audiences in Europe allowed the European Commission to strengthen its federal authority (Jabko 2006). For Polanyi and all these scholars, functioning markets arise when pro-market central government acquires and exerts sufficient authority to bar lower-level actors from the discretionary, discriminatory, socially-embedded non-market behaviors that they naturally prefer.

This contrast between Hayekian thinking and Polanyian thinking sets the stage for our treatment of the US and EU cases in two ways. First, in tracing the process of neoliberal-era

reforms in both polities, we try to display these conceptions of market-government relationships as active political ideologies. The Hayekian conception of market-government relationships prevailed in the United States and the Polanyian conception of market-government relationships prevailed in Europe. Second, in assessing the outcomes of these reforms—which we have already done to a large degree in our earlier sections—we can also discuss these conceptions as theories of political economy and evaluate how plausibly they capture how progress toward more market-style behavior relates to federal authority. We suggest that the further progress of market rules in the EU lends credence to Polanyian theorizing. Hayekian expectations fail on their own terms, since major assaults on federal power in the United States have been accompanied by persistent (and in some ways increasing) barriers to cross-jurisdictional exchange in the United States. That the naïve naturalism of the Hayekian position remains so influential can only be explained by a remarkable level of inattention to fragmented nature of the American single market—both from academics and, more tellingly, from political actors. Embedded in a peculiarly American hostility to federal authority, America's greatest champions of markets appear not to care whether or not governance favors broader open markets.

Hayek in Washington: How neoliberalism rejected federal authority in America

Preceding sections have suggested that the United States lacks a single market in regulatory terms to a surprising and little-noticed degree. This section goes beyond that descriptive claim to explore how this outcome could possibly have resulted in a polity that is famously dominated by pro-market discourse, which led the world into a neoliberal era in the 1970s and 1980s, and which is today known more than ever for a powerful and radical brand of free-market conservatism. We show that American neoliberals expressed practically no interest in encouraging broad market regulations from the very beginning. The "Reagan revolution" developed around a focus on cutting government spending and taxes. Its champions mentioned regulatory issues as a secondary priority, but formulated their regulatory agenda around a similar philosophy of cutting back federal government: the goal was simply to reduce business costs by eliminating or widening federal regulatory strictures wherever possible.

The roots of our "why" argument run deeper historically than we can develop much here, in the orientations of late-mid-20th-centuryAmerican conservatism against federal authority.

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. One historical thread that left mid-century Conservatives with these views was the New Deal, when Franklin Delano Roosevelt created new forms of federal economic action over substantial business opposition. Business's skepticism of federal authority was then reinforced in the 1960s, in opposition to Lyndon Johnson's construction of the "Great Society" agenda on FDR's foundations. The other historical thread pointing in these directions 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. 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." Or, to capture the real content of Reagan's thought, *federal* government is the problem.

The most important guru who moved Hayekian thinking toward politically-mobilizable ideas for American politics was Milton Friedman. In writings that were unusually politically explicit for an economist, Friedman laid out a version of Hayekian views in his 1962 book *Capitalism and Freedom* (Friedman 1962), as well as in speeches and writings in many other forums. 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 can 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). More generally, 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 himself would go on to have frequent and influential conversations with Reagan (Anderson 1988, 172), but other figures played important roles in carrying similar Hayekian themes into conservative political circles in the 1970s. One important vector for this process was an idea about taxes that grabbed Republicans' attention. 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, Wanniski 1978a). It attracted the broader label "supply side economics" and became one of the leading edges of Friedmanesque (and Hayekian) arguments that a reduction in federal resources and authority would liberate market competition, innovation, and wealth creation in ways that eventually lifted all boats. In networks that developed a particularly strong node around the office of Republican Congressman Jack Kemp, intellectuals like Laffer, Robert Mundell, Paul Craig Roberts, Robert Bartley, Norman Ture, Bruce Bartlett, Irving Kristol, Steven Entin, and Alan Reynolds built a case for a smaller federal government as a panacea for the American economy (Anderson 1988; Stockman 1986, 39; Bartley 1992; see also (Blyth 2002; Jones 2012; Prasad 2006). In 1980 Kemp eventually 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. He always supported tax cuts, but did not consciously have a comprehensive economic program until he was subjected to a swarm of supply-sider advisors in his presidential campaign (Stockman 1986, 61ff; Anderson 1988, 112; Sloan 1999; also Prasad 2006).

Thus the broad mid-century conservative distrust of federal authority appended economic arguments that federal cutbacks would stimulate growth and even increase government revenue. The Hayekian character of this connection is pervasively evident in the huge number of tell-all books by Reagan's advisors or other participants in his administrations (see Roberts 1984; Stockman 1986; Regan 1988; Anderson 1988; Niskanen 1988; Lindsey 1990; Meese 1992; Bartley 1992; Feldstein 1994; Baker and Fiffer 2008). As Reagan's Budget Director David Stockman put it, "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). Reagan's advisor

(and later Attorney General) Edwin Meese uses similarly Hayekian language of leading “the cause of liberty to an unprecedented victory over the forces of oppression and slavery” (Meese 1992, xv, ff). Other accounts express this idea more prosaically by stressing that the administration’s core philosophy was first and foremost about cutting back government, not about generating market dynamics. As the conservative economist Michael Boskin puts it, “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 follows from the former.

Reagan’s policy record clearly displays these principles. His initial Program for Economic Recovery in February 1981 stated four goals: tax cuts, balancing the budget via growth and spending cuts, limiting monetary growth, and a “substantial rescission of the regulatory burden” (Stockman 1981). The first focus and the biggest success (even according to Stockman’s famously backstabbing book in 1986) was the biggest set of tax cuts in American history in the Economic Recovery Tax Act of 1981 (ERTA) (Stockman Sloan 1999, 156). The dominant economic-policy issues through Reagan’s presidency were about these tax cuts and other fiscal fights over whether or not they could and should be accompanied by spending cuts. Indeed, the treatment of economic issues in most of the insider accounts listed above hardly mentions anything except tax cuts and spending issues (see Lindsey 1990, Bartley 1992, Meese 1992, Feldstein 1994, Baker and Fiffer 2008). Several of these books point this focus out very explicitly. William Niskanen, member of the Council of Economic advisors, summarizes 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 solely in terms of macro-economic policy (Anderson 1988).

This is not to say that Reagan did nothing on the fourth priority of “lessening the regulatory burden,” but he did far less, and what he did showed a disinterest in market-liberalizing dynamics that is remarkable when contrasted to the European case. The major deregulation of monopolies in the United States preceded the Reagan administration: telecommunications reform started with the Carterfone decision of the FCC in 1968, the airline market was deregulated in 1978, and trucking and railroads were substantially deregulated in 1980. These steps had been driven by arguments about consumer benefits (Derthick and Quirk

1985, 8)—much like Europe's Single Market agenda—but under Reagan criticisms of regulation were consistently recast to focus on the notion of reducing red tape and costs for business (Prasad 2006, 72ff.). Most references to regulatory reform were also lumped together discursively under the heading of "New Federalism"—which once again placed fiscal ideas at the forefront. Reagan promised in his campaign that "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" (Reagan 1980). The eventual main achievement along these lines was a consolidation of 77 federal grants into seven block grants, offering state governments some more discretion in a variety of policy areas (Conlan 1998, 204). Though the New Federalism promised in parallel to give states and localities more freedom by loosening federal regulations, this idea never received sustained attention. The 1982 State of the Union Address seemed to promise a comprehensive reform of federal regulations to reduce "the crushing weight of central government," but nothing along these lines was ever introduced in Congress (Ronald 1982). Reagan's two terms saw only a few erratic sectoral moves in deregulation. Further legislation on trucking, busses, and other commercial vehicles in the early 1980s did call on the Commerce Clause to preempt state regulations if they placed an undue burden on interstate commerce (Zimmerman 2005, 78f.), but both in this area and in steps to loosen federal energy-pricing regulations, state-level variation in standards and non-economic policy priorities retained a wide margin for maneuver (Teske 2004). Early planning to alter health, safety, and environmental regulation "was a near complete failure," except for moves to give states more freedom in implementing certain federal rules like the Clean Air Act (Niskanen 1988, 125; Conlan 1998, 198). The one truly major deregulatory "success" under Reagan—the attempt to solve the problems of struggling Savings and Loan Associations by relaxing leverage requirements and accounting principles and encouraged concentration of ownership—is widely interpreted with hindsight as leading directly into the Savings and Loan crisis of the late 1980s and early 1990s. Since the Reagan administration did not perceive (or at least did not focus on) a difference between deregulation and creating functioning market rules, these steps in banking ended with a bailout that cost roughly $140 billion (Sloan 1999).

Evaluations of Reagan's regulatory legacy by experts in regulation are generally harsh. 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). Regulatory-law specialist Kip Viscusi summarizes, "A major failure of the Reagan regulatory reform effort is not just that such reforms were never achieved but that they were never even attempted. 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, 47x).

A full demonstration of our argument would require attention to the decades since Reagan left office, but this account of the era that launched American neoliberalism shows that it bore 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 subfederal levels of government to standards of open and non-discriminatory exchange. To the contrary, through their filtering ideas—Hayekian 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.

Polanyi in Brussels: How neoliberalism and federal authority connected in Europe

The tale of how the European Union connected a single market to the construction of a novel sort of supranational federal authority has been told many times, so this section's account covers

more familiar ground. Yet by setting this story in contrast to American market-building (or the lack thereof), an EU case that is already typically perceived as remarkable looks even more extraordinary. A group of the most robust sovereign states in the world—far stronger and more diverse entities than American states—chose to delegate broad, general, open-ended authority over a single market program to the European quasi-federation.

The best-known accounts of how this happened share the implication that it reflected a stark Polanyian contrast to the Hayekian form of American neoliberalism, They agree, that is, that Europe committed to an ambitious single market plan because a dominant coalition of European elites came to see liberalization and stronger European institutions as logically linked. For Andrew Moravcsik (1991, 1993, 1998), structural economic change drove European interest groups to perceive rising incentives to cross-border exchange; they convinced their national governments to seek out a liberalization deal at the European level; and the governments accepted EEC institutional reform—mainly more majority voting—to make it possible to implement liberalization measures credibly. For scholars in a more institutionalist tradition, the key process was that the European Commission sold liberalization and institutional reform as a clever package. Jacques Delors and his colleagues convinced liberalizers that stronger institutions were worthwhile, and persuaded institutional reformers that liberalization was the right vehicle for federalizing ambitions (Sandholtz & Zysman 1989; Fligstein & Mara-Drita 1996; Pierson 1996; Sandholtz & Stone-Sweet 1998; Jabko 1999). These approaches agree that Europe's Single Market arose because many people came to see liberalization and European authority as a compelling package, though they debate how much structural imperatives or supranational persuasion forged that connection.

Our own version of the story is a bit more complicated. While the crucial *outcome* of European deals in the 1980s and 1990s was widespread acceptance that liberalization and European authority are self-reinforcing, the EU's advance in this heyday of neoliberalism was not a simple mirror image of the American case. The Polanyian view that significant market integration required stronger central authority was not nearly so dominant in Europe as the Hayekian dismissal of federal authority was among American neoliberals. To the contrary, Hayekian views were also present on the European scene, and the number of European elites who were genuinely persuaded in the 1980s or early 1990s of the logic and desirability of a Polanyian centralized-liberalization package was fairly small. Instead the Polanyian fusion came

together as a political bargain: neoliberals, of whom some took the Hayekian view that stronger European authority was at best a regrettable trade-off for steps in liberalization, agreed to a new Single Market push with Europeanist reformers, of whom some saw strong liberalization as at best a regrettable trade-off for stronger European institutions. Though key figures on either side were not actually themselves convinced of the Polanyian logic of the package, both publicly sold their deal after the fact as pragmatic and reasonable (with the eventual backtracking exception of Margaret Thatcher, the leading Hayekian neoliberal who later loudly regretted being misled onto a Polanyian path). From a political bargain came a Polanyian collective path.

We pick up the story in the early 1980s, when European market integration was widely perceived as stalled. This was partly just perception: some features of the European "common market" had actually already surpassed America's—free provision of lawyers' services across borders, for example, came in 1977—and in many low-profile but significant ways the EEC's legislative process and decisions by the European Court of Justice continued to reduce barriers to exchange throughout the 1970s (Sandholtz and Stone-Sweet 1998). At a political level, though, there seemed little prospect of a new push for expanded authority for the European institutions. By 1983, fights over the Iberian enlargement and the EEC budget brought the political atmosphere to a historical nadir.

Less than three years later, in December 1985 in Luxembourg, Europe's leaders signed the Single European Act that launched the "Single Market 1992" plan. It committed the renamed European Community (which was now going beyond being merely "economic") to pass a list of almost 300 liberalizing measures through institutions with new possibilities for majority voting in the EC's Council of Ministers and a stronger role for the European Parliament. From Jacques Delors' speeches at the Commission to Margaret Thatcher's statement in favor of SEA ratification in Westminster to the French Socialist Party's *rapporteur* in the National Assembly, all parties to the deal presented it as a logical two-part package: in order for Europe to move forward with liberalization, ran the shared narrative, it was helpful (or necessary) to make the European institutions more decisive and effective.[24] But if we look closely at how Europe's leaders arrived at this deal, we can see that it was not exactly driven by a Polanyian spirit in any simple sense.

Consider first how European liberalization came onto the table and who expressed

[24] This claim is correct but we need to chase down the specific cites behind it.

enthusiasm about it. The list of liberalizing proposals that became the guts of the SEA came out of the office of the EEC Commissioner for the Internal Market, which had begun trying to build support for some sort of liberalization package around 1981. It received modest attention and support until the beginning of 1985, when Jacques Delors became the new President of the Commission and a Thatcher appointee, Lord Cockfield, took over the Internal Market portfolio (Cowles 1994; Moravcsik 1998; Parsons 2008). Delors hoped to launch new initiatives in industrial, monetary, and social policies, but after consulting with European leaders recognized that a liberalizing call to "complete the Internal Market" attracted the most support. Cockfield quickly wrapped up his office's ambitions in a *White Paper on Completing the Internal Market*—complete with 279 directives to be passed by 1992—and the governments endorsed it with little discussion at the March 1985 European Council in Milan. At that point, no European government was seriously opposed to this basic idea, except perhaps the Greeks, but it was clear that there were varying levels of enthusiasm. Thatcher's Britain was the leading voice for liberalization; the Dutch, Belgians and Germans showed moderate interest (in that order); François Mitterrand's France was skeptical and cautious about far-reaching agreements but newly willing to discuss them after the 1983 "U-turn" from its earlier Socialist agenda (Dyson 1992; Moravcsik 1998; Grin 2003; Stark 2004; Parsons 2008).

After low-key agreement on the White Paper, the real action at the Milan European Council was a fight over EEC institutional reform. Mitterrand had led a push in 1984 to create the so-called "Dooge Committee" to discuss treaty changes—hoping that a new turn to Europe (what his advisor Jacques Attali called his "new political utopia") would distract French voters from the Socialists' U-turn from their domestic agenda. The French President took to supporting "maximalist" positions on majority voting and European Parliament powers, horrifying the British who had long been used to French support in opposing supranationalism. At Milan, fireworks erupted when the Italian chair brought forward a vote on whether or not to open treaty negotiations around proposals from the Dooge Committee's French-led majority. The EEC Treaty allowed for such a vote, but the most anti-supranational governments—the British, Danes, and Greeks—complained that bypassing unanimity was "illegal," a "coup d'état," and political "rape" (de Ruyt 1987: 62; Keating & Murphy 1987: 233). They gave in, however, in the face of threats to proceed without them (Moravcsik 1998: 360-3). Overall, the separation between support for liberalization and support for stronger European authority was quite stark (Armstrong

& Bulmer 1998: 14). The French, Italians, and Germans—ranging from ambivalent to weakly positive on liberalization—had opened treaty revisions by threatening to exclude the British, who favored liberalization and little else. In a post-meeting interview, Thatcher reiterated, "We are not interested in changing the Treaty as far as majority voting is concerned" and called it "ridiculous" to expect that negotiations could agree on institutional changes that so divided the governments.[25]

Institutionalist accounts tend to stress that it was at this point that Commission entrepreneurship forged the Polanyian connection. At the outset of the treaty negotiations in September, Delors made the first public connection between the White Paper and Dooge Committee recommendations, which had been understood as separate discussions until that point. Commission documents for the talks stressed an integral link: to implement the White Paper required more majority voting (De Ruyt 1987, 71; Dehousse and Majone 1994, 100). While the Danes and Greeks continued to object, the British quickly decided to accept Internal-Market-related majority voting but to hem it in with limits (in taxation, fiscality, health controls, and other areas) (Howe 1994: 456; de Ruyt 1987: 74; Corbett 1987). In three months a deal was done. The French and Italians continued to try to cut back the liberalization measures, and the British led efforts to minimize institutional change, but by December 1985 both sides had basically relented to create the package we know as the Single European Act.

But did either Commission persuasion or anything else actually forge this connection? A certain number of actors in the middle of the bargaining, notably in the Benelux and Germany, did not actually change their positions much at all. They had long been on the record supporting similar institutional reforms, and were also largely open to liberalization from the beginning. The French and Italians did not substantially change their positions either: they supported institutional reform from the outset and fought to cut back liberalization through the final negotiations (Favier and Martin-Roland 1991, 216). On the British side, all voices favored liberalization, and there was at least some movement on institutional reform. No major figure in the British government had welcomed treaty negotiations, but Foreign Secretary Geoffrey Howe and most of his diplomats accepted the Delors package as reasonable (or at least as non-threatening, such that the British had "little to lose" by agreeing: Moravcsik 1991, 41; Wall

[25]IRN radio interview, 29 June 1985, available at http://www.margaretthatcher.org, consulted 11 August 2008; Wall 2008: 51.

2008, 65; Budden 2002). Prime Minister Thatcher, on the other hand, did not seem to change her position until forced to do so by bargaining. After Mitterrand and Kohl persuaded Thatcher to agree on majority voting language in the final hour of talks, her post-midnight press conference appearance stressed that she rejected the Polanyian logic. Beginning by stating the logic that liberalization could advance better with QMV, she then underscored that this was why Britain *accepted* QMV, not that Britain *wanted* it: "We could have done a great many of the things which have been done here with treaty changes, we could have done without treaty changes, had we agreed to go about it that way. Now, people very much wanted an intergovernmental conference, so they had one." Her last sentence was, "I think we could have done what we have done … that we could have done by agreement without it…but if they wanted to do it this way, so be it."[26] Biographers report various views from Thatcher's advisors on her thinking, ranging from being tricked into seeing the institutional reforms as inconsequential ("We were diddled," said advisor Charles Powell) to taking a "calculated risk" on the reforms (press secretary Bernard Ingham) (Campbell 2003: 311).

The effects of the Single European Act and its "1992" program are now the subject of a large literature (Crouch & Marquand 1990; Woolcock *et al*. 1991; Swann 1992; Smith & Ray 1993; Dreyfus *et al.* eds., 1993; Keeler & Schain 1996; Armstrong & Bulmer 1998; Egan 2001; Wessels *et al*. 2003; Jabko 2006). Once given a new mandate to pursue liberalization and processes that could bypass national vetoes, the European Commission geared up for a newly ambitious, open-ended process of studying regulatory impediments to free-flowing exchange, proposing directives, and strengthening enforcement procedures to eliminate discriminatory action by lower-level authorities. In our first section we saw evidence that wherever possible, they have pursued highly general frames for these measures—addressing "professional qualifications" en masse, "services," or "public procurement," and only negotiating more specific regulations where a general-default approach encountered the sharpest sector-specific barriers. Though this effort has not sustained quite same pace it took with the initial push in the late 1980s and early 1990s, it has nonetheless continued through the 2000s despite changing leaders, political crises, and recessions. Not only did the EU accomplish considerable liberalization of services (despite the widespread impression that the Bolkestein directive was

[26]"Agreement" in this context meant non-binding agreements among governments to support liberalization, as oppose to treaty changes. Press conference text at http://www.margaretthatcher.org, consulted 11.8 .2008.

defeated), it liberalized other areas like postal services, and today is working hard on a "digital single market" and "innovation union." In October 2015 the Commission announced a broader renewed commitment to a "Single Market Strategy" that would further "ensure that consumers seeking to buy services or products in another Member State, be it online or in person, do not face diverging prices, sales conditions, or delivery options, unless this is justified by objective and verifiable reasons." It also stressed forthcoming measures "to improve the opportunities for businesses and professionals to be mobile across borders. It will improve the recognition of professional qualifications and facilitate the cross-border provision of business services, construction and other services that generate growth."[27] While the United States never even began a process of single-market building in the neoliberal era, Europe institutionalized a seemingly never-ending process of liberalization and widening federal authority to impose it.

Conclusion

Rough and exploratory though this paper may be, we think it shakes some powerfully established wisdom about both the European Union and the United States. How could it not be true that the United States has more liberalized rules than Europe, or that the US federal government has more authority over markets than the EU? Not only have these impressions long seemed so obvious that they did not call for much exploration, but the dominant narratives in the recent years of Europe's multiple crises have presumably reinforced them. Europeans and Europe-watchers have bemoaned more than ever that Europe's market integration is incomplete and that its political authority is fragmented, partial, and excruciatingly slow-moving. While the United States pulled itself out of the Great Recession, poor old Europe lacked the centralized capacities and the background economic consensus that a more effective response required. Thus the past decade has offered yet another lesson on how far Europe is from becoming a "United States of Europe."

But if this characterization makes sense with respect to the macro-economic policies that surge to the forefront in crises, it turns out that over the past few decades Europe has gradually surpassed the United States in many aspects of single market rules. It first began to move ahead

[27]For these statements and other documents about the new "Single Market Strategy," see http://ec.europa.eu/growth/single-market/index_en.htm.

in some ways as far back as the 1970s, when a politically weak and little-known European Commission was already successfully passing legislation on items like cross-border provision of legal services. The real departure came in the 1980s, when a complex confluence of neoliberal zeal and political motivations to "relaunch" European institution-building fused these two agendas in the Single European Act. Thenceforth the European Commission was given a prominent and open-ended mandate to identify and remove regulatory barriers to cross-border exchange. For a few thousand of Europe's best and brightest, it was now their job to gnaw away at impediments to a single market and to convince societal actors and national governments to approve dismantling them. Meanwhile, in the United States, an even more obvious burst of pro-market fervor had no similar effects. Conservatives who opposed federal action and imagined markets as the default results of decentralized governance paid practically no attention to eradicating the many barriers that remained to cross-state exchange. It was nobody's job to pursue a single market, and no one in America seemed to perceive a need for it. This remains the case; to our knowledge, despite constant and salient discourse about how the United States must further cut back government, there is no discussion whatsoever of any sort of single-market-style improvements to be made in the American economy. Indeed, in recent years the main criticisms about obstacles within the American market have come from the outside—above all from the EU, which has been "the most comprehensive critic of US state barriers" (Weiler 2012, 12). Perhaps, then, we will see a reversal of the common wisdom in coming years. To turn around the quote from Commissioner Reding on our first page, the United States could learn a lot from the European Union about how to utilize and implement a single market.

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