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Overcoming path dependency: path generation in open systems

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Abstract Studies on societal path dependencies tend to focus on mechanisms that anchor and stabilize national trajectories while paying less attention to transnational interactions and multilevel governance. This paper explores processes of path transformation in societies that are presumed to have the characteristics of open systems. Two pairs of case studies are presented and compared. The first illustrates institutional change through collision, when a national path meets with another. The second describes the emergence of transnational institutional paths and the impact of that process on national institutions and their (potential) transformation. The results indicate that path transformation often stems from a gradual succession and combination of incremental steps and junctures – change is gradual but consequential. They also point to increasing co-evolutionary interaction between national path transformation and transnational path creation. This implies a need for analytical tools that are adapted to the analysis of multi-level, nested processes of institutionalization and de-institutionalization. The paper suggests that the concept of path generation allows for a better specification of the conditions for change in existing societal paths and for the emergence of new paths in the case of open systems than the concept of path dependency.

Path dependency is a frequently used concept in the social sciences. In the general sense (soft version), it refers to the idea that events occurring at an earlier point in time will affect events occurring at a later point in time. In a stronger sense, path dependency characterizes historical sequences in which contingent events set institutional patterns with deterministic

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properties into motion. Trajectories that stabilize technological developments as a result of increasing returns are a prime example. The varieties of capitalism literature or the post-socialist transformation literature oscillate in their use of the concept of path dependency between these two poles. On the whole, and whatever the version considered, path dependency arguments tend to focus on mechanisms that anchor and stabilize trajectories while paying less attention to the sources and mechanisms of change. In the strongest versions of path dependency, path transformation is presumed to be highly unlikely except through rare radical ruptures or reorientations, which are often associated with violent external shocks.

In this article, we concentrate on the process of change and more particularly on the process of change in systems that are presumed to be open. We focus on institutional "rules of the game" and attempt to discover what happens to institutional paths when they confront and collide with other institutional paths. National institutional systems are highly structuring and powerful systems, but they are increasingly open in at least two ways. First, they closely interact and interplay with each other. Second, they are increasingly set and nested within higher-order i.e. transnational institutional frames (Djelic and Quack 2003b; Djelic and Sahlin-Andersson 2006). An institutional system is therefore a "moving target" with many points of interface. We are primarily interested in the consequence of such an open and dynamic context for path dependency.

To approach this question, we use two pairs of case studies. The first illustrates institutional change through collision, when a national path meets with another. Specifically, we investigate the attempted transfer of the US competition regime to German product and financial markets after World War II. The second illustrates the creation and generation of transnational institutional paths and the impact of that process on national institutions and their (potential) transformation. Specifically, we compare the establishment of two transnational rule setting and negotiating bodies: the IASB (International Accounting Standards Board) and the ICN (International Competition Network).

Parallel analysis of the two pairs of cases generates a number of insights, which are summarized in the Conclusions section. First, we find that path transformation cannot always be traced to clearly identifiable single ruptures. Instead, it may come about through the gradual succession and combination of a series of incremental steps and junctures. This may be described as gradual but consequential change (Djelic and Quack 2003b: 309) or "incremental change with transformative results" (Streeck and Thelen 2005b: 9). Second, both pairs of cases reveal roads with many junctions and a multiplicity of interlinked and interacting dynamic paths – all "crooked" and reflecting long periods of struggle between countervailing pressures. The picture, in each case, is much more complex than that of a single linear path or a single crooked path. We propose a concept of path generation as complementary to that of path dependency. Path generation refers to the creation of a new path or to significant deviation from an existing path through the succession of small, sometimes apparently inconsequential steps, through the aggregation of multiple decision points and critical junctures. Finally, we find increasing co-evolutionary interaction between national path transformation and transnational path generation. This calls for, we suggest, analytical tools that are adapted to multi-level, nested processes of institutionalization and de-institutionalization.

This article has four main sections. The first gives an overview of the debates on change in and around the existing path dependency literature. The second and third sections summarize the empirical results from our case studies, which have been described in detail and published elsewhere (Botzem and Quack 2006; Djelic 1998, 2002; Djelic and Kleiner 2006; Djelic and Quack 2005; Quack and Djelic 2005). A comparison of developments in these cases illustrates and reveals the limits of classical path dependency accounts. The concluding section draws from this comparison a number of theoretical insights on institutional development and change and puts forward suggestions for the future study of "path generation."

Path dependency and institutional change: a review

The concept of path dependency used in social sciences has a number of different meanings, but a common thread is a critical perspective on traditional efficiency arguments. The notion of "path dependency" suggests that the evolution of institutions, organizations or practices does not necessarily follow a pure logic of efficiency. Early steps can, in certain circumstances, lead to the stabilization of less efficient solutions. Beyond this common critical agenda, different versions of the path dependency argument are associated with varying views on institutional stability and institutional change.

Variations of the concept of path dependency

The weak form of path dependency is simply the general idea that "what has happened at an earlier point in time will affect the possible outcomes of a sequence of events occurring at a later point in time" (Sewell 1996: 262f). This soft version of path dependency is present either explicitly or implicitly in history and in some social scientific work with a historical focus. It does little more than acknowledge that contemporary behavior is constrained by the aggregation of past actions and decisions and that "innovation" is in a sense "bounded" (Weir 1992). Such descriptive accounts of successions of events rarely identify the mechanisms by which constraints are structured, reproduced or transformed. A number of social scientists within more nomothetic traditions describe this particular version of path dependency as having little "theoretical bite" (Mahoney 2000).

The path dependency tradition in economics and political science, on the other hand, is a tradition with much stronger theoretical claims. In the words of Mahoney (2000: 507), "path dependence characterizes specifically those historical sequences in which contingent events set into motion institutional patterns or event chains that have deterministic properties." This particular interpretation of path dependency can be traced back to the work on technological trajectories by economic historians such as David (1985) or Arthur (1989). This argument reconciles a view of contingent beginnings with an understanding that these contingent first steps create a path with deterministic effects. Once entered upon, a path generates "increasing return effects" that will stabilize and entrench it, turning it into a deterministic frame (Mahoney 2000; Pierson 2000). This concept of path dependency implies that equilibrium is stable and highly deterministic, but also temporary. At some point, the path will come to an end and a new set of contingent events will provoke a radical and partly unexpected reorientation. Garud and Karnøe (2001) suggest that entrepreneurs, *qua* knowledgeable agents, can generate and champion developments in technological fields. The cumulative effects of experimentation and bricolage might lead to the creation of a new path at certain points in time. Schreyögg et al. (2003) further specify that path dependency only exists if increasing returns generate a momentum that gradually limits the range of possible behaviors of the actors involved until a lock-in ultimately occurs. Alternatively, decreasing returns may lead to path transformation or facilitate the creation of a new path. The logic that characterizes the moment of origin of the path is thus radically different from the logic of its stabilization and reinforcement. However, this version of the path dependency argument sees both logics as equally important and complementary.

The literature on national business systems or varieties of capitalism suggests another reading of the path dependency argument (Whitley 1999; Hall and Soskice 2001). Situated at the crossroads of economic sociology and political science, this literature explores how national institutional settings influence, constrain or determine economic behaviors and interactions. Those institutional frameworks are generally considered to be deterministic of economic behaviors and interactions at any point in time. Traditionally, less attention has been paid to the logics behind their reproduction. The systematic identification of reproduction and stabilization mechanisms, the analytical description of exactly how those institutional systems persist, resist, and become entrenched is only a recent preoccupation in that literature (Crouch 2005b; Crouch and Farrell 2002; Morgan et al. 2005; Lane 2005). The double issue of the origins of and change in structuring institutional frameworks has been rather neglected, and the idea of contingent beginnings or breaking points, as present in the strong version of path dependency identified above, is largely absent.

In contrast, the post-socialist and post-communist transformation literature often focuses on critical moments or moments of "exceptional politics" (Stark 1992; Johnson 2001). These moments, though, are read and interpreted differently. Critical moments (such as the fall of communism) can be seen as real breaking points and "contingent (new) beginnings." They open the way to a new and possibly quite different path. This is the optimistic interpretation of "agency-centered theories," as referred to by Johnson (2001: 254). One may argue, on the other hand, that critical moments find their limits in stubbornly-entrenched institutional legacies. In what Johnson (2001: 254) calls "structure-based theories," the weight of past and pre-existing paths strongly constrain and limit the impact of even the most apparently radical ruptures. Stark and Bruszt (1998) aptly refer to this as "past dependency."

Path dependency and system stability

The various path dependency arguments naturally approach the issue of institutional stability in different ways. Weak historicist versions give no clear specification of the mechanisms through which institutional legacies are entrenched or reproduced. In fact, institutional stability is not necessarily presumed as "contingent, unexpected, and inherently unpredictable events...can undo or alter the most apparently durable trends of history" (Sewell 1996: 264).

The strong variant of the path dependency argument has its origins in economics and economic history and a large follow-up in political science. Its proponents pay more attention to the issue of entrenchment and reproduction mechanisms. This variant distinguishes very clearly between moments of innovation, beginnings, or reorientation, and longer phases of stabilization and institutional reproduction. The logic driving beginnings or reorientation is quite different from the logic that prevails in the stabilization phase. Early steps are likely to be somewhat contingent but they then lead to a near-deterministic path. Institutional stability emerges from increasing returns that follow from an initial choice or a step in one particular institutional direction. This idea is akin to the concept of "first mover advantage." Increasing returns can be explained by high initial or set-up costs, learning and coordination effects, and adaptive expectations, e.g., when actors stick to particular institutions because they expect others to adopt or support them as well (Deeg 2001, 2005; Mahoney 2000; Pierson 2000).

In the original work of economists and economic historians, the acknowledged mechanisms for institutional reproduction had utilitarian underpinnings (Arthur 1989;

David 1985; North 1990). Political scientists have made their own contribution by pointing to a few non-utilitarian mechanisms – such as power or policy feedback – that may also help to entrench and reproduce institutional frameworks (Mahoney 2000). Here, power is understood as institutionally embedded power in that different institutional settings provide societal actors variable access to different types of power resources. But once again, one should stop short of drawing deterministic conclusions since institutionally embedded power resources are likely to be rather unspecific; for example, the way and degree to which given players will be able to mobilize different power resources is likely to depend strongly on the particular actor constellation at a given point in time (see Djelic 1998; Jacoby 2000).

Power and policy feedback emerge as particularly significant mechanisms in post-socialist or post-communist transformation writings that emphasize stability and institutional entrenchment. As Johnson suggests, "structure-based theories" point to the fact that "conditions of uncertainty typically reinforce old networks and patterns as people turn towards the familiar and the safe" (Johnson 2001: 254).

Although the national business systems or varieties of capitalism interpretation of path dependency has given pride of place to stability and reproduction of institutional systems, it has only recently started to pay systematic attention to the issue of mechanisms ensuring such stability and reproduction (Amable 2003; Aoki 2001; Hall and Soskice 2001; Morgan et al. 2005). This literature focuses on complex institutional systems with multiple institutional subsystems and reveals additional entrenchment and reproduction mechanisms associated with the complementarity, interdependence and coherence of those subsystems. Each subsystem reinforces the others, and the mere interaction of those complementary or coherent subsystems contributes to further stabilizing the system as a whole.

The key mechanisms identified in the path dependency literature therefore include increasing returns, power and policy feedback, and institutional complementarities. Legitimacy-seeking and socialization are two further mechanisms that can reinforce and stabilize emerging path-dependency. The sociological literature emphasizes the importance of these mechanisms for institutional stability (Berger and Luckmann 1967; Beyer 2006; DiMaggio and Powell 1991; Meyer and Rowan 1977; Tolbert and Zucker 1996), but the connection with the path dependency argument as such is rarely made. We suggest that it should. A "logic of appropriateness" (March and Olsen 1998) and normative and cognitive alignment underlie the quest for legitimacy or socialization processes. Champions of institutional innovations need to find support, allies and relays to turn a fragile initiative into a new institutional path. New institutional developments will only be successful if their champions find ways to secure legitimacy. Ultimately, socialization can lead to a transparency of structuring and institutional frameworks and thus to "invisible" reproduction. This is probably one of the most powerful kinds of stabilization mechanisms, suggesting profound entrenchment and generating great legitimacy.

Models of change and their limits

The historicist interpretation of path dependency is not associated with a "model" of change *per se*. Nevertheless, change is highly plausible in that variant, and there is no sense of regular periodicity – such as long periods of stability and rare moments of change. Change comes about in unexpected ways and in an irregular fashion, mostly through a combination of contingent developments and agency that are described but not theorized.

The strong variant of path dependency also acknowledges the possibility of change, but holds it to be essentially rare and occurring in radical ruptures. The image or model of change is one of punctuated equilibrium. Specific breaking points with a clear and short time-span become critical junctures for future developments. Moments of change or radical reorientation are rare and sometimes reflect contingent developments (Mahoney 2000). These contingent developments or pressures for change tend to be seen as external to the system. They are external shocks that force along a re-railing, the logic of each path being entrenchment, stability and reproduction.

The national business systems or varieties of capitalism interpretation of path dependency leaves even less space for change and models of change (Crouch and Farrell 2002). Its original focus on static comparisons has now been combined with the perception that increasing return effects at the level of each institutional subsystem are reinforced by the complementarity or coherence of the various subsystems to give a picture of profound entrenchment of national institutional systems and nearly unshakable stability, even in the face of external shocks (Hall and Soskice 2001; Maurice and Sorge 2000; Whitley 1999).

The post-socialist and post-communist transformation literature has traditionally been hesitant here. Radical ruptures are often said to create the opportunity for contingent (new) beginnings, with change following upon and reflecting powerful agency often of a political kind (Hanson 1998). Other investigators have underscored the "stickiness" of institutional legacies and do not allow for a theorization of change (Murrell 1995).

More recent contributions move away from the simplistic alternative between rare and radical change and powerful path dependencies (Campbell and Pederson 1996; Campbell 2004; Djelic and Quack 2003a; Garud and Karnøe 2001; Johnson 2001; Stark 1992; Sorge 2005; Streeck and Thelen 2005a; Thelen 2003). These contributions suggest gradual but transformative change. They identify a number of mechanisms that open up the possibility for change, even from within the system itself. Campbell and Pederson (1996: 207) find that "revolutionary change" in post-communist societies often "embodied significant evolutionary qualities." Stark (1992) suggests that institutional transformations "are more likely to entail processes of complex reconfigurations of institutional elements rather than their immediate replacement." Padgett (2001) makes a parallel argument for organizational genesis. Johnson (2001) proposes the concept of "path contingency" to reconcile the possibility of "choice and chance" and the importance of "past paths and institutional legacies" (Johnson 2001: 255). Both Stark (1992) and Johnson (2001) underscore the time dimension of institutional transformation and the importance of sequencing and cumulative stages. Certain studies suggest the importance of interpretation as a mechanism for opening up the possibility for change. Fligstein (1990), for example, looks at the role of courts and court interpretation, Garud and Karnøe (2001) consider the "mindful deviation" associated with entrepreneurs, and Campbell (2004) explores the role of ideas in institutional transformation. Other contributions point to the importance of the "diffusion" of institutions and institutional elements and to associated processes of translation, adaptation, and hybridization (Westney 1987; Djelic 1998; Jacoby 2000). Crouch and Farrell (2002), Schneiberg (2006) and Sorge (2005) emphasize the fact that a multiplicity of institutional repertoires, including contradictory ones, can coexist in a particular institutional space. At any point in time, some may be active and others dormant, but subtle external or internal pressures may lead to a re-balancing (Morgan and Quack 2005). Thelen (2003) talks of institutional conversion. Existing institutional structures are redirected to new purposes and in a sense "revisited." She identifies "layering" as another mechanism where new institutional arrangements are "layered" upon pre-existing ones. In general, the model of change that emerges from Thelen's work as well as from some other recent contributions within the literature breaks away from the model of punctuated equilibrium and points instead to the cumulative effects of ongoing and often subtle changes (Djelic and Quack 2003b; Streeck and Thelen 2005b; Thelen 2003, 2004).

Another way to look at mechanisms of change is to go back to the mechanisms of stability identified above. Ebbinghaus (2005) proposes that different sources of stability will be sensitive to different pressures for change. A logic of stability that has to do with increasing returns will be sensitive to decreased efficiencies. A policy feedback and power-induced stability can be questioned by shifting power relations. Institutional complementarities can work towards stability, but a tight interdependence between institutional subsets could also mean that when a particular subsystem evolves, the entire system is under pressure. Finally, legitimacy and socialized stability are sensitive to a conflict of scripts and to the emergence of alternative ideas and paradigms that are relayed by organized interests.

Open systems, crooked paths, and nested path generation

We build upon those recent efforts at reintroducing gradual but significant change (Djelic and Quack 2003b; Streeck and Thelen 2005b). This article focuses on path generation as a continuous and complex process that can be studied only through time and that generally occurs in a series of successive and cumulative stages (Johnson 2001). Path generation does not necessarily imply the creation of a new path "from scratch." Instead, this may be a process of dynamic combination and recombination where legacies play an important but non-deterministic role, and where diffusion, layering, conversion, and bricolage are instrumental (Douglas 1986). The cumulative effects of combination and recombination over time can ultimately generate consequential institutional change.

Path generation must be seen as a "political" process of emergent nature. Different societal actors with different economic and political interests, normative orientations and social identities strive to shape the institutional rules used to govern the overall societal system or specific subsystems (see Kleiner 2003; McNichol and Bensedrine 2003; Morgan and Kubo 2005; but also Djelic 1998; Jacoby 2000). In doing so, they draw on an existing institutional repertoire of variably acceptable courses of action that leave considerable scope for strategic and tactical decision-making by purposeful actors (Clemens and Cook 1999; Mayntz and Scharpf 1995). Path generation is therefore a highly complex phenomenon that often involves a sequence and accumulation of events over a long period of time. The complexity of actor constellations means that the paths are likely to develop emergent qualities, i.e., characteristics not directly intended by any of the actors involved (Djelic 1998; Jacoby 2000; Stark 1992). Our understanding of path generation resembles Garud and Karnøe's (2001) concept of "path creation" in that it emphasizes reflexive agency and cumulative processes of gradual change, but differs in the degree to which actors are considered capable of strategically and intentionally creating and shaping path dependencies. While Garud and Karnøe (2001) put entrepreneurial activity at the center of path creation in technology fields, we point to the potentially unintended effects of behaviors in complex social processes and to the consequent emergent qualities of institutional schemes.

The complexity of path generation increases considerably when we move our focus from technology and organizational fields to national institutional systems. It increases even further if we treat national institutional systems as potentially open systems in the double sense that they interact with each other while being embedded or nested within transnational institutional structures (Djelic and Quack 2003a; Djelic and Sahlin-Andersson 2006; Scott 2001). The intensity of interaction between national systems may vary, as does the "tightness" of connections between subsystems. Because of openness and nestedness, there are likely to be multiple points of pressure where national subsystems might be subject to change, e.g., through transfers, diffusion, "conversions," "layering," or through the revival of "dormant logics" (Crouch 2005a; Schneiberg 2007; Sorge 2005; Streeck and Thelen 2005a).

Openness and nestedness therefore lead to complex logics of change. Because there are multiple points of pressure for change, it is difficult to predict the aggregate or cumulative results. The multiplicity of institutional seeds and the interactions between various action logics arising from these seeds are likely to lead to paths of change with emergent qualities. The paths cleared along the way are likely to be crooked since they reflect an accumulation of struggles, negotiations, and recombinations. Critical junctures can play a role, but we compare them to small clearings in a jungle. For a path to emerge from the clearing, critical junctures have to generate a number of incremental and cumulative steps that can extend over long stretches of time. The ultimate course of each path can only be identified and described post hoc – it is not pre-determined by any single critical juncture.

Path generation through collision: the US competition regime in Germany

Our first pair of case studies focuses on the German competition regime after 1945. The overall geopolitical context and a profound national crisis meant that the German system was relatively open then to international influences. We start by considering the attempted transfer of the US competition regime to Germany and then compare resulting developments in product markets and in the banking sector. Although the two cases have quite similar starting conditions and dynamics, their outcomes proved rather different. Some reinforcing mechanisms generated momentum towards a new path or towards a path deviation in one the case, and secured the reproduction and entrenchment of existing path dependencies in the other. Details of the analysis have been presented elsewhere (Djelic and Quack 2005; Quack and Djelic 2005), hence we concentrate here on key results and conclusions.

Breaking the old path: the postwar competition regime for product markets

In 1945, Germany was not the only European country with a tradition of cartelization, but it probably was the country where the systematic organization of markets had gone furthest. A key factor that eventually led to a shift in rules governing competition in product markets in Germany was the significant pressure exerted by the United States and the alternative model it represented. Since the American military command in Germany was convinced that cartels and large conglomerates had played an important role in the rise of the Nazi regime, it insisted on the decartelization and deconcentration of post-1945 German industry (Damm 1958).

After the occupation statute was signed in 1949, Germany was allowed to regain its sovereignty progressively. Still, the American government insisted that certain policy fields like decartelization and financial decentralization would remain under the full control and scrutiny of the Allied High Commission, which succeeded the Allied military command (Berghahn 1986; Djelic 1998; Horstmann 1991). The newly founded Federal Republic of Germany was to draft its own legislation in competition matters, albeit under the direct and close supervision of American authorities.

Seven years of heated debate and fierce negotiation followed. Numerous draft proposals and parliamentary votes were needed before the Law against Restraints on Competition (*Gesetz gegen Wettbewerbsbeschränkungen*, GWB) was finally passed in 1957. This law was a clear departure from the legacy of cartelization in German product markets. It set a new institutional trajectory built in part on dormant German traditions of liberal market regulation dating back to the nineteenth century (Quack 2006).

The American military administration in Germany understood from the start that mobilization of local support was crucial for the stabilization of this alternative approach to competition and cooperation in Germany. While searching for Germans sympathetic to their goals and perspectives on competition, the Americans found support in a small group of "ordo-liberal" economists from the so-called "Freiburg school" and a few practitioners who had been involved in the competition administration during the Weimar Republic. These groups were interested in collaborating with the Americans in hopes of gaining national leverage for their own projects and perspectives.

Ordo-liberals had been marginal in Germany before the end of World War II, with little intellectual and institutional impact. Nonetheless, their ideas were German seeds onto which American antitrust pressure could be grafted. The support of American occupation authorities brought a number of ordo-liberals into key institutional positions of power from which they could influence political circles and business communities. As Economic Minister of the Federal Republic of Germany, Ludwig Erhard was a central figure from 1949 onwards. Erhard served as mediator between the American military command and the German resistance and opposition. He remained an eminent proponent of a general ban on cartels during the following parliamentary discussions and negotiations on the Law against Restraints on Competition. The ordo-liberals around Erhard were ultimately able to engage in public discussions over the pros and cons of an economic constitution for the newly founded Federal Republic of Germany, linking the choice of a new competition regime to general political issues of democracy and social justice.

There was fierce opposition to the general ban on cartels. During the immediate post-war period, informal agreements quite reminiscent of wartime cartels continued to operate on an illegal basis, particularly in industries with a longstanding cartel tradition. The majority of German business leaders were strongly opposed to antitrust legislation (Hüttenberger 1976; Robert 1976). As soon as industrial associations became re-established in the late 1940s and early 1950s, they began to lobby in favor of established and traditional cartel rules and practices. Under the leadership of Fritz Berg, the Federal Association of German Industries (*Bundesverband Deutscher Industrien*, BDI) became a vocal defender of cartels (Djelic 1998). Only the retail sector and some small and medium-sized businesses, particularly those represented by the Association of Entrepreneurs (*Arbeitsgemeinschaft selbständiger Unternehmer*, AsU), were supportive of the antitrust policy because they hoped that such a ban could protect them from the pressures of "big business" (Berghahn 1986). Nevertheless, the concept of the legitimacy of cartels was still deeply entrenched, even within those groups, and it was generally acknowledged that certain exceptions to the antitrust rule were necessary or at least acceptable. Political parties were split on the issue.

Hence, the re-ordering of product markets in postwar Germany started from and with the encounter between dominant foreign and peripheral domestic actors. Once local stakeholders had gained access to important institutional positions of power and were able to relay their project in broad parts of society, dynamics internal to Germany gained momentum and proved quite significant for the long-term stabilization of change. Despite all the compromises made in the course of negotiation, the Law against Restraints on Competition, when it went into force in 1957, played a decisive part in the generation of the new competition regime. Cartel agreements with restrictive effects on competition were declared null and void, and a newly created Federal Cartel Office (*Bundeskartellamt*) was put in charge of monitoring, and if necessary, sanctioning violations of the law. The general prohibition of price and quota cartels and the establishment of the Federal Cartel Office did significantly alter the business behavior of German companies, even though it took quite some time in a number of cases.

Even though the overall number of cartel agreements registered with the Federal Cartel Office dropped considerably after the passing of the law, informal arrangements continued and occasionally became subject to official investigations. In the 1970s, according to Nawrocki (1973), business managers entangled in illegal cartel activities could count on understanding judges – to the dissatisfaction of FCO officials. As this shows, it took much more than the passage of the Law on Restraints on Competition to stabilize the new competition regime. The Federal Cartel Office initially pursued an explicit policy of dialogue and negotiation, but subsequently resorted to more coercive methods.

Several reinforcing mechanisms played a role. These included increasing returns for companies and economic sectors for which the disadvantages of (national) cartelization outweighed the advantages (Herrigel 1996; Sorge 2005), cognitive effects generated by new legal categories, and increasing public legitimacy of the FCO and competition policy as part of the German "economic miracle." Some of the most influential factors were probably policy feedbacks from the new institutional order on power distribution and interest articulation of the next generation of business leaders. According to Berghahn (1986), the Law against Restraints on Competition started a learning process in parts of the German business community. More and more stakeholders criticized the cartel strategies as inappropriate to achieve a leading position in national and international markets. The sectoral shift from traditionally cartelized heavy industries to less cartelized consumer goods industries as well as the socializing effects of the new competition regime and the strong influence of American management methods on the younger generation of managers in the 1960s and 1970s facilitated this reorientation among business leaders (Berghahn 1986; Djelic 1998). Factors that promoted the progressive re-integration of West Germany into the world economy, particularly the Marshall Plan and the emergence of a European market, furthered this learning process.

A special type of policy feedback evolved through the antitrust regime that was being established at the European level. Antitrust provisions emerged as an important feature of the European Coal and Steel Community (ECSC), founded in 1951, and the European Economic Community (EEC), established with the Treaty of Rome in 1957 (Djelic 2002). German politicians and competition officials, many of whom represented the ordo-liberal tradition, played an influential role in framing and implementing the European competition regime during the 1960s and 1970s. The concomitant and partly interconnected development of European antitrust law eventually became a stabilizing factor for the new competition regime in German product markets. In the 1970s, representatives of the German Federal Cartel Office, when confronted with negligent attitudes towards cartels in court investigations, could then cite European anti-trust legislation and directives in order to strengthen their own position (Quack and Djelic 2005). European competition regulations and the epistemic community supporting them therefore became a force that could be mobilized in support of the German competition regime.

The postwar story of competition regime shift in Japan would tend to confirm this (Haley 2001). Although the Japanese story shared a lot of features with the German one, the resulting institutional transformation in Japan was neither as significant nor as stable in the long run as it has been in Germany. One of the explanations, we propose, is that the shift in the competition regime in German product markets was stabilized and reinforced over time by the development and emergence of another "layer" of antitrust at the transnational or European level. Such reinforcing pressure was entirely absent in Japan.

Still, the clear break in the dominant governance mode of product markets in postwar Germany, which shifted away from cartelization towards competition, did not preclude continuity. Business leaders and politicians, who increasingly rejected cartelization, were often among those who actively worked towards promoting a further growth of German "combines" and re-restablishing German company networks between industrial firms and between industrial firms and banks (Beyer 1998; Streeck and Höpner 2003; Windolf and Beyer 1995). These forms, however, should not be regarded as simple substitute for the industrial cartels of the inter-war period (Shonfield 1977 [1965]). The combination of a clear break with the cartel tradition and the continuation and reinvention of other forms of economic coordination played an important role in structuring what was identified in the 1970s as a specific German model of "diversified quality production" (Streeck 1991).

Reinforcing the old path: postwar competition regime in the banking sector

At the end of World War II, the American military government favored a similar far-reaching change of the competition regime in the banking sector. When Joseph Dodge, an American banker, took charge of financial and banking policy within the American military government (OMGUS) in September 1945, he announced that the German banking sector would be decentralized and decartelized in such a way that "the German financial hierarchy will never play any part in disturbing the peace of the World" again (cited in Horstmann 1991: 64). A novel banking structure and competition regime was also to be established based on the American experience.

However, the impact of the Dodge Plan was not as deep or long-lasting as expected. First of all, it met with considerable opposition from the Allied Control Council. The British and Soviet military governments had conflicting aims and strategies regarding the future development of the German banking sector. In October 1946, the Allied Control Council acknowledged that no agreement could be reached and left the military governors to proceed as they wished in their respective zones of occupation. However, as future developments would show, the banking system could not be reformed by the individual occupied sectors independent of each other. Another important reason for the failure of the Dodge Plan was the inability of the American military government to mobilize local support. With few exceptions, the reactions of the German state (*Länder*) politicians were negative. Even politicians like Ludwig Erhard, who endorsed new competition legislation with a strong ban on cartels, thought that Germany's unified and universal banking system corresponded to the structure of the overall economy and therefore could not be split into parts without endangering the stability and liquidity of the economy as a whole. Representatives of private banks who had started to lobby German politicians immediately after the war with the goal of preventing major changes in the banking system objected to cooperation with American authorities.

OMGUS therefore imposed an order launching decentralization and prohibiting any informal contact between banks in the different German states. The Western Allied governments proposed the idea of having a bi- or trizonal central bank. By 1948, it seemed that key features of the Dodge plan were finally becoming reality in the three Western zones. However, the old German banking elites were merely re-asserting their leadership under the guise of apparent formal changes. Hermann J. Abs, a former board member of the Deutsche Bank, had been in close contact with the British military government since 1946. Abs became a key figure in mobilizing private banks against decentralization of the German banking sector. Private bank representatives launched a massive media campaign and strategically exploited the disagreement between the different Allied military governments (Horstmann 1991).

Time was on the side of the German opposition: the American influence gradually dwindled with the return to German sovereignty. Not surprisingly, a law passed shortly after the foundation of the German Federal Republic allowed private banks to recombine along the lines of the former banking groups. Compared to the original American plans for a reorganization of the German banking sector, the outcomes of the actual reform process appeared quite different at the end of the 1950s. Instead, one finds significant evidence of continuity with respect to the structure and functioning of the German banking system across and beyond the Nazi period and World War II (Scholtyseck 2000).

During the subsequent discussion on a Law against Restraints on Competition, actors from the banking sector proved similarly successful in preventing any kind of deeper change. Since the financial crisis of the 1930s, the German banking sector had been governed by cartel agreements that involved recommendations on interest rates. Soon after World War II, banks and banking associations pleaded for a continuation of these sector-specific restrictions on competition. Their main argument was that free competition in the banking sector would quickly undermine the stability and security of the overall financial system. Bank supervision authorities in the different German states generally accepted this argument and declared cartel agreements in their respective sector valid in principle (Hausleutner 1970: 47f., 86f.).

The planned Law against Restraints on Competition loomed as a serious challenge to the existing coordination of interest rates and, more generally, to restrictions on competition within the German banking sector. With the support of financial supervisory authorities and of several state governments, private banks and bank associations successfully lobbied to have the financial sector exempted from the law (Hüttenberger 1976; Robert 1976; Schmidt 1995).[1] This allowed banks and banking associations officially to continue their practice of negotiating and coordinating interest rates until the federal government declared the policy invalid in 1967. Even after that, several banking associations continued to propose and submit recommendations on credit interest rates to the Federal Cartel Office (Hausleutner 1970: 111f.). In the absence of any significant domestic opposition, the tradition of interest cartels was re-established as an exemption to both the changing national competition regime and to the more sweeping anti-trust regime that was to be established at the European level (formally including the financial sector).

More than 30 years passed before the exemption of the financial sector from the Law against Restraints on Competition (GWB) came under pressure for repeal. Three developments preceded and prepared the 1990 reform of Section 102 GWB. From the mid-1970s on, the Federal Cartel Office (FCO) systematically took action against collusive behavior. It adopted a much more critical position on the issue of interest rate recommendations in the banking sector (Schmidt 1995: 77). During the 1980s, the FCO received support from the EC's Directorate General IV, which launched an increasing number of investigations into cases of anti-competitive behavior in the European financial sector. In each case, the European Court of Justice ruled that the European competition law was applicable in all sectors without exemption. European competition law began to penetrate more and more deeply into national administrative and legal decision-making and finally forced the relevant German actors to adapt national legislation according to European standards (Quack and Djelic 2005; Schmidt 1995: 26). At the same time, large private banks in Germany exhibited a reorientation from national to international (often European) markets and from universal to investment banking (Morgan and Quack 2000;

[1] A special law concerned with the regulation of the banking sector (*Kreditwesengesetz (KWG)*), was enacted in July 1961. It indicated the conditions under which banks would be allowed to operate but did not touch upon questions of competition in this sector (Hausleutner 1970: 137ff.).

Vitols 2001). Liberalization of financial markets as well as increasing international competition among banks undermined the collective capabilities of large private banks with respect to sectoral self-organization and market coordination (Deeg 2005; Höpner and Krempel 2003; Lane 2005; Lütz 2002).

Lessons learned from the comparison

The two stories exhibit similarities as well as differences. In both the product markets and the banking sector, the initial impulse was exogenous and triggered by a critical juncture. The initiative for change came from the American military government and coincided with a situation of national crisis and self-questioning. In both cases, this initial impulse was also an attempt at pressing for increasing competition where cartelization had been the structuring principle. In other words, the distance between pre-existing institutions and the planned institutional change was quite significant. At the beginning of the process, the American military government was in a position to exert considerable power over the future development in both sectors. Neither of the two stories, however, is that of institutional path generation "from scratch." Instead, both cases point to associated processes of diffusion, translation, layering and – more generally – recombination. In both stories, such institutional recombination involved many struggles and confrontations over a period of time – nearly 10 years in the first case, and much more in the second. Furthermore, an apparent step in the direction of change might soon lead to severe backlash, and vice versa.

In spite of a number of initial similarities, the long-term outcomes of the two stories are quite distinct. In the case of product markets, the crooked path ultimately led to a significant transformation of formal institutions, which itself triggered and was reinforced by the progressive reorientation of economic actors away from cartelization and towards oligopolistic specialization. The American military government had managed to connect with local relays and was therefore able to find support and to generate legitimacy for the new policy within parts of the German business and political community. These local relays were also crucial for establishing the legal and administrative institutions that would socialize the next generation to a new and substantively different approach towards competition law. In this case, we do indeed observe "gradual but consequential change" (Djelic and Quack 2003b: 309), a process of path generation through "gradual transformation" (Streeck and Thelen 2005b: 9). This process involved a shift from direct exertion of power towards more subtle ways of generating legitimacy and achieving socialization.

In the banking sector, on the other hand, quite drastic formal changes originally introduced by the Allied occupation government did not prove stable and were progressively displaced and abandoned. The strength and coherence of German opposition worked in concert with an evolving geopolitical context and a highly constrained and constraining local financial system to deflect and tame the changes. Core players from the German banking sector managed to defend and maintain cartelization in the financial sector well after the 1958 law prohibited cartelization in most industries and product markets. For quite some time, path dependencies or even "past dependencies" in the banking sector seemed to absorb change pressures.

We identified three important differences between our two cases that go a long way in explaining the differing outcomes. First, changes in the competition regime of product markets are a prime example of a well-functioning "pincer movement." In "pincer movement," external pressure and actors find local relays and coalitions that are both sympathetic to the change project and have enough leverage and resources to have an impact. The impact of such a pincer movement on attempts to transform organizations and institutions has already been documented and theorized (Djelic 1998; Djelic and Quack 2003c: 25; Jacoby 2000). In the banking case, the Americans clearly failed to forge an alliance with a local "coalition of the willing." They failed in fact altogether to identify the groups that could have constituted such a coalition. The absence of local relays and champions in this case meant that the pincer had only one arm. Direct exertion of power was not transformed into local support, legitimacy or any form of socialization. Second, the importance of structural obstacles should not be underestimated. After 1945, the German economy was in dire straits; although means to finance reconstruction were urgently needed, there were no alternatives to the German banking system. In particular, the underdevelopment of stock markets meant that both American occupation authorities and the few domestic proponents of decentralization of the banking sector had difficulties in pointing to a viable alternative to universal banks. Such structural limitations gave the old banking elites significant leverage and the capacity to mobilize public opinion and political support in their own interest. Finally, in the products market, the possibility of introducing another layer of pressure from outside the system was available and seized upon much earlier than in the banking sector. In the case of product markets, ordo-liberal groups used appeals to European competition authorities at a rather early stage to stabilize and reinforce the impact of the Law against Restraints on Competition. In the financial sector, on the other hand, European competition regulation remained "dormant" for a rather long time before it was re-activated by interested stakeholders during the 1990s.

Path generation in the transnational void: setting international standards

The second pair of cases illustrates the generation of new institutional paths in the transnational sphere and their possible reflection upon national institutional trajectories. International standard-setting organizations and networks are important actors in the generation of transnational institutional paths (Brunsson and Jacobsson 2000; Tamm Hallström 2004). They contribute actively to the creation of rules in what used to be an overall institutional void. This section reflects on two international standard-setting organizations or networks: the IASC (International Accounting Standards Committee) and the ICN (International Competition Network). We discuss here their role in generating a new path in transnational rule-setting and the possible impact of this at the national level.

The IASC: International Accounting Standards and path generation

Since the emergence of nation-states in the nineteenth century until well into the second half of the twentieth century, accounting rules were drafted, implemented and enforced within national jurisdictions. In the last decades, however, there has been a proliferation of activities and initiatives to make accounting standards comparable and compatible across national borders. The internationalization of business, the rise of multinational companies and the growth of international capital markets have induced various international organizations in the postwar period, and particularly since the 1970s, to work towards a cross-border harmonization of accounting rules (for a detailed account see Botzem and Quack 2006).

When attempting to introduce international accounting rules, one must overcome deeply entrenched national differences in practices and ethical norms of private and public stakeholders involved. Accounting rules in Anglo-Saxon countries are predominantly oriented towards the interests of investors, whereas those in continental European (and Japanese) countries are primarily concerned with the interests of creditors. Common and

Roman law countries also differ with regard to the way in which accounting rules were defined and meant to be changed, i.e., through case law or statutory law. The linkage of financial accounting to taxation further distinguishes countries such as Germany, where annual accounting reports are the basis for company taxation, from countries like the United States, where financial and tax accounting are independent of each other.

Here, we concentrate mainly on the development of International Accounting Standards (IAS) by the International Accounting Standards Committee (IASC) and its successor, the International Accounting Standards Board (IASB). However, it is important to note that the European Community was also active. In the mid-1960s, the EC had already launched an initiative to harmonize national systems of regulation in order to improve the comparability of financial statements from different companies within the Common Market. A task force had been established to prepare a European accounting directive, but Member State governments opposed the resulting draft essentially because they were not willing to give up their sovereignty on tax-related issues.

The International Accounting Standards Committee (IASC) was established by British professional accounting associations in 1973, partly in reaction to the continental European influence in the European Community harmonization project. The founding members of the IASC included representatives of national professional accounting bodies from Australia, Canada, France, West Germany, Great Britain, Japan, Mexico, the Netherlands, and the United States. The primary purpose of the IASC was to develop basic standards that could be rapidly accepted and implemented worldwide to improve the quality and comparability of international financial accounting (Samuels and Piper 1985: 70).

The early years of the IASC were characterized by the elaboration and gradual institutionalization of a procedural framework that would allow different national and sectoral accounting norms and philosophies to be articulated and the opinions and experiences of potential rule recipients to be heard. This procedural framework was largely inspired by the “due process” of the American standard-setter, the Financial Accounting Standards Board (FASB), which had been established in 1973 to deal with a wide range of different constituencies. After identifying salient accounting issues, the IASC would set up technical committees to work out a discussion memorandum to be approved by the IASC Board. The memorandum would be published and the public invited to comment on the draft within a fixed period of time. Subsequently, the IASC Board would compose an exposure draft and make it available to the public for further comments. Finally, the IASC Board would vote whether the exposure draft should be adopted or withdrawn and revised (Ballwieser 1998; Vorwold 2000).

This more formalized framework evolved in a rather informal manner. The bulk of discussions took place among experts delegated by international accounting firms or professional associations to the IASC’s technical committees (Tamm Hallström 2004). The IASC gave them the opportunity to exchange information, to gain a better understanding of practices in other countries, or to learn about accounting standards in general (e.g., for representatives of developing countries with no accounting rules of their own). In this way, the IASC gave birth to a small community of international accounting experts who acted as bridging posts between different national accounting systems. The International Accounting Standards (IAS) published during the first 15 years of IASC existence have been characterized as “consensus standards” because they consisted essentially of a collection of accepted practices in various countries (Thorell and Whittington 1994: 224). Some IAS options were so broad that they could be used under different financial reporting systems ranging from the Generally Accepted Accounting Principles of the USA (US GAAP) on the one hand to the German commercial law code (HGB) on the other (Daley and Mueller

1982: 45). By the early 1980s, the IASC had established itself as an international arena for accounting standard-setting and had fostered the development of an international expert community, but its standards still lacked coherence, legitimacy, and recognition.

From the mid-1980s onwards, IAS standards became more focused on and oriented towards the Anglo-American accounting tradition. This change was partly engineered by the IASC and partly attributable to external economic and political transformation processes. To gain support and legitimacy for its standards, the IASC had an explicit policy of offering membership status to other organizations as a means of co-optation. Constitutional amendments in 1977 and 1982 abolished the bias that had favored the nine founding members. A complete overhaul of the organizational set-up in 2001 further increased the influence of preparers and users of company accounts as compared to the accounting professionals. A successive expansion of membership in the Consultative Group and the introduction of an observer status in the IASC Board intensified liaisons with government and public stakeholders. The overall result of these measures was a shift in power and influence away from the representatives of the various national professional associations to the preparers (large accounting firms in the general Anglo-Saxon context) and users of financial reports.

At the same time, the internationalization of capital markets, and particularly the increasing centrality of US stock exchanges for global capital flows, gave American accounting rules (US GAAP) a global reach and FASB, the American standard-setter, and the SEC more leverage in international standard-setting (Haller 2002). Both agencies viewed US GAAP as superior to IAS in terms of coherence and transparency, and they were not ready to list foreign companies on US stock exchanges unless these fulfilled the reporting requirements defined in US GAAP. This approach was subsequently adopted by the International Organization of Securities Commissions (IOSCO).

In the second half of the 1980s, IASC and IOSCO entered into discussions that led to the joint Comparability and Improvements Project in 1987 and to the affiliation of IOSCO with the Consultative Group of the IASC. The objective of the project was to reduce or eliminate alternatives within standards and to make standards more detailed and prescriptive. The IASC moved into a new stage of its work, described by Thorell and Whittington (1994: 225) as the "normative period." Professional representatives of continental European and other countries diverging from the Anglo-Saxon model came increasingly under pressure to give up their accounting principles in order to raise the acceptance of IAS among financial market players (Kleekämper 1995; Nobes and Parker 1985). After a second round of revisions brought the IAS standards even more in line with Anglo-Saxon practices, the IOSCO advised its members in 2000 to allow multinational issuers to use IAS in cross-border offerings and listings.

By the beginning of the new millennium, a clear pattern of international accounting standard-setting had emerged. While the boundaries, logics, and participants of the regulatory field had shifted from professional to financial market logic, the variety of accepted rules within IAS had been narrowed down to predominantly Anglo-Saxon principles of investor-oriented transparency and accountability. However, the future directions of international standard-setting in accounting will remain contested. While US regulators continue to insist on financial reporting according to US GAAP or on reconciliation of other reporting standards into US GAAP as a precondition for companies to be listed on US stock exchanges, IAS decision-making does not always follow the logic of Anglo-Saxon dominance. For example, the German proposal for share-based payment (IFRS 2) succeeded over more far-reaching Anglo-American suggestions. Consequently, the path is not yet firmly established but still very much in the making.

The changing logic of IAS standards made conflicts with national accounting rules even more acute. The clearing of a path for international accounting standard-setting affected national developments in this regulatory field in many ways. As outlined above, the IASC and its successor do not have any formal authority to impose their standards on companies and regulators in different national states. Nevertheless, the IASB and its IAS standards have led to decisive changes in continental European accounting systems. In 1998, for example, the German Commercial Code was amended to allow groups of companies the option of compiling their financial reports according to IAS (or US GAAP) instead of German accounting standards. As part of this legal reform, elements of IAS such as segment-based reporting and capital flow analysis were integrated into German law. Furthermore, accounting rules are no longer set by German legislators but by a German Accounting Standards Committee structured similar to the IASC (Botzem forthcoming). While similar adaptations can be observed in countries that tended to favor prudence principles (such as France and Japan), the American case indicates how geopolitical and economic power can immunize national accounting systems against influences from newly emerging international paths – even in times when national rules come under criticism because of public scandals such as the Enron case.

The development of IAS has also affected developments in the European Union. In 1995, the EU abandoned its own accounting standard-setting initiative to participate in the development of international accounting standards (Commission of the European Communities 1995). Since January 2005, IAS/IFRS has been mandatory for publicly traded companies in the EU, thus ruling out US GAAP as an accepted alternative (Regulation (EC) No 1606/2002). National governments may even extend the area of application of IAS/IFRS to other types of companies if they wish to do so.

The ICN: a transnational forum for the spread of competition law

In 1945, antitrust was essentially an American legal and regulatory tradition with no impact beyond the national borders of the United States. American antitrust reflected the double belief that competition should be the highest organizing principle and that the economy functions best when competitors have limits for permitted activities. Outside the United States, competition tended to be feared rather than fostered because of its potentially disruptive and chaotic consequences. Sixty years later, a major reversal of this trend has taken place. Competition has become the name of the game in both national and international economic spaces. Today, about one hundred countries have a competition policy and competition institutions that seem quite compatible, at first sight, with the American antitrust tradition. The last few years have also seen multiple attempts at fostering antitrust principles and institutions within the transnational space as well as initiatives to spread a "culture" of antitrust.

In the story recounted here, path generation at the transnational level was preceded by a long preparatory period when antitrust principles diffused progressively to a number of jurisdictions. There were several stages to that process of diffusion. An early movement was the direct transfer of an American model to a few other countries – Germany in particular – and the budding European community. As mentioned above, this movement started in the late 1940s and was a progressive, step-by-step, cumulative, and contested process. Another stage was the grafting of antitrust principles onto the genetic code, as it were, of key international organizations such as the GATT. The prohibition of cartels and agreements was put forth in Chapter V of the Havana Charter – the foundation document of the GATT and thus of the World Trade Organization (Zeiler 1999).

A third stage came in the 1980s. Three developments then gave a new and important impetus to the spread of antitrust across borders. Chronologically, the revival of the European construction effort came first. The European Single Act was signed in 1986 and paved the way to the negotiations that led to the 1992 Maastricht Treaty. This process clearly boosted activity around antitrust at the community level. One of the more direct and significant consequences was the enactment of a European Merger Regulation in 1989 giving the European Commission “the exclusive power to investigate mergers with a community dimension.” Then, in turn, such activity and activism at the European level trickled down to the level of the member states. Both old and new member states developed and/or modernized their antitrust acts and structures in the late 1980s and early 1990s to fit the European Union's antitrust template. A second important development was the fall of the Berlin Wall and the resulting “extension of the West.” With respect to antitrust, this triggered a wave of international missionary activity unprecedented since the early 1950s and on a scale and scope much greater than had been the case before. Both American and European antitrust authorities were actively trying to “export the rules of competition regulation,” first to Eastern and Central Europe, and soon also to many other areas in the world (Djelic and Kleiner 2006; Muris 2002; Pittman 1998; Rouam et al. 1994). A third important development is the episode of economic internationalization or globalization that gained momentum during the 1990s. Globalization and the multiplication of jurisdictions with competition law systems have undeniably created new constraints and challenges. The problem of overlapping jurisdictions and the associated risks of inconsistent or conflicting regulation and decisions have become particularly salient (Jalabert-Doury 2003; Monti 2002).

The new challenge for the antitrust world is therefore to create conditions for a better co-ordination of existing regimes and jurisdictions. This has been the objective of the latest phase of development. Since the 1990s, transnationalization of competition regulation, standards, and practices has been the main project. A first strategy was to develop bilateral agreements as a forum to ensure reciprocal understanding. These bilateral agreements have had undeniably positive results (Melamed 2000). This is particularly true of the EU/US connection (Schaub 2000). However, inherent limitations of bilateral agreements have also been revealed. It became clear in some cases that different legal systems, different procedures, different analyses of the same facts, and possibly different political perspectives could lead to different appraisals of the same operation by two authorities, in spite of the existence of mechanisms for bilateral cooperation (Djelic and Kleiner 2006). As a result, multilateral initiatives progressively grew in significance. These initiatives followed different routes that revealed conflicting perspectives and divergent opinions as to the purpose and desired scope of multilateral agreements.

In the 1980s, the OECD was promoting international discussion of competition policy matters within its longstanding working group, the Competition Law and Policy Committee (CLP), as well as within a working group that brought together CLP and OECD Trade Committee members. The CLP has worked particularly well as a forum for promoting soft convergence of competition policies among its members and for providing technical assistance to certain OECD observers and non-members. It has not, however, achieved much success in rule-making or dispute settlement, and convergence has been more in terms of understandings and principles than in terms of rules, processes, and practices. Efforts were also undertaken by the World Trade Organization (WTO). In 1994, EU Commissioner Van Miert convened with a group of “wise men” to elaborate the stakes and challenges for competition policy. The Van Miert report, published in 1995, called for the elaboration of a “plurilateral framework for competition ensuring the respect of certain basic competition principles" (Commission of the European Communities 1995). In 1996, the World Trade Organization (WTO) created a Competition Working Group under the strong influence of Karel Van Miert. In the beginning, this group had a limited mandate. The EU hoped to push it towards the negotiation of international rules, but the US and a number of other countries proved much more reticent (Van Miert 1997). A few years later, the EU again took the lead, suggesting that competition should be tackled in a new round of negotiations. In April 1999, Sir Leon Brittan, the former EU Competition Commissioner, proposed that "in negotiating a WTO agreement, we should aim for gradual convergence of approaches to anti-competitive practices that have a significant impact on international trade." So far, reactions to the EU position have been far from enthusiastic. Developing countries seem fairly skeptical that adopting a multilateral framework would bring economic benefits for them. The United States also insisted that any agreement should be voluntary and that it would be difficult to create a competition framework similar to the trade framework (Pons 2002; WTO 2000).

In parallel to these EU-driven developments, the United States launched its own initiative in 1997: the International Competition Policy Advisory Committee (Advisory Committee or ICPAC). Over the course of the next 2 years, the Advisory Committee held extensive public hearings in Washington attended by scholars, business executives, economists, lawyers, and competition officials from around the world. The ICPAC ultimately advised against the development of binding competition rules subject to dispute settlement within the WTO. Instead, it proposed a number of non-binding agreements (ICPAC 2000). ICPAC believed that binding agreements, like those the EU was pushing for within the WTO, were not the only way to develop cooperation in the field of competition policy or to facilitate further convergence and harmonization. The Advisory Committee argued that countries might be willing to cooperate in meaningful ways, but may not want to be legally bound to do so under international law. The ICPAC report therefore proposed a Global Competition Initiative to foster dialogue amongst antitrust officials as well as between officials and broader communities with a view to bringing about common understandings and a common culture and greater convergence of laws and analyses.

The ICN was born 2 years later as a direct heir to the ICPAC report (Djelic and Kleiner 2006). The ICN is a "project-oriented, consensus-based, informal network of antitrust agencies from developed and developing countries that will address antitrust enforcement and policy issues of common interest and formulate proposals for procedural and substantive convergence through a results-oriented agenda and structure" (ICN website). Membership is voluntary and open to any national or multinational competition authority entrusted with the enforcement of antitrust laws. The ICN is not only a virtual network, but also an open one. Concretely, this means that although only antitrust agencies can be members, interaction with a wider community is encouraged. The targets are "non-governmental advisers," that is, members of international organizations, representatives from consumer and industry associations, and practitioners of antitrust law, as well as members of the academic community. The founding fathers often assert their willingness to stimulate the emergence of what they call a "community of interest." Annual conferences provide a physical rallying point where this "community" comes together. The ICN has a double objective. First, it proposes to enhance collaboration between antitrust authorities so as to stimulate the development, spread, implementation, and monitoring of "seamless" practices and standards of competition regulation, and this within, across, and beyond national boundaries. The second objective is a more cultural one – to foster and encourage a belief and trust in the superiority of markets and competition within and beyond the antitrust community.

Learning from the comparison

Both cases of path generation in the "transnational void" clearly show the importance of time, preparation, and multiple junctures, many of which were purely accidental and haphazard – "out of path," as it were. In both cases, a wide range of private and public actors with changing participation over time were involved in rule-setting. Both stories feature a multiplicity of parallel paths that may collide and conflict at certain times, and reinforce and strengthen each other at others. Several possible routes towards transnational institution-building existed, and those routes were constructed and furthered in parallel for rather long periods of time. Interestingly, one route may ultimately seem to become dominant while the others remain open and active, yet nothing can prevent us to think that it could not take over at a later stage (Schneiberg 2007).

This comparison illustrates the complex nestedness of transnational and national institutional trajectories. Transnational rule-making in our two stories is strongly influenced by certain national institutional sets. The role of an American "model" is undeniable in both cases. At the same time, transnational rule-making is shaking and shaping national institutional trajectories. An interesting empirical question is the degree to which this does or does not include the United States. In other words, path generation at the transnational level reflects a complex process of recombination where certain national institutional legacies play a part. However, path generation at the transnational level also has an impact of variable strength and depth on national institutional systems.

A feature that differentiates this pair of cases from the preceding one is that path generation at a transnational level proceeded largely in the absence of legislative coercion. While the US military government used direct force and coercive power in Germany after 1945, the proponents of an Anglo-Saxon model had to use more subtle forms of hegemonic and discursive power in transnational negotiations. In the absence of legislative power, voluntary and network-like governance mechanisms were established to generate legitimacy and create the conditions for socialization. On both dimensions, the IASC and the ICN display characteristics that are typical for rule-setting at the transnational level (e.g., Djelic and Sahlin-Andersson 2006).

In these two cases, we can identify three mechanisms that link path generation at the transnational level with developments at the national level. First, increasing interaction and cultural homogenization of epistemic communities across borders proved helpful in shaping and stabilizing an emerging transnational path of rule-setting. Epistemic communities act as transmitters and mediators, to facilitate the direct and indirect impact of international rule setting on national institutional sets and systems. Second, the agreement among a majority of actors on common procedures for rule-setting, including procedures for the articulation of minority or deviant opinions and conflict resolution, contributed greatly to the stabilization of new paths. Third, the distinction between rule-makers and rule-followers progressively dissolved. Rule-setting thereby becomes a reflexive learning process, and the nature of the learning process itself adds legitimacy to the resulting rules in the eyes of the participants.

Finally, these two cases also illustrate that transnational institutional paths are, to a large extent, cognitive and normative. Institutionalization and its reinforcing mechanisms at the transnational level tend to project a logic of appropriateness. In this context, socialization and the quest for legitimacy emerge as key mechanisms for institutional stabilization and reproduction. Transnational rule-setting is expected to have an impact, not through hierarchical enforcement, but through mutual influence, imitation, and learning, in particular between and across national and international standard-setting arenas. Both stories thus point to the co-evolutionary nature of path generation and transformation at the transnational and national level, suggesting the need for closer analysis in future research of reinforcing and de-stabilizing effects across levels.

Concluding remarks

The four case studies we have described and contrasted in this article show that path generation in open systems can be complex, dense, and somewhat messy in real life. A comparison of evolutions across those four cases illustrates the conditions and limits for formation and change of institutional rules. The empirical material presented in this article generated several interesting insights and hypotheses.

(1) The case studies presented here show that path generation can be a long-drawn and slow process. Path generation needs time. The progressive transformation of the German competition regime, the development of International Accounting Standards, and the emergence of an international competition regime all featured a succession of critical junctures and moments.

(2) Punctuated equilibrium, i.e., a single radical and abrupt jump from one stage to another, was not observed. Instead, multidirectional struggles, an aggregation of decision points, and multiple critical junctures charted a posteriori a series of crooked paths. These crooked paths are made up of a complex accumulation of recombination episodes and a succession of small, sometimes apparently inconsequential steps, each of which has partly unintended consequences that stimulate unexpected reactions and developments. Legacies can play a variably determinant role in these episodes of recombination. Interpretation, diffusion, adaptation or translation, layering, conversion, and bricolage can all be instrumental processes. These crooked paths could not be precisely predicted at the beginning of the process; they can only be identified and ascertained post hoc.

(3) The long-drawn process of path generation often relied on a combination of different mechanisms. While power and policy feedback were needed to generate momentum at the beginning of the process, the ability to gain legitimacy and to establish efficient ways of socialization became decisive for the stabilization at later stages. Power and policy feedback took different forms. In all cases, however, the exertion of power was necessary but insufficient for the stabilization of a new path or for the transformation of an existing path. The ability of certain actors to mobilize support and legitimacy for the new approach and to establish institutions that socialize other actors towards the new approach distinguishes the successful cases of path generation from the unsuccessful ones. Path generation studies should therefore give increased attention to the combined and interactive effects of different re-enforcement and stabilization mechanisms, particularly those with increasing returns, power and policy feedback on the one hand, and legitimacy and socialization on the other.

(4) A configuration where perceived internal crisis, disruptions, or dysfunctions combine with external pressure is conducive to the emergence of this type of path generation. In particular, institutional systems or subsystems will be more likely to change when external pressures and solutions are connected to local stakeholders and their traditions through what we define as “pincer movement.” We argue that the likelihood of path generation, i.e., the creation of a new path or a significant deviation from an existing path, increases when institutional systems or subsystems are attacked through pincer movement, both from inside and outside, and foreign as well as domestic actors

are able to mobilize various resources in favor of a common or at least compatible project (for more examples, see Djelic 1998; Djelic and Quack 2003c: 25; Jacoby 2000).

(5) All four case studies show the importance of nested effects among institutional dynamics at the national and international level. Path generation through collision and path generation in the transnational void were both strongly influenced by specific national institutional trajectories such as the American or Anglo-Saxon model. These influences entered rule-setting at the transnational level as part of a complex process of recombination. At the same time, transnational rule-making had feedback effects on national institutional trajectories of variable strength and depth. The embeddeness of national institutional systems in transnational rule-making means that there are multiple points of pressure where national subsystems become subject to change.

Our results suggest that the concept of path generation allows for a better specification of the conditions for change in existing paths and for the emergence of new paths in the case of open systems than the concept of path dependency. Path generation does not result from single critical junctures, but rather from a historical sequence of multiple junctures that cannot be fully anticipated. Such crooked paths show the interplay between pressures for continuity and stimuli for change – reinforcing mechanisms challenged by external and internal triggers for change. This type of constellation is likely to become more common in a world characterized by increasing cross-border and transnational interdependencies.

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