HOW CAN A MARKET BE BUILT WITHOUT A STATE?
A Comparative Perspective on Market Building and Legal Integration in Europe

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Abstract - The European common market is the outcome of legal rather than political decisions at the Community level. This experience of market building radically contrasts with the equivalent process in the EU member states. Whereas in the European countries, state building was the precondition for market growth, at the EU level a market has developed in the absence of a traditional state. Nevertheless, on extending the comparative perspective, one finds that the EU experience bears many features in common with the American process of market building. Indeed, in this respect the EU much more closely resembles the United States than it does its member states. Nevertheless, in America, the process came about because of the presence of very favourable conditions. And when those conditions changed, the country was able to rely on the presence of already legitimated institutions. Moreover, the federal constitution proved sufficiently rigid to protect democracy but also sufficiently flexible to adapt democracy to the new circumstances. The EU is mainly a supranational commercial republic, although it now increasingly behaves as a political authority based more on informal governance than on formal government. Is this form of governance sufficient to reconcile the demands of the market with the exigencies of democracy? How will the EU deal with the challenges raised by a more turbulent? internal and external context?

1. Introduction

The adoption of a single currency by 12 of the 15 countries of the EU on 1 January 2002 was a major step forward in the process of European integration. The Euro applied further pressure on the EU to become a supranational polity, rather than, or more than, an international organization. Moreover, the single currency concluded a process of integration largely driven by economic factors and promoted by legal actors (primarily The European Court of Justice). It was the gradual formation of a common market which gave substance to the project of integration. The need to build a continental economic space devoid of national barriers and open to transnational competition introduced a systemic mechanism of change into the economies of the EU member states. The two Rome Treaties of 1957, especially, engendered a dynamic process of successive changes which eventually gave rise to the emergence of internal monetary sovereignty in the form of a supranational financial institution: the European Central Bank. But it was the European Court of Justice, with its interpretation of the Rome Treaties as quasi-constitutional documents, that transformed those treaties into compelling arguments for the dismantling of national barriers to the formation of a continent-wide market. The EU thus constitutes a case of market building promoted (at the Community level) by legal rather than political action. Moreover, the lack of a generally accepted political strategy by the member states (at the Community level) fostered the development (at least until the 1980s) of a market dynamic devoid of social considerations.

The paper will seek to answer the following questions. First, is the EU experience of market building unusual in democratic countries? Second, is the separation between economy and society an obstacle to the EU’s legitimacy? Third, is the EU’s system of governance likely to be successful in promoting a wider and more active Europe? To answer these questions, I shall locate the EU experience in a broader comparative perspective. For too long, European political development has been taken to be the paradigmatic case of state building. American political development is deemed radically different; so different, in fact, that Europeans consider it an "exception", while the Americans, too, use it as an argument for their "exceptionalism". Whatever the case may be, both European and American scholars have done much to keep the political trajectories on each side of the Atlantic separate, thereby engendering a sort of cultural parochialism in both continents. Moreover, both America and Europe have found themselves without guidance in the face of contemporary challenges, and this has further heightened the perception that they are unique. In fact, now that America has become an imperial power, it believes that no previous democracy has been confronted with the challenge of conjugating freedom with power; and now that Europe has moved in the direction of “a pluribus unum polity”, it believes that no previous democracy has had to resolve the dilemma of conjugating diversity with authority. The conclusion to be
drawn is that the EU experience is not as exceptional as many observers claim; but also that the EU will not be as protected against new challenges as some observers hope.

2. The EU common market

The creation of a European common market was greatly favoured by the European Court of Justice (ECJ), which was able to operate regardless of the stalemate (during the 1960s) and the tensions (in the 1970s and 1980s) within the intergovernmental Union Council. At the EU level, the judiciary came to play a policy-making role unprecedented at the EU member-state level. The ECJ has acquired institutional autonomy from the other legislative and executive powers, exercising control over the ‘constitutional’ legitimacy of EU and national laws. Moreover, by imposing the supremacy of Community laws over domestic ones, the ECJ has created the legal conditions for introducing (within the scope of the treaties) a process of judicial review in the EU member states. On the basis of art. 177 of EC Treaty, domestic courts may refer to the ECJ whenever a domestic piece of legislation appears to conflict with Community laws, so that they may thus by-pass the domestic constitutional court. Obviously, the domestic judiciaries must then adopt and implement the ECJ’s rulings. This referral procedure has enabled those domestic courts that are allied with the ECJ to undercut the principle of domestic parliamentary sovereignty – and with it the judicial structure built around that principle.

This process was started by domestic economic actors operating on a continental scale, such as multinational corporations or export-oriented firms, with a material interest in reducing or neutralizing national constraints on free trade within the European market. By claiming before national courts that national legislation conflicted with Community rules, those economic actors prompted a revision of domestic laws which strengthened national judiciaries vis-à-vis parliamentary actors. The interactions between firms, national courts and ECJ (“the triangle”, as Stone Sweet 2000 has called it) generated powerful pressure for so-called negative integration: that is, the dismantling of the main barriers against the formation and functioning of a single European market. But, of course, once the previous differentiated barriers had been dismantled, the need to create a more homogeneous regulatory system arose: a need for positive integration largely met by the Community institutions, and by the Commission in particular. The member states in the Union Council were not passive onlookers, of course, but apart from the decisions of historical importance, decisions, they tended to operate within a policy framework established by the Commission and supported by the actors in the ‘triangle’. All three of these actors had something to gain from the harmonising of market interactions: firms could operate in a larger and more predictable market; the national courts could increase their influence over political decision-makers; and the ECJ could impose its role as the ultimate
interpreter of the treaties. In sum, with the backing of the national judiciaries – more than their national constitutional courts, which in fact resisted (as in Germany and Italy) the constitutionalization of the treaties by the Court – the ECJ promoted a judicialization of politics previously unknown to Europeans (Shapiro and Stone Sweet 1994). Note, however, that this judicialization concerned domestic rather than Community legislation.

Thus, supranational Europe has endeavoured to build a continental market without the institutional machinery which was instrumental in creating national markets. By calling for the dismantling of many of the national rules which obstructed the free movement of goods, capitals, workers and services across the Community member states, the ECJ has been instrumental in promoting a supranational legal order for a European common market: a legal order, again, that has required specific political decisions (first, at the member state level and then at the Community level) for it to be institutionalized. With its revolutionary rulings, the ECJ has introduced a number of key principles: the direct effect of Community law on individual national citizens (Van Gend en Loos of 1963); the supremacy of community law over national legislation, even if the latter has been approved subsequently to the former (Costa vs E.N.E.L. of 1964); the mutual recognition of domestic rules, which turned into pressure for the harmonization of national regulations (Cassis de Dijon of 1979); and the principle of governmental liability whereby a member state is liable for damages incurred by an individual because of that state’s failure to transpose a Community directive properly (Francovich of 1991).

Viewed from the perspective of the European nation states (Poggi 1991), this process is astonishing, for never in European history has market building been separated from state control and intervention. Indeed, it is taken for granted by social scientists that, in Europe, the capitalist market has been the outcome of a sequence of state decisions and choices. As Polanyi (1944) argued persuasively, without public intervention it would have been impossible for the market to take root and develop. Contrary to the neo-classical ideology, the capitalist market that arose in the European nation states required institutional and political conditions which only the public authority (represented by the parliamentary majority) could devise and implement. One can thus plausibly argue that, in Europe, the state arrived before the market, or better that the formation of territorial nation states created the structural and behavioural premises for the building of a modern economic system. This is why the territorial state, in the long transition from pre-modern to modern Europe, won the competition with its rivals, the Italian city-states and the German city-leagues. And it did so because of its greater capacity, given its larger territorial size, to mobilize societal resources in order to neutralize internal particularism.

Economic particularism, in fact, entailed transaction and information costs which precluded economic efficiency. As Spruyt wrote (1994:185),
"central administration provided for gradual standardization of weights and measures, coinage and jurisprudence. Undoubtedly this was a lengthy process (...) but (...) the dominant political actor, the King in France, the king-in-parliament in England, had vested interests in limiting defection and free riding and in furthering the overall economy. The greater autonomy of urban centres in the Hansa (league) and the Italian city-states made such objectives more difficult to achieve". Scholars (Caporaso 2000) have talked in this regard of the formation in Europe of a Westphalian state, by which they mean an institutional construct with the capacity to exclude external powers from its internal decision-making process; a capacity guaranteed by an internal organization of public authority around the dominant rulers. Thus, the Westphalian state which dominated European history from the seventeenth to the twentieth century was a large territorial unit, enjoyed external sovereignty from outside challenges, and ensured its own autonomy by means of the centralized organization of decision-making resources. It was on these institutional bases that a national economy could develop.

For this reason, from a European perspective, the current evolution of the EU is problematic from both an intellectual and a political point of view. The EU has apparently created a continental market without a continental centralized state, or at least without a powerful or effective central administration. The EU has adopted a supranational currency without a supranational government to control it. The EU member states have surrendered broad margins of their sovereignty on numerous domestic policies to the Community, although they retain their sovereignty on military and foreign policy. This is exactly the opposite of what happened in other federal or quasi-federal systems of the past, where the constituent units preserved their control over domestic policies but transferred authority over external relations to the centre. Moreover, the supranational currency is not supported by supranational policies in strategic aspects of monetary governance. The EU does not yet have a common fiscal policy, nor does it have a coordinated macro-economic policy. Above all, the EU has not constrained its monetary governance with social considerations. In fact, whereas historically the public support of the economy was legitimized by the state’s intervention to reduce the harmful effects of the workings of the market, only in the late 1980s did the EU begin to consider (with Delors’ Social Charter) the need to give social legitimacy to the common market. In sum, if the European welfare states have been the necessary side-payments for popular acceptance of the national capitalist economy, at the EU level economy and society still appear to be significantly separated.
3 Public authority and market building

The difference between state-building in Europe and America is not solely a matter of degree, with the former pattern (the European one) connoted by a state in constant growth (in terms of its economic and social responsibilities), and the latter (the American one) by a state which has grown to a lesser extent. Rather, the distinction relates to the different types of public authority wielded by the state (Fabbrini 1999a). In the countries of Western Europe, where the bureaucratic (territorial) state has generally preceded the formation of a modern market society, that authority has defined social relations, while in America, where the market society preceded the formation of a modern bureaucratic (federal) state, the authority wielded by the latter has been regulatory in character. In short, in the former case, the state has defined society as such; in the latter, it has done no more than regulate the dynamics of its growth. Unlike in Europe, in America (Offe and Preuss 1991:145) “the individuals (could) pursue their diverse interests and their particular notion of happiness…(without) the danger of an omnipotent government imposing its notion of collective happiness upon the people”.

This different structuring (in the nineteenth century) of the relationship between state and society in the two parts of the West inevitably conditioned the history of Western democracy. In the United States (Lipset 1979) a contractualistic view of democracy arose, while in the European countries democracy resulted from a sequence of hard-fought conflicts between social classes and bureaucratic interests for control of the state (Daalder 1995). When comparing the American and the French experiences in the nineteenth century, Grimm (1986: 97) remarks: “in America, where class distinction, feudalism, state controlled economy had never been established, there was no need for a liberal reform of society (…) In France, on the contrary, political power first had to bring about the situation which, for the Americans, seemed to be the natural order. Hence, the French revolution destroyed the absolute monarchy, but not the sovereign state. It merely changed the subject of sovereignty”. In sum, in the United States, democracy did not have to contend with an absolute state to ‘constitutionalize’, nor was it conditioned by a socio-economic context of scarce resources to be distributed among a growing population, as happened in Europe (continental in particular). Thus, whereas in the United States freedom of economic enterprise – although restricted since colonial times by communitarian-religious constraints – anticipated the birth, and thereafter guaranteed the growth, of political freedom itself (Dahl 1967), in Europe, and in France and Germany in particular, it was the conquest of political freedom that created the conditions for the development of economic freedom (Tilly 1990).
Because of this differential time sequence, it has been claimed that in America, unlike in Europe, a modern market economy has been able to develop in a stateless context (Nettl 1968). Indeed, the differential time sequence influenced the ideological predispositions towards the market (which traditionally enjoyed much more legitimacy in America than in Europe), rather than its material structuring. In fact, in both America and Europe, economic freedom had to be guaranteed by public power in order to become institutionalized and develop. In both cases, the formation of a market economy (which is the empirical outcome of economic freedom) required specific political intervention so that the public could be distinguished from the private in terms of property rights to protect, legitimate interests to recognize, and realms of actions to promote. As Karl Polanyi stressed, everywhere markets are political artifacts, not natural phenomena. However, “although Polanyi is correct in recognizing that the legal order must support market activity, and understood the vital role of the state in constructing and maintaining the market, he did not specify the particular instruments that the state might use in pursuing that goal” (Egan 2001: 38). And here emerges an important difference between the American and the European experiences of market building. In nineteenth century antebellum America, the market was promoted primarily at the local and state level. As McDonald wrote (1990: 218), “state and local governments engineered a massive shift of resources from public to private uses through the distribution of public lands, the granting of legal privileges and immunities, direct capital investment in some projects – especially railroads – and the provision of a wide variety of police, education and social welfare services”. James Bryce in his celebrated The American Commonwealth (1888) noted that, throughout the antebellum period, the federated states had been instrumental in promoting economic activity within their territories, which they jealously protected against external encroachment, and they pursued mercantilist policies no different from those of many European nation states.

This decentralized support of the market was made possible by a crucial factor: the control exerted by the states over fiscal resources. Only with the sixteenth amendment of 1913 did the federal Congress acquire the "power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration". Thus, according to several reports (Mann 1993), throughout the nineteenth century, with the partial exception of the Civil War period (1861-1865), the ratio of government expenditure to gross national product was routinely 1/5 or 1/6 of the ratio recorded in the largest European nation states,. Thus, for more than the first century of its life, the new American republic was based on states' rather than federal power. The federated states resisted any attempt to centralize power in Washington D.C. "(L)ocally rooted legislature (guarded) the right to initiate - or, more likely, not to initiate - new tax laws. Unlike the Jacobin legacy for
France, republican ideology in America merely deepened the distrust of national [that is, federal] mobilization" (Wiebe 1995:70).

The different structural and institutional contexts of America and the individual European nation states generated two opposed trajectories of market building. In federal America, the segmentation of the market along state lines very soon proved to be a constraint on its further development. “Between 1875 and 1890 business organizations began to challenge state restrictions, and pressed courts for relief” (Egan 2001: 35). Why courts? And which courts? With the federal Congress largely controlled by state and local interests, and the president still not enjoying sufficient policy-making influence, those interests pressing for a national market appealed to the judiciary to challenge the legislation in force: after all, judicial review encourages the courts to assume a policy-making role. But, because the state courts sided with the states’ claims to preserve their own tariffs and barriers, it fell to the Supreme Court to create a national free trade economy proportionate to the federal dimension of the polity. Building on the landmark cases of *Gibbon v. Ogden* (1824) and *Brown v. Maryland* (1827), and on the basis of the so-called Commerce Clause (Article 1, Section VII.3 of the Constitution, which states that “Congress shall have the power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes”), the Supreme Court began dismantling state trade barriers, and thus set a legislative agenda in favour of a national market. Yet, the institutional dispersion of national sovereignty inherent to the American political system, coupled with the legitimacy enjoyed by the idea of an unrestrained market economy, prevented any direct intervention by the federal state, in the stead of private economic forces, to foster economic growth in strategic sectors.

Thus, post-bellum industrial America set a new pattern for public intervention in the economy: the regulatory pattern. Through the formation of *ad hoc* independent agencies, to which the Congress delegated legislative as well as judicial and administrative functions, the federal state laid down rules to regulate competition among the economic actors operating in a particular sector. It is of no importance here to establish the strategies pursued by private interests to subjugate the regulatory activity of these independent agencies. What is of interest, though, is the regulatory nature of state intervention in America entailed by the separation of powers system, and solicited by a powerful policy-making role of the Supreme Court. Nothing comparable happened in the European nation states. Whilst in America the judiciary was crucial for the building of a national market, in no European nation state could the judiciary have played an autonomous policy-making role for the same purpose. The legal order of the market was established by legislative or executive decisions, in relation to both the predominant political ideologies and parties and the stage reached by the economic development of the country. This was therefore political rather than judicial intervention. After all, since the Colbertist
experiment in the absolutist France, it has been clear to all European states that their (military) fate “was naturally much affected by their economies. (This is why) European states were generally much involved in (their) workings” (Calleo 2001: 48). If classical mercantilism served the absolute state’s need to support its wars against neighbours, Calleo writes, the liberal mercantilism of the nineteenth and early twentieth centuries enabled it to catch up with the colonial expansion of the capitalist economy – which, for the European state, was another way to wage war against its neighbours. “Mercantilism encouraged imperialism – as the means to control more trade and thus gather more resources” (Calleo 2001: 42).

Hard pressed by the formidable challenges raised by war and economic competition, the European nation states did more than limit themselves to establishing a reliable system of property rights, taxation and commercial regulation. In continental Europe, especially, the state defined the sectors crucial for the country’s growth. In many cases it assumed direct responsibility for their development and promoted corporatist arrangements between the representatives of the main economic interests in order to exert political control over the main economic resources (investments, profits and wages). Europe responded to the dramatic economic crisis of the 1930s and the epochal transformation induced by the Second World War by extending public control or ownership to large sectors of the economy. America, for its part, responded by further extending its policy of market regulation (Majone 1994), thereby preserving the private nature of its economic system (the mobilization of national industry to support the war effort was largely overseen by private businessmen operating in public agencies).

In the twentieth-century European nation states, mercantilism was gradually replaced by the nationalization of strategic sectors coupled with Keynesian policies for the public support of aggregate demand. Public control over macroeconomic variables was ensured by centralized fiscal policies. In some cases, nationalization was imposed by the economic need to speed up technological development in order to reduce the gap with the more industrially advanced countries. In other cases, it was required by the political endeavour to establish new industrial relations between workers and employers in the context of a corporatist or communitarian national ideology. Whatever the reason, the European state was an economic actor per se, rather than the creator of the institutional conditions for a market economy. Not so in America. The market was supported by legal, rather than political, rules. And even when the federal state began to intervene conspicuously in the economy with the New Deal policies of the 1930s and 1940s, it made sure not to substitute market forces with public actors. In the post second world war period, American Keynesianism served the purposes of the military-industrial complex rather than those of a universalistic welfare state.
In Europe, the free market economy never achieved the degree of legitimacy that it enjoyed in America. In order to do so, the market economy needed to become a social economy or an économie contrôlée. This explains why European market economy has always comprised an interweaving of private and public ownership, and why the pursuit of private interests has been considered appropriate (by post second world war national constitutions) only if coherent with the public interest as defined by the state through its sovereign parliament (as stipulated by the French Fourth Republic constitution of 1946, the Italian constitution of 1948, or the German Fundamental Law of 1949). There were thus two quite different roads to market building in democratic countries: the American legal-regulatory road and the European mercantilistic one. The American road was congenial to a political system organized around a multiple separation of powers and thus with a very weak and quite incoherent central public authority (Fabbrini 1999b). The European nation states' road, by contrast, was congenial to political systems connoted by a fusion of powers: that is, systems centred around the parliament and whose decision-making was largely determined by the preferences and resources of the government and its parliamentary majority. Retrospectively, one may say that the American road was that proper to a compound polity, while the European nation states' road was that proper to unified polities.

Thus, not unlike the American experience of market building, also in the post-national Europe of the second half of the twentieth century it was the Community judiciary that neutralized state barriers, and thereby made it necessary to fill the void with positive rules on integration issued by the EU institutions. “In dealing with the discriminatory effects of regulatory barriers to trade, the European Court of Justice has played an active role in negative integration. At the same time the Court has provided the window of opportunity for the Community to foster positive integration through the creation of a new regulatory regime” (Egan 2001: 108). One may therefore plausibly argue that the EU has been governed with judges (Stone Sweet 2000), as the US continues to be (and was especially in the nineteenth century when it was simply what has been called “a state of judges and parties” , Skowroneck 1982). In sum, the lack of centralized institutions did not impede in either case the building of a market on a continental scale, and whose successful functioning furnished the new political system with the necessary support.

4. Asymmetries in the social responsibilities of the state

From the point of view of the relation between state and market, therefore, there is no single Western pattern of experience. Although, throughout the West, the state has been given the task of defining the necessary public rules for the economic game, those rules take different forms and have been used for different purposes. This feature has
conditioned the very nature of the democratic system. In Europe, democracy has been *statist* in character in the sense that it is based on a reality and ideology of equivalence between the state and public interests, whereas in America democracy has been *social* in character because it left the task of approximating public interests to the interplay of private actors (Tilly 1975; Hartz 1955). These two different patterns of the democratic development of the state traversed the history of the West in the nineteenth century, and continued to do so in the early decades of the twentieth, notwithstanding pressure to turn the democratic state into a *welfare state*. In fact, between the two great world wars of the twentieth century, and in particular under the impact of the economic crisis of 1929, both America and Europe dramatically increased the economic and social responsibilities of the state. In short, on both sides of the Atlantic, the state of civil and political rights expanded to the point that it became the state of economic and social rights (Marshall 1950). Nevertheless, the different paths along which they developed constrained the tendency towards convergence.

Various factors were responsible for the birth of the welfare state. First, the spread of electoral suffrage meant that the Western democracies came to operate in a context of increasing mass participation in the political process. By exercising their voting rights, the working classes were able to transform the harmful effects of wars and crises into demands for the participation and social protection that only the state (obviously) could provide. Second, structural changes in the capitalist market gave rise to oligopolistic economic groups and powerful interest organizations able to control the policy-making process. Pressure was thus applied on the state to reorganize the conditions governing economic competition. Third, once the state had internalized social conflict (by endeavouring to help the less affluent classes or by forestalling potential market turmoil) through social and economic policies, it set about constructing administrative and political apparatuses internal to itself and which would continue to pursue those policies whether or not the circumstances that had originally justified them still obtained. This was not only to the result of the lock-in effects of institutions; it was also due to the fact that public policies, however they may have been devised in the first place, tend to institutionalize a given coalition of social interests, thus preventing its replacement with an alternative coalition.

The result of these processes on both sides of the Atlantic was the institutionalization of highly uncertain boundaries between state and society (Benjamin and Elkin 1985). The welfare state inaugurated a double power structure. On the one hand, it conserved the (formal) power structure centered on the legislature and geared to the approval of general legal acts; on the other, it activated the (less formal) power structure of the interventionist state characterized by arenas and practices for negotiation among the representatives of the main interest groups, the heads of specific
administrative agencies and the members of the executive, and geared to the implementation of specific public policies. In other words, the rise of the welfare state determined in all Western democracies (albeit with different institutional implications for the systems of separation or fusion of powers), not only the predominance of the government over the parliament – or of the president over the Congress – which was already apparent before its arrival, but also the displacement of crucial decision-making resources outside the formal legislative circuit.

Of course this process towards an extended social responsibility of the state was unable to erase the distinctive features of specifically American and specifically European experience (Rimlinger 1971). Europe (from the British Labour government of 1945-50 onwards) responded to the social crisis induced by the collapse of the market and war-time social mobilization with a redistributive and universalistic welfare state – that is, one designed to reduce social inequalities through the delivery of social services. America responded to the same crisis by creating an industrial and residual welfare state – that is, one not intended to affect the workings of the market and which therefore provided welfare only for groups excluded from it (Esping Andersen 1990). In sum, in the course of the twentieth century, on both sides of the Atlantic the state was called upon to remedy the failures of the market. On neither side was there any better means than the state to satisfy the social needs of millions of new voters integrated into national politics by the mass parties, and to ensure balanced economic growth. On both sides the state responded positively to these needs. With the end of World War II, all the Western countries began a historically unprecedented process of accelerated and general economic growth and increased social well-being sustained by the state through its welfare social policies and Keynesian economic policies. This led to the further expansion of the Western states, a process also driven by the functional adjustment of nation states to the twin requirements of promoting capitalist accumulation and guaranteeing democratic legitimacy.

Nevertheless, divergence still persisted. The United States maintained its residual welfare state model whereas Europe continued to develop its universalistic one, in both its social democratic and corporatist versions (Esping-Andersen 1990). The roots of this divergence were historical and institutional. “America’s precociously democratized federal polity has always made it difficult for either capitalists or industrial workers to operate as a unified political force in pursuit of class projects on a national scale. (…) American workers learned to separate their political participation as citizens living in ethnically defined localities from their workplace struggles for better wages and employment conditions” (Skocpol 1992a: 574). Moreover, in America social and public expenditure was largely controlled by the states. In sum, America had a proto-welfare state since the second half of the nineteenth century, but its social programmes were either tailored to the need to protect specific groups (Civil War veterans
and their families, women and children, Skocpol 1992b) or organized at the local and state level.

Moreover, early male suffrage and ethnic divisions among industrial workers notwithstanding, the American system of horizontal and vertical separation of powers proved to be a formidable constraint on any strategy of national mobilization in favour of universal social protection policies. Moreover, the easy access of interest groups to the courts further segmented social claims for protection, whereas in Europe the need for social protection could only be satisfied by gaining a majority in the elections for the national parliament. Thus, whilst in Europe the failures of the market were met by (and further triggered) the organization of few, inclusive and hierarchical associations of workers pressing for class-wide (and not industry-wide) public protection, in America the same failures were met by policy-making which continued to be dispersed and pluralistic. Only with the War on Poverty programmes of the 1960s did the federal state start to promote country-wide schemes like Medicare or Medicaid. But again, in the 1970s and 1980s, with the fiscal difficulties created by the defeat in the Vietnam War, with the dramatic increase in oil prices, with the declaration of inconvertibility between dollar and gold, and with the electoral success of the neo-conservative wing of the Republican party, the pendulum swung back towards the states. Many federal programmes, especially those targeted on ethnic or social minorities, were transferred to the states, which drastically reformed (or cut) them.

If we consider post-war government revenue as a percentage of GDP as indicative of the state’s social and economic responsibility – and if we compare the four main European countries (Great Britain, Germany, France and Italy), with their different welfare state versions of the universalistic model, against the United States – we find that, regardless of the differences among the European models, the latter grew increasingly distinct from the American model during the period 1960-1997 (see Fig. 1). Moreover, as Fig.1 also shows, the effects of the neo-conservative revolution of the 1980s and the first half of the 1990s in both America and Europe did not reduce the differences between them. On the contrary, the European and American welfare states were more distant at the end of the 1990s than they had been at the beginning of the 1960s. Consequently, the EU’s social policy has been much more similar to the American pattern than to that of the EU member states. In fact, the EU has a very weak social policy at the Community level and quite strong welfare systems at the nation-state level. This situation does not question the legitimacy of the American federal state, also because social policy is considered by the prevalent political culture of the country to be the business of the states, and not structurally connected to the functioning of the market. It is difficult to claim that the EU might enjoy a similar cultural predisposition to leave social policy to the state.
Fig. 1 - Government revenue as a percentage of GDP. Period 1960-1997.


Note for Germany: until 1992 only Federal Republic; after 1992 Unified Germany.

5 The EU as a commercial republic?

In this comparative framework, it seems evident that the EU experience of market building is much closer to America’s than to the European nation state’s. If it is true, as Elkin (1996:597) puts it, that from the beginnings of the new American republic it was thought (by Madison and Hamilton as well) that “the commerce was to be the engine for the prosperity...valuable in itself and necessary for the stability of the new republic”, it is all the more true that the building of a common market was the essential rationale of the European Community. Like the American federation, the EU has been primarily a "commercial republic", to use Madison's expression. The EU’s foundations reside in the functioning of the market, and the EU’s success has been frequently presented (to the larger public) in primarily economic terms. Nevertheless, the ECJ, with the support of a transnational coalition of economic and social elites, has fostered a process of constitutionalization: in fact, a commercial republic requires more than an economic constitution if it is to function properly.

The EU is the most advanced experiment in building a supranational political authority to be undertaken in the twentieth century (Fabbrini 2002; Stone Sweet, Sandholtz and Fligstein 2001; Weiler 1999). Other experiments in regional integration, like the North American Free Trade
Agreement (NAFTA) among Mexico, the United States and Canada are essentially limited to economic cooperation. The EU is more than a purely economic arrangement: it embodies an endeavour to construct a public authority with supranational features, if not to construct a “new form of state” (Caporaso 1996). An increasing number of traditionally domestic policies (Fabbrini and Morata, 2002; Wallace and Wallace 2000) are now influenced, conditioned, structured or defined at the EU level. The scope of the EU has extended enormously. At Maastricht in 1992 it was decided to structure the EU around three pillars: whilst the first pillar concerns the growing number of policies connected to the formation and functioning of the common market, the others are more to do with traditional state sovereignty. The second pillar, in fact, concerns the coordination of domestic security and foreign policies, and the third cooperation in justice and home affairs.

The first pillar is organized by the “Community (or supranational) method”, while the other two still come under the “intergovernmental (or confederal) method”. Nevertheless, also in the latter, steps have been taken to introduce a supranational method since September 11, 2001. This supranational organization has been institutionalized via a complex system of interlocking governmental bodies: complex but nevertheless effective in supporting integration and in promoting member state consensus. Regardless of the confusion of powers in Brussels, or even because of it, the EU has become increasingly a regulatory state. After all, without a significant fiscal basis (the budget of the EU cannot amount to more than 2 per cent of the total GDP of its member states), the Community actors (the Commission in particular) have preferred a regulatory approach to the traditional interventionist one. Regulation does not cost anything; or better, the costs of regulation are paid by the actors regulated. Thus, as Majone (1996) has persuasively argued, the EU has become a sort of regulatory state no different from the American state.

Moreover, globalization has imparted a further powerful impetus to the integration process. Market globalization grew to an unprecedented extent in the last twenty years of the twentieth century. Of course, as Wallerstein (1974; 1980) points out, the expansion of markets has been a constant feature of Western capitalism, at least since its definitive establishment in the fifteenth and sixteenth centuries in the central belt of Europe (the same belt from central-northern Italy to the Hanseatic cities that was hostile to the formation of the national territorial state). But what has happened recently has distinctive implications. The international extension of (preeminently Western) markets and business organizations has challenged the established boundaries of the nation states. Of course, borders still count for a great deal, but nevertheless globalization has bypassed Westphalian-type authority over the market in the Western countries as well. Economics and politics no longer overlap, in the sense
that the functional boundaries of the state and market no longer coincide (Held 1995).

Globalization has brought with it pressure for regional integration to counteract its effects. Western Europe, which embarked on establishing a common market as early as the early 1950s (with the 1952 Treaty of Paris creating the European Coal and Steel Community, and the 1957 Rome Treaties creating the European Atomic Energy Community and the European Economic Community), and which experienced various forms of transnational cooperation throughout the post-war period (Wallace 1999), was already in a favourable position to meet the pressure for regional integration. Of course, these developments were the European response to the disastrous effects of the century-long rivalry among the continent’s nation states; a rivalry which provoked, for example, the Franco-Prussian War of 1870-71 and then the two world wars of the first half of the twentieth century.

Nevertheless, globalization has reinforced and redefined the institutions and aims of European supranational cooperation. As the French socialist governments found in 1981-1983, when their nationalization of crucial economic sectors brought the state’s finances to the verge of collapse, even the fourth industrial power of the world cannot pursue economic and industrial policies in isolation from the international financial market. France radically changed its views on European integration during the second half of the 1980s. Together with Germany, it played a crucial part in deepening European integration, first with the Single European Act of 1986 and then with the Treaty of Maastricht of 1992 which committed the European Union (EU) to the creation of a single currency. By that time, however, the legal foundations of the Community had already been established. In sum, the EU is the outcome of multiple pressures and interests. Its supranational evolution springs from the need of domestic economic actors to overcome the limits and boundaries of segmented national regulations. But it also derives from the interest of the EU member states to create a broader system of economic cooperation, so that they may more robustly meet the challenges and opportunities of globalization. In sum, the EU has thus far been a surprising success, although this success has rested mainly on the EU’s ability to generate economic gains for all the influential actors of its constituent members.

6. Conclusion

The EU has been a success so far because it has been able to generate, or to allow, the development of a positive sum game between nation states and economic and political actors (Gilbert 2003). This situation has given rise to an instrumental view of the EU among the general European public. The EU is considered to be worthwhile in so far as it increases individual
and collective opportunities. But the EU has been an élite-driven experiment, amongst other things because the European publics do not perceive it as a challenge to their national equilibria. Indeed, whenever the EU has sought to increase its supranational scope, there have been hostile reactions in the various member states. Supranationalism has thus become an ambiguous term which enables the EU to meet the needs of actors wanting to bypass nation-state boundaries, but without alarming those actors fearful of the formation of a European federation.

But this supranational "neither-nor" is, by definition, a highly contingent condition, for supranationalism can only last in a very favourable ecological context. As shown by the American experience of the nineteen century, an open and decentralized system of public authority is able to prosper in conditions of constant growth and few external challenges: conditions, nevertheless, which did not preclude a dramatic Civil War in that country. And they are not the conditions in which the EU is operating at the beginning of the twenty-first century. Moreover, when the America of the twentieth century had to deal with the challenges of industrialization and its subsequent international military projection, the country could rely on a system of public authority already institutionalized because it was supported by a constitution that (at that time) was accepted by all sectors of society. The EU has no such constitution. Its commercial republic is crippled by a democratic deficit, and there is no guarantee as yet that the process of constitution-making initiated at Laeken in December 2001 will eventually produce a document accepted by all the old and new member states and their more influential groups and interests. Will the EU be able to change from being a commercial republic to being a constitutional republic? Will the EU be able to create a system of public authority so effective and democratic that it can curb the power of the main economic and financial institutions? As is well known, social scientists are reasonably good at describing the past, but they are more than reasonably bad at predicting the future.
7. REFERENCES


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