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Preface

In 1889, a traveling salesman found himself in circuit court in Montgomery County, Missouri for violating the law by going from place to place, in a cart or spring wagon, selling Singer sewing machines, without having a license as a peddler. The Missouri Supreme Court ruled that it was a valid exercise of the power of the state over persons and business within its borders. The fine was $50. We might not call them drummers, hawkers, or peddlers in Europe these days, but the story of the traveling salesman in Missouri shows how firms seeking new markets for their products faced challenges in selling in a single market. To me, the peddlers of sewing machines symbolize the journey towards single markets in both Europe and the US.

The primary focus of this book is on drawing together two disparate fields of European integration and American Political Development to understand how markets are constituted into broader territorial units. Although the focus is on the transformation of market forces by largely internal rather than external stimuli, building on the work of American Political Development, the processes of American state- and market-building have been tied to issues of industrialization, sectionalism, professionalization, organized interest mobilization, and jurisdictional competition that bear many resemblances to how scholars have studied the European integration process. These contributing factors should not underestimate the power of states—or public authorities—in shaping the developments in law and political economy to foster market consolidation as both polities seek to integrate into larger economic units.

Market integration in both polities generated concerns over the centralization of authority, the distributional consequences of market integration, and the impact of the *jural* state in shaping economic and societal outcomes. Yet all too often, the narrative in the US is often focused on liberalism, exceptionalism, and weak states, even as contemporary historiography challenges such assumptions about state power and its role in American political history and economic development. In much the same way European scholars are questioning the progressive European narratives, whether in terms of rhetorical devices and concepts used, or by viewing European integration as a model to imitate. How we recount the past has sometimes given us cognitive dissonance where historical rhetoric and contemporary political reality seem at odds, as we try to discern and understand patterns of authority, governance, and control, to account for European and American Political Development.

Given the sheer historical scope of the project, the narrative is broken up into a discussion of key elements shaping market integration followed by four specific cases on the free movement of goods, capital, services, and labor in both contexts. Each case study follows a similar format and strives to highlight critical developments, and to allow for comparison across cases as well as across polities. Thus it seemed appropriate to look at the consequences of economic integration on political development in the American context in the nineteenth century, and the lessons that the American experience provides for European governance. Just as the US polity has engaged in a political project to create a national market, wresting control over money from subnational authorities, removing interstate commercial barriers, and extending authority over business practices through anti-trust and regulatory policies, so have the dynamics in the EU context generated similar policy developments.

The title of the book indicates its intention. Certain elements in the processes of market integration in Europe have captured my attention in particular: the relationship between democracy, governance, and economic integration; the redefinition of the role of the state and constraints on national policies in various domains particularly welfare, monetary, and fiscal issues; and the extent to which states have remained the focus of democratic political organization and collective identity. Studying the American experience in terms of its own domestic efforts to consolidate markets in the nineteenth century gave me a different vantage point to study developments in the European case. This has led me to delve deeper into historical processes of market formation, and to relate the importance of sectional and economic cleavages, law and regulation, and territorial expansion to the political and economic development of divided power systems.

I wish to thank both the German Marshall Fund for a Research Fellowship which enabled me to begin the initial research and writing for this book, as well as the Howard Foundation at Brown University for a research fellowship to enable me to move towards completion while on sabbatical leave. Special thanks go to my various colleagues who have provided advice and support on this project. Any book that seeks to cover such a broad topic in a single volume owes a debt to many scholars. I can only acknowledge their influence through various citations of their work. I am indebted to Alberta Sbragia, whose own work on comparative federalism and American public finance has proved to be an important reference for my own work on political economy. My thanks extend to James Goldgeier, Susanne Schmidt, Kalypso Nicolaïdis, Pam Camerra-Rowe, Phil Brenner, Stephen Silvia, Randy

Henning, Virginia Haufler, Kate McNamara, Jacques Pelkmans, Andrew Moravcsik, Guy Peters, Craig Parsons, Robert (Bob) Pastor as well as the anonymous referees at Oxford University Press for comments and suggestions. The Institute for International Economics and Syracuse Maxwell School working group provided many stimulating discussions, as did the Globalization and Governance Seminar at the University of Maryland. My thanks to various capable research assistants for tracking down numerous and often obscure references: Jeannette Buchner, Monica Knapp, Robertus Anders, Maia Lowell, Andy Marshall, and Brian O'Hanlon. As always, Dominic Byatt, Commissioning Editor at Oxford University Press, provided strong support for this project and his patience is much appreciated. Thanks are also due to Susan Frampton and Olivia Wells for working with me on the production of this volume.

Special thanks to my family for their support in writing this book. To my parents, Gill and Ted, who have always provided significant support and have encouraged me. To my children, Georgina, Declan, and Daniel, who have provided much joy and welcome distractions. And to my husband, Bill, who has read and commented on the entire manuscript, and provided critical insights on both the European and American cases.

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List of Abbreviations

ABA	American Bar Association
AMA	American Medical Association
APD	American Political Development
BRRD	Bank Recovery and Resolution Directive
CAP	Common Agricultural Policy
CCP	Central Counterparty Clearing House
CEE	Central and Eastern Europe
CRD	Capital Requirements Directive IV
CRR	Capital Requirements Regulation
EBA	European Supervisory Authority for Banks
EC	European Commission
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
ECU	European Currency Unit
EFSF	European Financial Stability Facility
EFSM	European Financial Stabilisation Mechanism
EFTA	European Free Trade Association
EIOPA	European Supervisory Authority for Insurance and Occupational Pensions
EMIR	European Market Infrastructure Regulation
EMU	Economic and Monetary Union
ERDF	European Regional Development Fund
ERT	European Round Table
ESMA	European Supervisory Authority for Securities and Markets
EU	European Union
ICC	Interstate Commerce Commission
OECD	Organisation for Economic Co-operation and Development
OEEC	Organisation for European Economic Co-operation
NATO	North Atlantic Treaty Organization

SEA	Single European Act
SLIM	Simpler Legislation for the Internal Market
TEC	Treaty on European Community
TEEC	Treaty of Rome (Treaty establishing the European Economic Community)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UCIT	Undertakings for the Collective Investment of Transferable Securities
UNCTAD	United Nations Conference on Trade and Development
WEU	West European Union

1

States, Democracies, and Single Markets

We could learn a lot from America about how to utilize and develop a single market.

EU Commissioner Vivian Reding[1]

Introduction

Comparisons of American and European political development have proliferated in recent years broadening lines of inquiry into the past. Part of this research has focused on understanding the durable shift in political authority and governance, in terms of identity politics, welfare state formation, sovereignty and statehood, federalism and market relations, that have accompanied their respective shifts from singular states to unions (Glencross, 2007; Fabbrini, 2007, 2005, 2003, 2004; Nicolaïdis and Howse, 2001; Moravcsik, 2002b; Menon and Schain, 2006; Sbragia, 1992a; Donahue and Pollack, 2001; Egan, 2008; Keohane, 2002). One of the most interesting consequences of these broad comparative and historical studies is the need to more adequately historicize the American state to use as a comparison with the European Union (Novak, 2008; King and Lieberman, 2009). Challenging the "myth of the weak state," where the American state is conceptualized in terms of constitutional restraints such as federalism, limited government, and separation of powers, these studies provide new avenues for comparison with the European Union (hereafter EU) through narratives and interpretations that historicize political and economic developments across time to compare the nature and role of political institutions (Novak, 2008).

For many scholars, increased concern about fostering democratic legitimacy in Europe has focused particular attention on decision-making and constitutional development in the early US, as enshrined in the Philadelphia convention and the constitution it produced. Much less attention has been paid to the influence of American capitalism and economic development in relation to constitutional jurisprudence, federalism, separation of powers, equal protection, and preferred freedoms (Gillman, 1999; Scheiber, 1975). Yet it is important to give both democracy and capitalism, the two major products of the American Revolution, full credit in shaping the economic and political options available to policymakers (Moore, 1966). The need to manage an industrializing society shaped many of the decisions in Philadelphia. While one of the central concerns of the constitutional convention was the security and structure of a new form of government, the framers were also concerned with the development and working character of market institutions. Significant sections of the US Constitution focus specifically on economic rights and the regulations and institutions needed to facilitate business and commercial activity. From Philadelphia onward, the historical vitality of American market capitalism has been profoundly and continually linked to the constitutional structure and institutional design of the American state.

This book examines the evolution of the American single market in the nineteenth century and the corresponding political and societal struggles that ensued as a means of comparison with the efforts in postwar Europe to foster market integration and create a single market. The politically successful adoption of single markets represents one of the most interesting issues in comparative political economy. By examining how—and how successfully—markets are consolidated in two regions, this book analyzes the politics of economic integration in the EU and the US, the two largest advanced economies that have broadly integrated single markets. What accounts for the political success or failure in creating integrated markets in their respective territories? What institutional rules and norms are necessary for promoting and legitimizing market integration? Are compensatory mechanisms for garnering support crucial in advancing integration?[2] Can social discontent threaten market integration with a populist backlash, and if so, what needs to be done to create political support for market integration? And what variation in the processes and outcomes of market integration are evident in comparing the two regions? These questions have broad significance, as efforts to create an integrated market economy and the politically successful adoption of regionally integrated trade blocs has become an important area of study in the field of comparative politics and political economy (Duina, 2006; Pastor, 2011; Mattli, 1999; Chase, 2005; Mansfield and Milner, 1997).

While some scholars have focused on how single markets have been instituted in other historical periods, drawing on examples from nineteenth-century German unification and integration (Hallerberg, 1996; Henderson, 1981) and nineteenth-century American consolidation and expansion (Egan, 2008; Bensel, 1990; North, 1966), a study of the historical processes of market consolidation can provide a useful starting point to understand the contemporary situation in Europe. Yet European integration has rarely been tied to research on the spread of the market economy and interregional flows of goods, services, and productive factors in the US (see North, 1966; Sbragia, 1992). This is surprising since both Europe and the United States were able to make a feasible and persuasive case about the gains from increased trade and productivity explicitly using ideology to persuade society of the necessity of expanding and securing their markets (North, 1981; Schmidt, 1939; Cecchini, Catinat, and Jacquemin 1988; Emerson, 1988).

In comparing two economic unions, the book addresses larger debates about organizing the polity and the economy. Using nineteenth-century America as a comparative analogy, the consolidation of markets in the US took place in conjunction with the expansion of state regulatory power and the pressures for democratic reform. Emphasizing the economic nature of EU identity, as the core element in the integration process, the process of market integration has to some degree mirrored that of the US where market freedoms are "guaranteed by public power in order to become institutionalized and develop" (Fabbrini, 2002: 8; Fligstein, 2001). Unlike the historical experience of state- and market-building among Europe nation-states, the formation and consolidation of a "common market" in the US emerged from a different structural and institutional context in which a federalist heritage of power sharing among the states and the national government stretched back to the nineteenth century (Johnson, 2009: 89). Partisan, institutional, and ideological struggles emerged from this complex mixture of state- and market-building in the US and the corresponding efforts to balance the conflicting demands of democracy, order, economic stability, and economic development (John, 1997; Novak, 1996; Weibe, 1967). This fragmented polity has often been viewed as exceptional in terms of political development (Lipset, 1996; cf. King and Lieberman, 2009; Fabbrini, 2003). That distinction is increasingly challenged by scholars from Europe and the United States, who have focused on systematic comparison of both polities. These scholars have focused on a variety of lessons and experiences drawn from comparative politics, public and constitutional law, international relations, and public policy generating theoretical and empirical analysis that no longer treats the EU as *sui generis*.

Part of this is driven by the expansion of research agendas in European integration where the dominant explanations in international relations have been supplemented and complemented by new perspectives. The basic divide has been between supranationalist and intergovernmental theories. The former, neofunctionalism, is based on a rational framework of analysis that draws on functionalist theories of international cooperation. Neofunctionalism requires positive results in the economic realm for its justification, so that providing welfare benefits and economic growth is generally seen as a way of legitimizing further spillover into other policy areas (Christiansen, 1997). By contrast, liberal intergovernmental approaches focus on the need for cooperation as means to promote commercial exchange and enhance the credibility of interstate commitments, based on the rational calculations and relative bargaining power of national governments (Moravcsik, 1998). Market integration is viewed as the product of state power and interests where the material and distributional consequences of greater cooperation generate domestic support. More recently, constructivists rooted in sociological perspectives have focused on the influence of ideas, norms, identities, and ideologies on the economic practices of governments, firms, and societies (Fligstein, 2008). Constructivist political economy stresses ambiguity and uncertainty in driving economic outcomes rather than rational utilitarian approaches. In understanding how ideas about market integration emerge on the agenda, strategic constructivists focus on the power of political or economic ideas to explain how particular choices emerge (Jabko, 2006). Comparative politics scholars have focused on the functioning of the European polity, with interactions similar to those within national systems and especially federal ones (Hix, 1994; Jupille and Caporaso, 1999). They have drawn attention to the politics of identity formation, social movements and mobilization, party politics and democratic competition. The result has been the expansion of comparative and international relations perspectives that have suggested new lines of inquiry.

One major area of research has focused on comparing their respective federal systems, with emphasis on the institutional allocation of authority to assess their origins, durability, and performance (Börzel and Hosli, 2003; Hooghe and Marks, 2003; Sbragia, 2002, 2004; Scharpf, 1988; Kelemen, 2010). Scholars have evaluated federalism in terms of the trade-offs between the representation of functional and territorial interests on the one hand (Sbragia, 1992, 2004) and the optimal allocation of competencies and economic efficiency on the other (Scharpf, 1988). Both the economic and political dimensions of federalism have been used in relation to both polities, with arguments for both centralization and decentralization. Welfare economics and public choice approaches suggest that the logic of fiscal federalism and interjurisdictional competition would benefit from decentralization (Tiebout, 1956). Similarly, Barry Weingast (1995) has argued that "market-preserving federalism" provides a means for governments to commit credibly to rules that sustain a market economy. Thus, replacing a monopoly over economic policies at the center with jurisdictional competition stimulates "a diversity of policy choices and experiments" (Montinola, Qian, and Weingast 1995: 59). By contrast, political studies of federalism, such as Kelemen, focus on the "durability of federalism," notably the types of institutions and constitutional rules that effectively manage and sustain federations (Kelemen, 2007; Börzel and Hosli, 2003). Such studies highlight the tensions between decentralization and subsidiarity in Europe and the US, suggesting that these two polities can be examined in terms of how the institutional context—the logic of federalism—determines policy outcomes, or how its political feasibility and durability is determined by partisan politics, institutional rules, and other veto mechanisms.

A second area of comparative research has revolved around democracy and identity, and the implications for sovereignty and legitimacy in divided power systems. Both polities have confronted the need to legitimate the exercise of political authority. They have fought protracted struggles over the exercise of strong central state authority. For Moravcsik, the European integration experience, which has often been depicted as facing a crisis of democracy and legitimacy, may be less exceptional when viewed in terms of constitutional checks and balances, institutional delegation, and electoral participation in the US (Moravcsik, 2002a, 2002b). For Majone, the shift to non-majoritarian institutions which characterizes both polities can enhance efficiency which assumes that some policy areas do not require democratic legitimation as they focus on regulatory rather than redistributive issues (Majone, 1998, 1996, 2002). Yet the expansion of European competences has generated increased political contestation about the role of national sovereignty and identity, as European integration tries to create a political community that complements or transforms national territorial identities. For Hooghe and Marks, this has fundamental consequences for democratic competition as it has disrupted patterns of party political competition and allegiance in member states (Hooghe and Marks, 2009, 2004).

A third research theme has focused on (contemporary) institutional comparisons in terms of regulatory agencies and bureaucratic authority (Majone, 1994a, 1994b), the development of legislative rules and parliamentary procedures (Kreppel, 2006), the role of judicial politics and constitutional developments (Kelemen, 2011; Shapiro, 1992; Sandalow and Stein, 1982), and the presence of organizational interests and interest group dynamics (Mahoney, 2007) as key features of both polities. Comparing policy areas such as environmental policy (Kelemen and Vogel, 2010), immigration (Schain, 2006), monetary integration (McNamara, 2003, 2005; McKay, 1996), and competition (Damro, 2006) has highlighted both the philosophical and regulatory differences over modes of economic governance, and the strategies and opportunities for transatlantic regulatory coordination to strengthen economic cooperation where differences in the regulatory choices and domestic preferences can have significant trade impacts (Egan, 2005; Drezner, 2007; Damro, 2006; Young, Wallace, and Wallace, 2000). Comparative studies in this vein assess the supply of public goods and services in both polities to determine how this affects their trade and economic relations. But more broadly, the significance of trade has generated greater attention to the systematic influences and constraints of the global international economy on domestic economic constituencies, and conversely the "relative power of states stemming from asymmetrical interdependence" in shaping market outcomes (Moravcsik, 1998: 18). This has also led some scholars to focus on "market power" Europe to understand how the EU uses its regulatory and market strength to promote its internal policies to shape transatlantic and global markets (Damro, 2011). And similarly, scholars of American Political Development have also focused on the quest for overseas markets through imperial expansion, highlighting the role of finance capital in conjunction with state authority in shaping international economic policies as a means of understanding contemporary American "market" power (Moore, 2011).

In different ways, these comparative studies have focused on governance structures, rules of exchange, and issues of state sovereignty which bear directly on different elements of market consolidation, administration, and regulation (Fligstein, 1990; Egan, 2008). This has resulted in a significant expansion of the institutional capacity of the American state over two centuries with a similar discernible pattern of institutional development in Europe (Pollack, 2009). For some, the institutional basis for a market economy owes much to federalism as the territorial structure of government affects not only central–local relations but the shape of markets (Sbragia, 1996; Weingast, 1995). By contrast, rather than focus on internal political developments, other scholars have focused on the international dimension of markets with the significance of trade, war, and the struggle to secure borders, as key features of promoting and sustaining economic development (Katznelson, 2002: 9, 10, 15). Though the institutional capacity of the antebellum state was viewed as weak, both in terms of administrative and military capacity, in fulfilling its foreign obligations (Keohane, 2002), it was vastly strengthened after the Civil War, responding to pressures to increase its security requirements as military capacity was an essential element of state-building (Katznelson, 2002: 83). The international capacity of the state was in evidence as the military promoted the territorial expansion, trade, and security of the continent by shielding shipping lanes for commerce, settling territories, and protecting borders through land settlement and garrisons, which brings in the international dimension to understanding how the US integrated a diverse polity and extended its sovereignty through responding to domestic and international pressures to provide internal security and facilitate the growth of a "commercial republic" (Katznelson, 2002: 102–4).

Equally important, market transactions and commercial exchanges are often contested in Europe and the United States, so efforts to deal with negative externalities or market failures through regulatory action may have distributive or redistributive outcomes. The value of a single market has to have some form of utility or productive benefit for states to ensure that they accept the costs of compliance with market rules, and choose to exercise voice over exit in strengthening economic cooperation even if those political or economic conditions change (Hirschman, 1970). As such, market outcomes should strive for Pareto optimal choices, to meet the functional needs of integration, since this provides the best method of legitimating institutions (Majone, 1998, 1997). For others, socially acceptable outcomes are critical to balance democracy and markets given the constraints that market integration imposes on state autonomy in terms of redistribution and welfare. The need to offset the impact of increased market contestability requires an institutional response so that compensatory social and regulatory policies provide normative legitimacy, accountability, and support for the deepening of market integration (Scharpf, 1999b; Monti, 2010; Polanyi, 1944).

While these studies have generated a wealth of insightful contributions, few have related the European experience of consolidation and regulation of markets to processes of American state-building (see Skowronek, 1982; Novak 1996; Dobbin, 1994; Pollack, 2009). Like the growth of theoretical 'pluralism' in EU studies, American scholars have also offered new paradigms to understand the development of the American polity (Novak, 1994, 2008; Smith, 1993). Their critique pushes theoretical, normative, and empirical questions about democratic legitimacy, institutional allocation of power, and legal doctrine to the forefront of recent scholarship on the American state, especially in light of its current global hegemony. For these scholars, the characteristics of the state in the US generated a trajectory that was different than individual European nation-states, and institutionalized a regulatory state that differed from public control and nationalization in Europe (cf. Fabbrini, 2007). While most discussions of state-building focus on war and welfare, thus using the European nation-states as their model, some also consider market-building as part of state-building (Tilly, 1992; Dobbin, 1994; Fligstein, 1990; Fabbrini, 2003; Bensel, 1990, 2000). Mapping the development of American political economy, their studies of regulation, tariffs, banking, anti-trust, and other policies highlight the need to embed market relations in society as the structural changes driven by industrialization require the institutionalization and growth of state capacity to deal with the contradictions of market integration and foster its development through a combination of market-making, market-facilitating and market-regulating mechanisms (see Table 1.1; Polanyi, 1944).

Clearly the consolidation of the American single market has implications for how we think about the evolution and development of regulatory governance in Europe. The process of market integration in the US was contentious with significant periods of mass mobilization and opposition to changing economic conditions, with important implications for American Political Development (Noble, 1985). By focusing on partisan politics and the impact of strategies of governance in the nineteenth century, it shifts the focus of the "regulatory state" from the abstract to a situational context in which the struggles over territoriality and governance have relevance for the political and institutional dynamics in the EU. While political union initially led economic union in the US, with the reverse true in the EU, both have had to define and constantly reevaluate the relationship between political institutions and levels of political authority, market rules, economic interests, and societal actors.

State-Building and Market Integration: APD meets the EU

Although the US experience is instructive in terms of the pattern of American Political Development (APD) with its institutionalization of state power in terms of functional and territorial representation, and shared rule through the horizontal and vertical separation of powers, few studies have linked the work on American Political Development and European integration (Fabbrini, 1999; Egan, 2013, 2008; McNamara, 2003). Scholars of both polities are interested in several interrelated aspects of political development. One element is the critical reconstruction of political identities and political culture in the US and EU (Risse, 2010; Smith, 1993). While the American case focuses on challenging the assumptions based on Hartz or Tocqueville that American political identity is more contested and rooted in multiple traditions (Smith, 1993), the European case is also moving in that direction in that there are collective and distinct European identities depending on what resonates at the domestic level (Risse, 2010). A second element is the tension between different layers of authority and the impact of what Orren and Skowronek call the "durable shifts of political authority" across time (Skowronek and Orren, 2004: 132). The institutional allocation of power affects regulatory and distributive outcomes, and the institutional evolution of federalism in both cases has often been contested and challenged, whether through constitutional provisions, political opposition, or market actions. A third element is the "incurrence" between institutions and ideas involving both state and market. In this case, the simultaneous operation of different sets of rules, and how they are layered upon each other, may create incongruent patterns of authority and governance leading to recurrent or emergent patterns of change or pressures due to different perceptions of the polity or the economy (Skowronek, 1982; Orren and Skowronek, 2004: 17–19). Exploring this relationship requires us to draw together these distinctive areas of research along two dimensions. Scholars of American Political Development focus on the institutional conditions for market integration, viewing it as a political project, in which their economies have generated a set of policy innovations and administrative arrangements that are essential to provide stable conditions for market exchanges and transactions. They see market integration as a contextual variable shaping the incentives and actions of actors and institutions.

For scholars of American Political Development who focus on political economy, market integration is a core component of state-building (Bensel, 2000). The new historiography with its emphasis on state power in terms of rule of law, regulatory authority, and public–private modes of governance differs from our conceptions of European state-building but can nonetheless provide a version of the American state that is useful in thinking about the European integration project. More recent scholarship has argued that the American state has been consistently stronger, larger, more durable, more interventionist, and more redistributive than described in many earlier US historiographies (Novak, 2008; King and Lieberman, 2009).

Stephen Skowronek's analysis of the development of the administrative capacity of the American state has widely influenced the field of American Political Development (Skowronek, 1982). Richard Bensel has focused attention on the role of tariffs, fiscal stability, and state regulation as critical elements in the creation of a national commercial marketplace in the US (Bensel, 2000). John has explored the role of the state in the promotion and regulation of communications infrastructure, from the post office to the telegraph and telephone in the nineteenth century (John, 1995), Skocpol has documented the early origins of the welfare state (Skocpol, 1992), and Mashaw has highlighted the centralizing impact of national administrative law and the growth and development of national administrative statutory law (Mashaw, 2006, 2007; Mashaw and Perry, 2009). The formative powers of the state have also been examined in terms of land management and eminent domain (Scheiber, 1971), and the role of police powers in regulating social conduct and behavior (Novak, 1996). Long before regulatory agencies emerged in the late nineteenth century, national and state administrative capacity was substantial in interpreting a range of statutory measures, affecting health and safety, sanitation, public safety, and public property, resulting in a mode of governance that emphasized regularity and uniformity of practice (Mashaw and Perry, 2009). The expansive role for administrative discretion emerged under broad delegations of Congressional authority that generated substantial regulatory activity on the part of administrative agencies, contributing towards the consolidation and growth of state power, through permissive acceptance of administrative adjudicatory and enforcement authority.

These studies suggest that market consolidation in the US strengthened the role of the state as the expansion of public law and steady growth of regulation underpinned American political–economic development (Novak, 1996; Keller, 1977; Horwitz, 1977; John, 2008). As government intervention in the economy grew, in part due to the need to establish economic security and stability, reduce transaction costs, and respond to increased societal pressures and demands, the strengthening of administrative capacity and democratic reform measures undertaken suggests that the extent of state action and public economic policy in nineteenth-century America is indicative of the historical growth and power of the American state. And rather than view the US as an underdeveloped "weak" state in comparison to state formation in Europe (Hartz, 1955; cf. Fabbrini, 2003; Katznelson and Shefter, 2002), they emphasize how the political struggles over the organization of state power produced different state formations including a "decentralized" antebellum state, a coercive, "extractive" southern state directed towards war-related production and economic development, an interventionist "Reconstruction state" in the transition from slavery to free market economy and a more market-oriented post-Reconstruction state that paved the way for a more centralized "regulatory state" at the end of the nineteenth century (Bensel, 2000; Orren and Skowronek, 2004).

For many APD scholars, a single market contributes to the administrative and bureaucratic expansion of the state, although the balance between local authority and national control in the regulatory arena has evolved over time. Initially, states were able to pursue their varied individual policy preferences in response to economic and social change during the early nineteenth century (Novak, 1996; Childs, 2001). The mechanisms of regulation in the US are often more varied than portrayed, in part as a result of the shift from a "developmental" state to a "regulatory state" in which there was competition among regulatory regimes, as well as innovative governance structures that evolved to cope with changing economic, technological, and political developments. Not only was there strong debate regarding the legitimacy for government to regulate, to assure that resources and facilities would be available for "the common use" or public interest, but the public and private were never so rigidly segregated in understanding the overall pattern of economic development during these early decades of US market-building (Scheiber, 1981, 1984; Sbragia, 1996). Addressing economic pressures of a rapidly industrializing and urbanizing society, new ways of thinking about the role of the state, and new ways of thinking about the economic environment and its material and moral repercussions emerged (Hays, 1995). The evolution of political economy in nineteenth-century America is thus germane to the EU as both involved a restructuring of the relationship between territory and governance, with new forms of authority, new mechanisms of representation, and new demands articulated by societal interests about the regulatory and distributive costs and benefits entailed by economic growth, productivity, and competition. Rather than see particular trends in American politics as reflecting new solutions, new ideas, and new modes of governance, American Political Development seeks patterns and relationships between past and present, emphasizing the central incentives and constraints that have structured the political development of the American state (Egan, 2013; Orren and Skowronek, 2004).

Since its founding, practical questions about democratic governance and participation, notions of the public and private, and the structure of governing institutions have shaped discussion and debate about the American polity (Jacobs and Zelizer, 2003). These have also included sharply different conceptions about the market, property rights, and the economic role of the state, based on competing demands over the political economy of market integration as disagreements over tariffs, gold, and regulation reflected different regional economic interests (Bensel, 2000). Mapping out the underpinnings of American economic growth, with its multiple competing economic orders, the nineteenth-century American state is considered much more authoritative in regulating markets than earlier accounts generally concluded (King and Stears, 2011; King and Lieberman, 2008, 2009). Yet as policymakers and scholars renew a debate over the economic role of the state amidst a recession in the US, few have turned to historical precedents even though government regulation in the public interest was much more salient and typical in understanding American economic governance in the nineteenth century (Scheiber, 1997; Novak, 2009). The emphasis on market liberalization in the contemporary era needs to be placed in a broader context of public–private partnerships in social and economic policy development. How to think about the state–market relationship, the balance between public and private power, the relationship between legal institutions and the market economy, the conflict over national identity, and the patterns of democratic competition, in particular historical settings, is at the core of APD (Keller, 2007; Orren and Skowronek, 2004). By exploring the complex interrelationships between state and economy, and the ideas, policies, and institutions through which these are expressed, the American case allows us to see the current efforts to promote European market integration in a new light. Market consolidation is partly a collective effort to resolve different interests and preferences, which are often in conflict, but also an effort to enhance institutional capacity in order to make markets work effectively; and to reconcile different ideas about the constitutive nature of markets.

This also allows us to link recent scholarly developments on the causes, content, and impact of the European single market comparatively and historically, as this too has been the source of much contestation and contention over its institutional capacity in regulating, liberalizing and integrating markets. Much of this research has focused on the benefits allocated to particular interests in terms of gains from trade, the advantages derived from institutional cooperation and credible commitments, or the role of neoliberal ideas in driving market liberalization (Moravcsik, 1998; Parsons, 2003; Jabko, 2006). Some have argued that this is part of the political economy of embedded liberalism at the supranational level (Caporaso and Tarrow, 2009) with the legitimacy of democratic capitalism maintained through the explicit compromise between markets and social protection (Polanyi, 1944). Others have critiqued this model of market integration as reflecting the dynamics of transnational capital and class struggle (Apeldoorn, 2000). In recent years, the focus has also shifted towards understanding the EU in terms of regulation in which the formalization and expansion of policymaking capacity can occur within a polity with limited fiscal and budgetary capacity (Majone, 1996a). While increasing international competition and deepening economic and monetary integration have resulted in a reduced role for the positive, interventionist state mode of governance and a corresponding increase in European regulatory governance, major features of the regulatory state borrow from the American state-building experience (Majone, 1996a, 1997). This is especially useful as both polities engage in policy formation, regulation, standard-setting, and enforcement as a means of promoting economic growth, dealing with market externalities, and fostering greater economic coordination. Since both rely on judicial power and bureaucratic rule-making, their histories and characteristics may offer significant promise in thinking about their respective political and economic developments across and through time (King and Lieberman, 2008; Skowronek, 1997).

Moreover, if the EU is committed to completing the single market and focusing more attention on promoting reliable access for goods, capital, and services, combined with credible European governance by means of specific rules and institutions, amidst financial turbulence and debt problems, the American experience provides an important reference point for understanding not only the efforts at fiscal sustainability and budgetary compliance, but also the impact on the institutional allocation of power, intergovernmental relations, and patterns of governance (Sbragia, 1996; Elazar, 1964). Nineteenth-century American economic development also experienced debt crises, defaults, and debt limits, with new administrative capacities and policy instruments aimed at reducing state fiscal autonomy. Europe is experiencing a problem similar to that which the American economy wrestled with during the nineteenth century—averting the bankruptcy of constituent governments (Wallis, 2005; Sbragia, 1996). Because the defaulting states were part of a large and economically integrated nation, creditors could not enforce payment by imposing military or trade sanctions. Doing so would be difficult due to the freedom of trade among states in the US. In spite of the absence of sanctions, states repaid their debts in order to maintain access to capital markets (English, 1996; Wibbels, 2003). As one of the most traumatic periods in American public finance, with strong pressure for federal assumption of state debts, the market-preserving resolution to the debt crisis is a critical model for Europe.

In the wake of this financial crisis, US states began in the mid nineteenth century to enact laws through legislative or constitutional means to restrict state borrowing (Sbragia, 1996; Wallis, Sylla, and Grinath, 2004). Defaults stimulated institutional innovation, and the actions of federal and state governments have shaped the development of markets and federalism across time. As Europe faces the prospect of destructive fiscal policy pursued by individual countries, the historical experience of the US shows how law-based and market-based strategies are important in understanding that past historical choices over the appropriate role of both national and local and public and private governance shape and constrain market integration (Egan, 2001: 212; Sbragia, 2000). Market integration in nineteenth-century America was one of volatile market transition, heavily dependent on well-defined legal mechanisms for resolving interstate conflicts that were often contested. The legacy of the past means that the US federal government is not responsible for state debt nor does it exercise surveillance (Sbragia, 1996). The market does. But as several economic historians have noted, the emergence and subsequent reduction of Civil War debt ultimately proved to be a significant impetus to postwar growth (Williamson, 1974; James, 1984). As policymakers assume new responsibilities for responding to economic crises in Europe, the conflict over public finances is tied to the future direction of European political economy.

Modes of Governance and Differentiated Integration

Building on this analysis, this book argues that markets are social institutions, created and sustained by competing values and interests; and that "single markets" have specific attributes, embedded in the governmental mechanisms which define and protect different legal, political, and economic rights. Specifically, effective state institutions are crucial for making markets work. As both the American and European examples show, the need for an effective state exists not only during the process of market integration but also after the market system has been instituted. The building of a productive, growing economy requires creation of a mutually re-enforcing relationship between business, government, and society, in which government accepts responsibility for establishing a clearly defined and uniformly enforced "playing field" for economic actors, for sustaining the vitality of markets (Carstesen, No Date). Governments must wrestle with the problems that emerge from the rapid expansion of market transactions such as the concentration of private economic power, and the dilemmas of uneven development. In the US, sectional conflict fundamentally shaped the nature of industrialization, market consolidation, and state formation, and produced growing inequality through the disproportionate and deliberate exclusion of rights along race, ethnic, and class lines. In these circumstances, according to Skowronek, “the foundations of the modern American state were forged in the vicissitudes of this scramble” (Skowronek, 1982: 169). Similarly, the EU is an arena of deep economic integration characterized by non-exclusive territoriality, where sovereignty is functionally limited and integration is an extension of administrative governance aimed at dealing with changing patterns of production beyond the nation-state. Although there has been an expansion of competences in Europe to address market externalities and regional disparities, the growth of administrative power generates tension between the procedural arrangements of democracy due to the trade-offs between accountability and performance that result from bureaucratic delegation across an increasing range of policy areas at the European level.

Since governments have to articulate coherent answers to these problems to preserve and even strengthen markets, they have adopted a variety of mechanisms to meet these challenges. For example, it is crucial to have effective governmental regulation of privatized enterprises, and reliable guarantees of property rights. Table 1.1 provides the three broad categories of government responses in order to distinguish different patterns of governance that are evident in the case studies. Governments can introduce *market-facilitating* measures in order to provide information, reduce transaction costs, and promote efficient markets. They typically adopt regulations to improve market competition and facilitate business transactions. This can include the codification and formalization of rules, as well as legal and administrative reform. They may also delegate regulatory responsibility to private enforcement bodies through legislative mandates which they do in order to cope with the growing complexity of markets and the information costs associated with regulatory oversight.

Government has also played a critical role historically in investment in infrastructure and human capital. Private firms have enjoyed much government encouragement and protection, whereby governments may intervene in some instances to favor specific industries, usually national champions, provide industry subsidies, and discourage the entry of foreign competitors. Governments may also introduce competition, by maintaining entry for new competitors or participants in areas where there are often concentrations of power in the form of oligopolies or monopolies. Such *market-correcting* measures may result in specifying the conditions of mergers and acquisitions, levying fines, or having the authority to break up companies. Governments may offset the impact of increased competition by designating specific welfare provisions and benefits for certain particular interests. Such market correcting policy interventions serve to complement the more familiar market integration and liberalization measures by constraining and modifying the effects of

Table 1.1. Market coordination measures

Market facilitating	Standardizing weights and measures Standardizing monetary units Licensing of professionals Investment in infrastructure and human capital Property rights and contracts
Market correcting	Antitrust laws Welfare benefits
Market regulating	Regulatory commissions/regulatory agencies Government ownership and control

market competition (see Scharpf, 1999a). Governments may institute *market-regulating* measures in order to exercise control over specific industries and sectors. In some instances, firms remain privately owned and managed, but are subject to regulatory oversight by public commissions or regulatory agencies. The alternative is government ownership where government directly owns and operates large-scale industries where there is often a strategic imperative or economic interest in managing large-scale investments.

However, if the gradual expansion of policy competences and administrative power has some parallels across issue areas, especially in relation to economic governance, as both have allocated formal regulatory powers at different levels over time, (Donahue and Pollack, 2001: 109; Weatherill, 2012), research on market-making in Europe has been more attentive to the constitutive impact of different modes of governance on internal developments and processes (Héritier and Rhodes, 2011). While scholars of APD have been attentive to the configuration of formal political institutions, less attention has been given to informal modes of governance. Yet both Europe and the US have used both formal and informal policy instruments to shape domestic political regimes, covering a wide range of tools including reciprocity mechanisms, uniform laws, and decentralized enforcement of standards. For example, the uniform-law process conceived in the late nineteenth century has much in common with harmonization in Europe, although the former was not federal in contrast to the latter. Comity between states has resulted in either mutual recognition of rules and standards in Europe or state administered compacts, interstate administrative agreements and other forms of mutual reciprocity in the US (Zimmerman, 2010, 2006; Pelkmans, 2007).

In each case, both coercive mechanisms as well as more coordinative soft-power instruments have been used to shape public welfare and private market behavior (see Table 1.2). Though EU scholars have increasingly focused on "non-hierarchical modes of coordination and the involvement of non-state actors in the formulation and implementation of public policies," (Börzel and Risse, 2010: 113) so too have American historians begun to focus on the different configurations of American governance, which were often public in form and private in substance (Balogh, 2009). Such modes of governance "have occurred with surprising frequency in American history," in ways similar to the EU, where efforts to build state capacity have created particular institutional arrangements that allow private actors to play a central role in the administration of policies, highlighting ways that market integration can be pursued "outside of the confines of formal state institutions" (Moore, 2011: 34).

Not all states shared the same state-building goals, and cognizant of the organizational and institutional limitations of reaching political agreement, both polities have structured relations to accommodate diversity, whether through more differentiated integration models such as interstate compacts, interstate administrative agreements, comity measures, opt outs, or selective membership (Zimmerman, 2002; Nugent, 1999; Dyson and Sepos, 2010). In Europe, the customs union, common external trade policy, and the single market have been the core of unitary integration, based on a model of legal uniformity. There has, however, been a shift towards more differentiated integration by a subset of states to foster agreement through collective action due to the greater diversity of membership and the increasing scope of policies that have become Europeanized. Differentiated integration is part and parcel of state-building, and it remains part of the internal process of consolidation of power within states, as well as to European integration (Dyson and Sepos, 2010: 10).

In Europe, the opt outs on monetary union, and selective membership in the eurozone, raise concerns about asymmetric effects for both insiders and outsiders. Labor market restrictions generate problems of discrimination and exclusion, in sharp contrast to the possible "free-rider" gains from opting out of social policy or financial supervision. At the same time, differential integration has accompanied American state-building. Though the American federal system appears to be symmetrical, there is substantial territorial differentiation and constraints imposed on federal and state governance. In the US, there are non-state components that are part of the polity, as well as concurrent legal systems within the US tribal lands and territories, and sovereign proprietary claims exercised over states in the West, that provide a distinctive historical context to American state-building and market activities. The existence of internal, dependent nations within the country's border, in the case of Indian tribal lands and the extensive federal control of Western lands, has created distinct federal relations within the broader polity.

By examining the ways in which the American and European political systems integrated and consolidated their markets, the book provides important insights into the interplay between law and political forces in the context of capitalism, and the emergence of the administrative and regulatory state in response to the functional requirements of a market economy. More surprising

Table 1.2. Comparing Modes of Governance in the US and EU

Modes of Governance US	Modes of Governance EU
Interstate compacts	Mutual recognition
Administrative Agreements	Harmonization
Partial mutual recognition and reciprocity	Open method of coordination
Uniform state legislation	Decentralized enforcement
Federal–State compact	Delegation to private actors
Public–private partnerships	Voluntary accords

is that these two experiences in market-building, which offer such rich cases in political, regulatory, and economic action, have not been the subject of a detailed comparative study. This book addresses that challenge, drawing out the relationship between market and state institutional transformations, and the effects of administrative, legal, and regulatory changes on the legitimacy and accountability of the political system.

Methodology

The present study pursues a cross-regional comparison which includes historical background, development level, economic structure, and political–institutional framework. The regions selected have a number of factors in common in terms of the relationship between market-building and institutional development, making it easier to acknowledge the impact of differences—such as the role of political parties, colonization, and slavery, on the political processes and outcomes of market integration and consolidation. The chapters that follow bring out commonalities across regions, while also highlighting variation in legal, political, and regulatory developments that affect how a market economy is constituted.

Based on in-depth qualitative research using a case-oriented approach, the book provides a longitudinal analysis of the efforts to consolidate and integrate markets. The goal is to assess the conditions that promote economic integration by focusing on the operation of specific causal factors at certain points in time (Bartolini, 1993). While research on regional integration initially started with a historical and comparative focus, and acknowledged that regional integration processes are affected by different degrees of economic development and state capacity, societal pluralism and interest mobilization, there has been much less attention in recent years to broad comparisons with processes and developments elsewhere (Caporaso, 1997; Marks, 1997; Duina, 2006; Mattli, 1999).

In comparing the political conditions and effects of market integration, understanding how they evolve and are implemented requires specific cases to illustrate the dynamics of market integration. Thus the book focuses on substantive issues that balance rights of establishment and free movement of factors of production against the provision of public goods and mitigating market externalities. While this provides us with a selection of case studies, it does not provide the causal interferences that large statistical analysis can demonstrate. The methodological approach of American Political Development, with its systematic consideration of temporality and its emphasis on conceptualizing historical processes of change, fits with the historical turn in EU studies, unraveling the "teleological assumptions" of earlier studies to reexamine traditional themes about state power, bureaucratic capacity, ideological conflict, and market behavior (Orren and Skowronek, 2004: xi, 123; Parsons, 2003; Hooghe and Marks, 2009). While the study is small in comparison, it does speak to concerns about the treatment of the EU as a distinctive single case, by focusing on the broader themes in comparative politics about the relationship between capitalism and democracy, and the institutional powers and organizational processes needed to foster and maintain a functioning market economy. For "there are uncanny similarities and persistent tendencies—regularities and recurrences"—in the logic and processes of American market integration that suggest structural features and historical insights that can alter our usual narratives that tend to depict the American state, with its multiple centers of public authority, intergovernmental bargaining, and federal-type structure as similar to the European integration experience without addressing the transformation and changes inherent in American Political Development that have shaped the logic and pace of market integration (see Novak, 2010: 797). While European integration has offered different theoretical explanations about the complex relationship between sovereignty, integration, and power, the rationale and conditions under which new policies and practices emerge, or the constitutional, federal, or compound nature of the EU, the nature of the American polity is often viewed in terms of federalism, separation of powers, or constitutionalism, with less attention paid to the historical rise of the mechanisms of legal, political, economic, corporate power, or change over time in American state- and market-building (Novak, 2010; Gerstle, 2010; Johnson, 2009).

The issue of constitutional and institutional reform has been debated at length over the past decade in Europe, often generating historical analogies with the founding of the American Constitution. Many of these comparisons have focused on the atypical development of the American compound Republic with its horizontal and vertical separation of powers, sectional balance of powers, and fragmented sovereignty (see Siedentop, 2001; *Economist*, December 15, 2001; *European Voice*, 8, 8: February 28, 2002). Being acutely sensitive to the division of powers and competencies between federal and state governments, the American Founding Fathers debated distinctly different conceptions of the

American polity and state. Focusing on broad political considerations regarding the role of the national government in American politics, the original design specifically demarcated the boundaries, dividing and organizing power to create a structure of mutual balance and influence between the two levels of government (Beer, 1978; Elazar, 1964). The purpose of this institutional allocation of authority was a solution to the problem of representation for the American polity. Since then, the growth of the public sector and the evolution of new structures of decision-making and representation within the public sector have generated renewed concerns about the legitimacy and accountability of the American polity (Beer, 1978; Lowi, 1979). Ironically, this has not dispelled interest among proponents and critics of European integration alike in using the US as a comparison in terms of fundamental questions concerning the distribution of sovereignty, and related issues of governance, representation, and legitimacy (Nicolaïdis and Howse, 2001; Ansell and Di Palma, 2004; Fabbrini, 2004, 2005; Sbragia, 1992a; Scharpf, 1999a; McKay, 1996, 2001; Moravcsik, 2002b). While contesting the nature of EU power, both in normative and structural terms, they have not engaged with the state-centered analyses of American political and economic development, which has shifted from a philosophical and theoretical premise of a "weak" state due to the broad distribution and fragmentation of power via multiple levels of governance, into one where the formative powers of the state(s) in different areas was critical for American political economy (Bensel, 2000; King and Lieberman, 2009; McCraw, 1981). These new directions suggest that the work on American Political Development can shed light on the creation of a national and subsequently regional marketplace, and the interrelated development of state intervention and market expansion.

Case Selection

The book follows a case-study approach through a detailed comparison of the so-called four freedoms: namely the removal of border controls and the largely unrestricted transfer of goods, services, and capital across different jurisdictions. Using these categories that are the core objectives of the European founding document, it is then possible to establish a functional equivalence with the US, since most observers recognize that economic integration requires the removal of restrictions to trade in goods and other factors of production. Each case-study chapter provides a comprehensive overview of the efforts in both the US and EU at consolidating markets through the removal of restrictions to trade liberalization, through the constraint of at least some domestic policy instruments, and the irrevocable transfer of some rules and instruments to the federal or European level. This allows us to compare the