Interdependence, Transnational Opportunity Structures, and Cross-National Layering in Transatlantic Regulatory Conflict

By

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How are regulatory disputes between the major powers resolved? Jurisdictions have different – and often incompatible – rules over issues such as consumer protection, the environment, health standards, or production processes.[1] These regulatory differences pose major questions for the study of international politics as regulations[2] determine how national and international markets work and often distribute their economic benefits across market actors.[3]

Existing literature generally characterizes such regulatory disagreements as *system clash*, in which fixed national systems of regulation come into conflict, so that one sets the global standard, and the other adjusts or is marginalized. State power arguments claim that internal market size and external coalitions of states determine winners and losers.[4] Liberal accounts are more interested in how national institutions shape bargaining strategies,[5] or how firm incentives and the fit between domestic and international institutions shape bargaining outcomes.[6] These accounts assume that regulatory preferences result from processes of domestic interest formation external to the theory, that bargaining takes place between relatively discrete jurisdictions, and that once an equilibrium outcome has

[1] Pollack and Shaffer, 2009, Authors, Büthe and Mattli, 2011.
[2] Adapting Mattli and Woods, 2009, we define economic regulation as the organization and control of market activity, through rules promulgated by public or private entities, which are recognized by market actors as the authoritative rule-setters in the relevant area.
[3] Büthe and Mattli 2011, 2003, Posner 2009a, Krasner 1991.
[4] Drezner, 2007, Simmons, 2001.
[5] Milner, 1997, Lake, 2009.
[6] Büthe and Mattli, 2011.

been reached it will only change in response to major shifts in the external environment.[7]

The empirical record, however, suggests a different picture. If we look at the two great economic powers in the global system – the EU and the US[8] -- we find repeated evidence of compromise and adjustment rather than straightforward system clash. To list a few examples – a purportedly intractable dispute over genetically modified organisms has given way to effective agreement, by empowering a group of pro-GMO actors vis-à-vis GMO opponents within the European Commission.[9] An apparently irresolvable conflict over online privacy was moderated by a hybrid regulatory structure, which transformed the apparent options available to both states.[10] After years of U.S. intransigence in financial services disputes, the U.S. and the EU have negotiated agreements, fostering international rule compatibility that do not reflect the initial preferences of either.[11]

What explains this? This article integrates insights from two literatures – earlier accounts of interdependence and historical institutional explanations of institutional change from comparative politics – to develop an argument about the potentially transformative role of transnational cooperation for global regulatory politics.[12] Building on the work of Keohane and Nye, we argue that interdependence

[7] Drezner, 2007, 40, Büthe and Mattli, 2011, 57, Lake, 2009, 229.
[8] Drezner, 2007. While China might soon have the potential to exercise regulatory power, it has so far been primarily a rule taker.
[9] Young, 2011.
[10] Authors.
[11] Posner, 2009b, Lütz, 2011.
[12] Fioretos 2011.

alters the *opportunity structures* that regulatory actors confront.[13] Specifically, it creates incentives for transnational actors, (e.g. multinational firms) to demand change, and opportunities for sub-national *regulatory actors* (e.g. bureaucratic units within the government, or self-regulatory authorities outside it, that can shape authoritative rules) to supply specific *kinds* of change. Where national regulatory actors are able to create or draw upon transnational regulatory networks,[14] with other regulators in the relevant jurisdictions, they can use these networks to build cross-jurisdictional alliances. Because not all regulatory actors have access to transnational networks, the solutions provided will privilege the interests of the participants. Resulting transnational institutions create a 'cross-national layer'[15], which can reshape long term political relationships among the relevant domestic groups and constituencies. In a world of interdependence, then, regulatory disputes are less discrete international conflicts between sovereign jurisdictions than ongoing battles among regulatory actors within jurisdictions (and alliances across them).

We assess the plausibility of our arguments by examining how well they explain two cases of EU-US regulatory disagreement – surveillance information sharing and accountancy standards. Following a most different case selection, we show how our cross-national layering argument provides a more plausible account of these disputes than either traditional state power explanations or two level games approaches.

[13] Nye and Keohane, 1971, Keohane and Nye, 1972, Risse-Kappen, 1995.
[14] Cerny, 2010, Risse-Kappen, 1995.
[15] Here we translate the concept developed by Thelen 2004 and Hacker 2004 into the international context.

International Regulatory Politics as Systems Clash

Regulation is joining trade and money as a major pillar of IPE with scholarship focusing on variation in regulatory convergence.[16] When do global standards emerge and who influences their content? The dominant literature takes a *state power* approach. Jurisdictions with large markets can shape regulatory coordination through market access.[17] Both the US and the EU, for example, employ equivalency clauses in which market access is conditioned on the adoption of compatible rules in other jurisdictions. More passive processes such as "trading up" also reflect these power dynamics.[18] This approach sees interdependence between different national systems as causing regulatory clashes, but maintains that these clashes are *resolved* through national bargaining based on market size.

For much of the post-cold war period, state power scholars saw the US as the main driver of regulation.[19] More recently, Drezner (2007) argues that market size puts the EU and US at the center of most global regulatory debates.[20] When the two great powers share preferences, global standards emerge and when they disagree, rival or sham standards are more likely. To understand the great powers' regulatory preferences, Drezner argues that states have an incentive to defend and

[16] Drezner, 2007, Mattli and Woods, 2009.
[17] Drezner, 2007, Posner, 2009a, Authors
[18] Vogel, 1995.
[19] Simmons, 2001.
[20] There is controversy over whether the EU should be considered as a state. While there are complex relations between the EU level and the politics of its individual member states, the EU level is important for most areas of regulation and considered as a polity. Majone, 1999.

replicate their domestic rule structures globally. He applies this basic logic, pitting US and European preferences for regulation against each other, across a host of policy domains.

Liberals generally agree with power scholars' focus on large markets but emphasize institutions of interest aggregation at the domestic and international levels. Building on the classic two-level game metaphor, they argue that sector characteristics and factors of production shape interest group preferences. National institutions filter these preferences so as to constrain international negotiators.[21] Outcomes reflect not only market power, but domestic institutions. Interdependence activates the *preferences* of domestic interest groups - e.g. importers versus exporters - but it neither affects their bargaining power, nor leads directly to institutional change.

Emerging work within liberalism takes a less state-centric approach, examining how global regulation can emerge from either extraterritorial application of domestic law or soft law. Such regulation does not face the domestic ratification requirement depicted in the two-level game literature. These liberals focus more on market competition, information dynamics, and the network effects of standards than formal veto points.[22] Büthe and Mattli argue, for example, that private European standards organizations were better able to shape global rules even in the face of US opposition because European institutions fit better with the global standard setting process.[23]

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[21] Moravcsik, 1997, Milner, 1997, Putnam, 1988.
[22] Mattli and Woods, 2009.
[23] Büthe and Mattli, 2011.

Power and liberal approaches have similar empirical expectations across many dimensions. Both emphasize how powerful markets set global rules, rely on jurisdictional and sovereign borders as a means of distinguishing the key regulatory players, and assume states have fixed preferences. State power arguments expect global convergence to occur in cases where great power preferences converge. Given the historically rooted trajectories of regulation across the great powers, such convergence is probably rare. The more common outcome is rival standards projected by the largest markets or sham standards that have no real consequences. Where there is preference disagreement, liberals see some additional room for cooperation, when standards arise in a battle of the sexes type cooperation environment. Given different domestic and international institutional configurations, one large market may be better positioned to articulate its preferences versus a rival and gain first mover advantage over setting global rules.

We summarize the broadest contours of these approaches with regard to regulatory disputes in Figure 1. Interdependence produces new friction, which brings jurisdictions into contact with one another and differentially affects domestic interest groups. Depending on the approach, market power or institutions play the primary role in understanding how these different interests shape global rules.

[FIGURE 1 HERE]

Despite the significant contributions of both approaches to the field of international regulatory politics, empirical developments present a number of puzzling results. From agriculture to finance, the level of convergence has changed

over time.[24] This has happened without any significant shift in the relative balance of power or change in the institutional setting. Moreover, jurisdictions that have long enjoyed first mover status have had to accommodate other great powers.[25]

Transnational Opportunity Structures and Cross-National Layering

Building on early interdependence literature, we develop an alternative analytic framework to explain international regulatory politics. In contrast to system clash, we emphasize the importance of *intersocietal* interactions. Within most jurisdictions, there is disagreement among actors over status quo regulatory bargains. Interdependence both makes these rules costlier, and allows regulatory actors with shared interests and access to transnational networks to create alliances *across jurisdictions* to challenge rules. Over time, the agreements struck in such transnational forums create cross-national institutional layers that can destabilize domestic institutions and weaken alternative coalitions.

This harks back to the original literature on interdependence, which was more interested in the causal consequences of cross-national relationships, [26] than in preference formation and the filtering role of national institutions and international organizations.[27] Scholars such as Joseph Nye and Robert Keohane argued that 'intersocietal interactions' provided opportunities for 'transnational actors' to shape international politics.[28] More than just describing new global

[24] Berger, 2000, Young, 2011, Posner, 2009b.
[25] Posner, 2010.
[26] Kaiser, 1971, Nye and Keohane, 1971.
[27] Keohane, 1984, Milner, 1997, Mansfield et al., 2007.
[28] Nye and Keohane, 1971.

challenges or actors, this was a structural argument about the changing nature of international politics with "situations characterized by reciprocal effects among countries or among actors in different countries."[29] In discussing interactions among sub-state actors, in particular, Nye and Keohane (1971) highlighted the ability of such actors to serve two distinct roles in international politics: transgovernmental coordination and transgovernmental alliances. While much of the current literature on regulatory cooperation has focused on the former (i.e. regulatory cooperation as a functional response to interdependence friction), this article develops the latter more political and contentious phenomenon.

Fundamental to this earlier notion of transgovernmental alliances was the idea that interdependence created an *opportunity structure*, which regulatory actors may use in their efforts to reshape domestic institutional bargains (and in turn global rules).[30] This branch of earlier interdependence literature, however, was never fully developed as following work focused on issues of coordination. We, therefore, set out to develop a set of mechanisms by which such opportunity structures may alter global regulatory politics. First, we reject the usual assumption that the most fundamental condition of international politics is the rule-less space of anarchy. Instead, we begin from the assumption that increasing globalization (which we think of as increased flows of capital, goods and information) creates a condition of *rule overlap* in international markets. Cross-national interactions mean that domestic rules of different regulatory systems come to interfere with each other.

[29] Keohane and Nye, 2001, 16, Risse-Kappen, 1995, Cerny, 2010.
[30] This builds on the transnationalism literature. Risse-Kappen, 1995, Keck and Sikkink, 1998.

Where those rules are incompatible, they impose extraordinary pressures on actors, in particular multinational firms, which need to work under the rules of different systems. Because these actors are politically important, this creates pressure on regulatory authorities to resolve these contradictions. While large firms have preferences over which regulator's rules should obtain, these preferences are usually subordinated to the more urgent need to create regulatory certainty. In the face of rule overlap, businesses generate strong pressures to reach *some kind* of arrangement and thus destabilize existing domestic regulatory bargains.

Moreover, interdependence creates an opportunity structure for regulatory actors to forge cross-national alliances. Within jurisdictions, we assume that there are regulatory actors with a variety of preferences. Absent interdependence, those seeking to change their regulatory status quo have to work within domestic politics. Interdependence, however, opens up multiple political channels between jurisdictions, allowing actors to forge alliances with those holding similar preferences in other jurisdictions.[31]

The opportunity structure created by interdependence is not equally distributed among regulatory actors. Historical sequencing means that some regulatory actors will be better positioned than others to engage in intersocietal interactions.[32] When regulatory actors with a shared agenda have access to the transnational policy space, a transnational agreement is possible. In contrast to the theories of systems clash employed by state power-based and liberal arguments,

[31] Keohane and Nye 2001.
[32] On sequencing, see Pierson, 2000. For space reasons, we treat this distribution as a given.

neo-interdependence opens up the possibility for internal disagreements *within* jurisdictions and transnational alliances *across* them.

Transnational networks of regulatory actors may play a critical role.[33] Such networks rarely have direct power to impose formal rules. Instead, they develop soft law agreements, or recommend formal action at the national level. Nonetheless, they provide participating actors with considerable freedom to develop a joint regulatory agenda.[34] Cross-national dialogue within these networks ensures that regulators who are in direct contact with each other will have better information about what other jurisdictions are, or are not prepared to countenance than other national-level actors. They can informally coordinate their regulatory actions across borders, effectively moving the international reversion point. Actors who do not enjoy access to these cross-national networks, will have less information, and less legitimacy when they try to leverage international disputes for their own purposes. They will not be able to provide the same assurance to business that their own preferred solutions will resolve cross-national regulatory clashes. Rather than seeking to solve problems through expert consensus, as Anne-Marie Slaughter (2004) has suggested, actors in these networks will seek to reach solutions that favor their particular political interests rather than the interests of those without access.

Building on work in historical institutionalism in comparative politics we consider such transnational institutions as a possible sources of endogenous change *within* national jurisdictions. We term this process 'cross-national layering'. Facing

[33] Slaughter, 2004, Authors.
[34] Raustiala, 2002, Authors, Nölke and Perry, 2006.

rule-overlap and mounting uncertainty, international business will have an incentive to look to the transnational agreement so as to mediate contradictory demands. Such transnational agreements create a cross-national informal institution which overlays domestic rules. Over time, the transnational agreement can subsume or replace the domestic rule, by making it less and less relevant to the actual behavior of key actors (e.g. businesses with cross-national exposure).[35] Business support for (and compliance with) transnational agreements reshapes the incentives of domestic regulatory actors who were previously inclined to block change. Given the context of rule overlap, these blocking actors may find that their best available strategy is to engage the transnational rule-making process rather than suffer further losses in influence. As support leaches away from these institutions, those actors will find themselves obliged to get the best deal that they can in the new transnational arena that is increasingly coming to dominate.

Figure 2 summarizes the logic of our cross-national layering approach. Interdependence produces rule overlap as jurisdiction 1's rules begin to affect actors in jurisdiction 2. At the same time, interdependence creates opportunity structures for transnational networks between regulatory actors B and C. The cross-national layer constructed by B and C feeds back into the domestic institutional context of jurisdiction 2, buttressing the new global rules.

[FIGURE 2 HERE]

In the next section, we process trace two transatlantic regulatory disputes – surveillance information sharing and accountancy – so as to demonstrate the

[35] This logic is a cross-national variant of the national-level mechanism of 'layering' discussed by Hacker, 2004 and Thelen, 2004.

plausibility of the neo-interdependence account compared to the state power and liberal arguments. We chose surveillance and accountancy as cases of prominent transatlantic disputes which both state power and liberal arguments have sought to explain, and which represent very different policy areas. Following a most different case logic, applying the neo-interdependence approach across these two very different domains not only provides a plausibility probe of the causal argument but suggests that the argument has wider purchase.[36]

Interdependence and Surveillance Information Sharing

After the September 11, 2001 terrorist attacks, the United States government passed laws requiring increased information sharing from its European allies.[37] Owing to domestic differences over privacy – the ability of citizens to control the use and dissemination of their personally identifiable information – these new rules sparked a number of heated disputes lasting nearly a decade. Surprisingly, these conflicts have now been resolved but on terms that neither jurisdiction might have originally anticipated.

State power explanations depict these disputes as examples of systems clash. Drezner treats EU-US disagreements over commercial privacy as "a good example of the rival standards outcome"[38], which stemmed from differences in their domestic regulatory systems. One body of research suggests that the US post-September 11 used coercion to press for EU reform and as a result of imposition the EU has

[36] Seawright and Gerring, 2008.
[37] Regan, 2004, Schwartz, 2008, Rees and Aldrich, 2005.
[38] Drezner, 2007, 103, .

complied with US demands.[39] Another, however, supports the rival standards claim finding that differences in security culture has led to conflicting views of such information sharing.[40]

Liberal accounts highlight different sets of causal variables. Although the US executive has not had to seek Congressional approval during its negotiations with the EU over information sharing (these negotiations have involved executive agreements rather than treaties), there has been important variation in the European Commission's need to seek the acquiescence of the European Parliament.[41] Before the Lisbon Treaty came into force, the Parliament had little influence over regulatory arrangements in the area of surveillance. After the Lisbon Treaty, the Parliament was granted an effective veto. This mattered because the Parliament on civil liberties grounds was strongly and vehemently opposed to compromises with the US.

A liberal institutionalist account would predict that regulatory solutions would be easier to craft when the European Parliament had no veto power.[42] Under these conditions, the ideal point of European Union negotiators would solely reflect the preferences of the executive. When the European Parliament *did* have effective veto power, it would almost certainly block any deal, since it explicitly preferred the status quo of no deal to any plausible compromise. Finally, in the unlikely event that a deal was possible, it would more closely reflect the Parliament's preferences of

[39] Argomaniz, 2009.
[40] Rees and Aldrich, 2005.
[41] The process of reaching agreement within the EU has been more complex than for e.g. trade agreements. Meunier, 2000.
[42] Liberals agree that the more actors with veto power, the smaller the space of possible agreement. See Tsebelis, 2002, Milner, 1997, Mansfield et al., 2007.

protecting the civil liberties of EU citizens, than an agreement reached without the Parliament.

Our cross-national layering argument would make quite different predictions. Rather than focusing on coalitions of states or institutional veto points, it would look to the efforts of regulatory actors within the EU and US to work together through international networks. Regulatory actors that were interested in undermining their domestic status quo would use international networks to seek change that they could not achieve at the domestic level. In EU-US disputes over information sharing, the relevant actors on the US side represented the security establishment, and had little interest in upsetting a domestic status quo that they had shaped through the US PATRIOT act and other legislative and regulatory initiatives after September 11. In contrast, after a brief initial period, the EU actors with access to the relevant regulatory network had strong interests in reshaping their domestic institutions. They too represented security interests – but were unhappy with their domestic institutions.

Our argument would expect that security-oriented actors within the EU would coordinate with security-oriented actors within the US to build cross-national arrangements that would over time weaken domestic privacy arrangements within the EU. As these arrangements became accepted as a fait accompli, they would find increasing acceptance among affected businesses with interests in both jurisdictions. This, in turn, would lead to the destabilization of the institutional bargaining within the EU, as actors which had previously sought to defend existing institutional structures defected so as to continue to influence rule-making in a modified

institutional setting.

SWIFT and Rule-Overlap

One of the key surveillance disputes involved financial information sharing facilitated by SWIFT (the Belgium based Society for Worldwide Interbank Financial Telecommunication), which runs a secure messaging service for banks, organizing up to 6 trillion dollars in interbank transactions daily.[43] After September 11, US officials secretly demanded that SWIFT transfer data on financial transactions.[44] This data provided the basis for the so-called Terrorist Financing Tracking Program (TFTP), which US officials have claimed was crucial to the fight against terrorism.[45] The problem for SWIFT was that by complying with US authorities it was breaking Belgian privacy laws. This delicate equilibrium persisted until June 2006, when the *New York Times* publish details of the arrangement despite strong pressure from the US administration to remain silent.[46]

The article caused furor among European politicians and privacy regulators, leading to demands for European level action.[47] While both the EU and the US had the capacity to make credible threats, open hostilities would have been painful for both. Banks and financial institutions used the SWIFT system as part of their daily operations – as long as SWIFT was in legal limbo they too faced uncertainty and

[43] A second dispute involved airline Passenger Name Record data. For reasons of space, we detail this dispute in forthcoming work.
[44] SWIFT, 2006.
[45] Levey, 2006, Obama, 2010.
[46] Commission de la Vie Privée, 2006, Lichtblau and Risen, 2006.
[47] Commission de la Vie Privée, 2006.

possible liability.[48] Pressure from these institutions created strong incentives to reach a compromise.

US and European officials concluded an agreement in June 2007, which made some concessions to privacy advocates in Europe while preserving a version of the *status quo* in which data transfers continued.[49] The European Parliament (as well as a network of European data privacy authorities called the Article 29 Working Party) – was bitterly opposed to the deal but had no competence to overturn it.[50]

This result fits roughly with the predictions of liberal accounts. The final accord reflected the respective bargaining strength of the two sides, while domestic institutional structures channeled influence so that some actors were able to shape the outcome, while others, which had no veto power, were left on the sidelines. A state power account would find it easier to explain a continued stand-off, but could focus on the role of bargaining power in determining the specifics of the final arrangement.[51]

Contrary to the expectations of these theories, this arrangement did not produce a stable solution, in which state level actors with fixed preferences found compromise between their preferred outcomes. Instead, the deal became the starting point for relationships between regulatory actors on both sides of the Atlantic, and for a new set of institutional dynamics, culminating in major changes to European institutions.

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[48] The European financial community was extremely "vocal," and "raised hell" about the need to resolve the SWIFT dispute. Interview with European privacy official, 2008.
[49] Office for Foreign Assets Control, 2007.
[50] Interview with Commission official, 2008, Pawlak, 2009.
[51] Krasner, 1991.

The Security Community and Transnational Opportunities

Discussions over TFTP were dominated by EU and US officials dissatisfied with the institutional status quo within the European Union.[52] Internal European data regulation had been driven by the actors most sensitive to privacy concerns – data privacy commissioners and the European Parliament.[53] This meant that privacy law was deeply embedded in European institutions and data handling practices, causing frustration among European security officials. While the privacy rules provided exceptions for security related information, they still made data sharing more cumbersome and conflictual.[54] These frustrations were shared by US officials, who saw Europe's attachment to data privacy rules as hampering international cooperation in information sharing. Security-oriented officials wanted to remake the European data privacy regime, so as to facilitate regional and international data sharing.[55]

The European Union's cumbersome legislative process made it hard to get change quickly. Under 'codecision' rules, the European Parliament was willing and able to block internal legislative changes that might undermine privacy.[56] The Parliament's obduracy was reinforced by the member states' Data Privacy Commissioners, both in their national role and as members of an EU-level regulatory network, known as the Article 29 Working Party. Although the Working

[52] Pawlak, 2009.
[53] Authors.
[54] Interview with European Commission official A, 2008.
[55] Interview with European Commission official A, 2008.
[56] Authors

Party had no formal veto power, it did have the right to be consulted, and was able to mobilize opposition in Parliament and among its members against potentially privacy-invasive changes.[57]

The TFTP controversy led to the creation of a broader set of transatlantic discussions and networks over information sharing, helping security officials in both jurisdictions unsettle the European privacy coalition. EU foreign relations experts – who played a significant role in early negotiations – soon gave way to home affairs officials, who tended toward a more security-oriented approach.[58] Moreover, the European Commission's priorities had shifted dramatically, thanks to an internal reassignment of responsibilities concerning privacy. The European Commission's data privacy unit had been transferred from DG Internal Market in March 2005[59] to the DG for Justice, Freedom and Security, where it played the lead role in early negotiations over SWIFT. It was soon sidelined in favor of the policing unit within DG Justice, which took over negotiation and implementation, nearly completely freezing out the more data privacy friendly elements within the Commission.[60] Additionally, data privacy authorities and the Working Party had no formal role in Home and Justice affairs. As a series of transatlantic networks formed, they were populated primarily by security-oriented actors from the two jurisdictions.[61]

These networks aimed not only to facilitate the transfer of financial

[57] Interview with Commission official A, 2008. Interview with European privacy official, 2008.
[58] Pawlak, 2009.
[59] DG Justice and Home Affairs, 2005.
[60] Interview with Commission Official B, December 2009.
[61] Pawlak, 2009

information, but also to address other aspects of EU-US relations on privacy and homeland security.[62] In November 2006 a High Level Contact Group of senior EU and US officials was initiated to begin discussions over a broad-reaching set of proposals.[63] The High Level Contact Group issued its first report in May 2008, following it up with an addendum in October 2009.[64] The Group did not reach agreement on definite principles, but laid the ground for the negotiation of a more formal EU-US deal on privacy, which could take the form either of a binding international agreement or of soft law. This strategy amounted to a tacit agreement between EU and US security officials to a transnational regulatory layer that they hoped would both cement relations and ease problems of security cooperation (especially on the European side), by supplementing, modifying, and perhaps over time even supplanting the existing EU privacy framework with one more amenable to security concerns. By creating common principles and procedures, applying them to existing and emerging controversies, and then seeking to have them become the formal basis for EU-US relations, these officials hoped to transform both transatlantic relations and EU politics in ways that were conducive to their institutional interests. As described by an official directly involved in the negotiations, the High Level Contact Group was intended to provide "building blocks" for solutions to the problems that kept recurring, and over time create the basis for an enhanced information sharing agreement.[65]

European security officials did not anticipate immediately building a

[62] Ibid.
[63] High Level Working Group, 2010.
[64] European Council, 2008. European Council, 2009.
[65] Interview with European Presidency official, December 2009.

European TFTP system, which they feared would be vetoed by the Parliament. However, they did hope to reap benefits from a streamlined system of information exchange both across the Atlantic and among European member states. Such a system could be layered on top of existing privacy institutions – and, over time partly subsume them. The privacy rules that were agreed between the EU and US would help reshape relations among member states too, tilting the balance away from what they saw as an excessive concentration on privacy and bureaucracy, and towards what they anticipated would be a more efficient focus on national security.

Altering Parliament's Preferences

As the High Level Contact Group sought to create a broad framework for the EU-US privacy relationship, the vexing issue of SWIFT data transfers started to re-emerge. The initial EU-US deal had been based on the US's direct access to SWIFT data (SWIFT had an operations center in the US). When SWIFT relocated its US operation center to Switzerland, the original deal proved moot. A failure to reach agreement on SWIFT would be a "nuclear option" that could plausibly stymie the future development of a transatlantic institutional framework for information sharing.[66]

EU and US officials sought to create an interim agreement as a stop-gap, to prevent any loss of coverage, but also to set the agenda for longer lasting changes at *both* the EU and transatlantic levels. Specifically, they hoped that the establishment of a precedent had made the Parliament less hostile to transatlantic data exchange,

[66] Interview with European Presidency official, 2008.

but recognized that the Data Privacy Authorities were less likely to agree. Security officials within the EU hoped to pave the way towards a more general review of EU privacy law, which would remake European rules so as to make them more security friendly. [67]

As significant opposition within Parliament to the deal persisted, the Council panicked, seeking and failing to get the agreement through before Parliament got new authority under the Lisbon Treaty.[68] Despite an appeal from US Secretary of State Hillary Clinton and US Secretary for the Treasury Timothy Geithner, the agreement was voted down by the European Parliament, by 378 votes to 196, on February 11 2010.[69]

However, the Parliament's position *had* changed in ways that were not recognized by its critics across the Atlantic. While it continued to make loud noises about privacy regulation, the Parliament found itself under pressure from the European financial industry, which emphasized how unhappy banks were with the protracted debate, and stressed the "utmost importance" of a renewal of the "legal certainty" that had been undermined by the Parliament's rejection of the TFTP deal.[70]

This, combined with the opportunity to shape post-Lisbon domestic security arrangements, presented the Parliament with different incentives than it had had in 2006-2007. Rather than seeking to unravel burgeoning EU-US cooperation, it sought a bigger role in shaping discussions within it. The Commission soon proposed that

[67] Interview with European Commission official A, 2008.
[68] European Parliament, 2010a.
[69] European Parliament Press Office, 2010a.
[70] European Banking Federation, 2010.

the European Parliament would be kept "immediately and fully informed" at all stages of the negotiation.[71] This created an important precedent for the Parliament's role in future negotiations over privacy and homeland security.[72]

This was not a simple product of the Parliament's increased bargaining power after the Lisbon Treaty came into effect. Parliament could have continued to stymie ongoing discussions between the EU and US rather than to engage them. However, this would have been difficult for the Parliament, given the importance of transatlantic regulatory certainty to business and other politically influential actors.

The more dramatic change was in the Parliament's underlying preferences. In 2009, European officials had declined to raise the possibility of an European TFTP for fear that it would irrevocably alienate the Parliament.[73] Now, the Parliament made it clear that exactly such a program was its preferred solution. On May 5 2010, the Parliament resolved to support a:

> twin-track approach which differentiates between, on the one hand, the strict safeguards to be included in the envisaged EU-US agreement, and, on the other, the fundamental longer-term policy decisions that the EU must address[74]

This 'twin track' tacitly accepted that there was an emerging linkage between the EU-US relationship and institutional changes within the European Union. More precisely, Parliament suggested that:

> the option offering the highest level of guarantees would be to allow for the

[71] European Parliament Press Office, 2010b.
[72] LIBE Committee, 2010.
[73] Interview with European data privacy official, December 2009.
[74] European Parliament, 2010b.

> extraction of data to take place on EU soil, in EU or Joint EU-US facilities, and ask[ed] the Commission and the Council to explore … ways to phase into a medium-term solution empowering an EU judicial authority to oversee the extraction in the EU, on behalf of Member States, after a mid-term parliamentary review of the agreement.[75]

These suggestions were taken, as they were intended, as an invitation to create a European TFTP program along American lines. The final EU-US agreement incorporated this outcome (under the supervision of the European policing agency, Europol, rather than a judicial authority), while a Council/European Commission Declaration following from the agreement "acknowledges in the longer-term, the ambition for the European Union to establish a system equivalent to the TFTP, which could allow for the extraction of data to take place on EU soil," and noted that the US "has committed in the Agreement to cooperate and provide assistance and advice to contribute to the effective establishment of such a system."[76]

The transnational deal over financial data transfers remade the regulatory bargain over security and privacy within the European Union. It paved the way towards a new set of arrangements, under which the EU would copy the US example by building its own independent means to analyze financial data on EU territory. This privileges security over privacy concerns in just the way that European security officials (and their US counterparts) hoped for, and signals a dramatic shift in the Parliament's position.

The cross-national layering argument helps explain both the shift in the Parliament's stance and the final outcome. The key divisions were not between

[75] Ibid.
[76] European Council, 2010.

jurisdictions, but between different regulatory actors within them. There was initial preference heterogeneity within the European Union between civil rights oriented regulatory actors (data privacy commissioners, the European Parliament, some parts of the Commission), who wanted to preserve the existing European institutional bargain, and security oriented officials (in justice and home affairs ministries, in some parts of the Commission, and in the Council) who wanted to remake it. As the latter came to dominate negotiations and policy networks, they were able to strike up alliances with US officials who shared their very broad objectives.

They accordingly made proposals that advanced their particular agenda (of weakening regulatory bargains within the EU favoring privacy over security), which resulted in an informal agreement between the two sides. This transnational layer quickly attracted the support of banks and other transnational businesses, which needed regulatory certainty and stability.

This in turn altered the interests of regulatory actors, most importantly the European Parliament, which had previously sought to support the internal pro-privacy status quo. Since it was nearly politically impossible to get rid of the transnational agreement – important businesses relied on it – the Parliament was obliged to reconsider its position. Rather than continuing to defend an increasingly fragile institutional *status quo ante*, in which privacy rights were supposed to exclude potentially intrusive uses of financial data by security agencies, the Parliament opted to support the *status quo post*, in return for some degree of influence over negotiations. As one skeptical member of the European Parliament

describes the outcome, the proposal for a European TFTP:

> fits the trend whereby whatever instruments the US has for counter terrorism and other law enforcement purposes is copied by the European Union. … via the back door, a European TFTP will be created. It is the umpteenth example of what we call policy laundering. There have been many examples where either the US or the member state governments who usually work in tandem want something; the European member states know that if they present such a proposal to their national parliaments there is no way in hell they are going to get it, so what they do is they hide behind some international agreement in order to get it.[77]

As the European Union creates its own apparatus to mine financial data for security relevant information, it will profoundly reshape the previously existing bargain over privacy and homeland security, building a set of core institutional arrangements that would have seemed inconceivable even five years ago.

Interdependence and International Accounting Standards

Fundamental economic measurements ranging from how firms determine assets, liabilities, to profit are anchored in accounting standards.[78] These standards thus form the building blocks of modern finance capitalism, providing the information necessary for managers, investors and creditors to make decisions. Those who create these rules, whether private or public actors, serve as effective regulators.

Globalization has increased the demand for harmonized accounting rules[79] – but the question of *which* rules should predominate has been controversial.

[77] Interview with Member of European Parliament, 2011.
[78] Véron, 2007.
[79] Nölke and Perry, 2006, Martinez-Diaz, 2005.

Actors whose standards do not win out at the international level face distributional costs as actors have made investments in a particular domestic regulatory regime. Transparency and open reporting (generally speaking) benefit investors, the international accounting firms that represent them, and financial analysts. Calculating assets by their historical value, by contrast, helps manufacturers or small businesses manage long-term investments.[80] Although firms might benefit from coordination around a set of common rules, they must pay the switching costs associated with moving from the old to the new.[81] Moreover, domestic regulatory agencies risk sovereignty losses, as international harmonization would pass significant autonomy to other regulators or an international standards body. Distributional costs and sovereignty losses, then, have consistently raised roadblocks to calls for international cooperation.

The historical path to global accounting harmonization is puzzling. For roughly thirty years starting in the 1970s, little progress was made. In one forum after the next, competing interests stymied reform.[82] Similarly, early efforts in the European Community stalled owing to differences in investor and creditor positions across the member states. Most striking, the International Accounting Standards Board (IASB)[83], which would become an important global standard setter, found few followers through the 1990s.

[80] Botzem et al., 2007, Perry and Nölke, 2006.
[81] Mattli and Büthe, 2003.
[82] Rahman, 1998.
[83] For simplicity, we refer to the organization as the IASB. Prior to 1999, the organization was named the International Accounting Standards Committee (IASC).

Over a decade, however, thousands of firms from Asia, Australia, Europe, and the United States began using International Financial Reporting Standards (IFRS) developed by the IASB. The European Commission now requires all listed companies to use IFRS for consolidated reporting and the U.S. Securities and Exchange Commission (SEC) accepts IFRS without reconciliation for foreign issuers listing on US exchanges. Countries ranging from Canada to China have begun integrated IFRS into their accounting frameworks. How did this change take place?

Again, power and liberal accounts predominate in the existing literature.[84] Drezner does not discuss accounting standards in particular, but tabulates them as belonging to a group of 'club' standards in finance, which the EU and US agree on, and use to shape the markets of developing countries.[85] Simmons specifically argues that convergence is an example of market adjustment to unipolar power.[86] The US acts as a financial hegemon and IFRS represents a market mechanism through which its influence is exerted. Elliot Posner disagrees, and argues that the accounting standards case demonstrates the rising importance of the European Union for international financial governance.[87] With its newly centralized internal market, contra Simmons, the EU's recognition of IFRS dramatically shifted global accounting debates.

Liberals have emphasized market and informational forces in addition to the way institutions filter interests. Their arguments highlight how the IASB created a focal point to resolve the frictions of interdependence as firms attempted to raise

[84] Simmons, 2001, Mügge, 2011.
[85] Drezner, 2007.
[86] Simmons, 2001.
[87] Posner, 2009a.

capital on foreign stock exchanges.[88] Buthe and Mattli (2011) have additionally argued that differences in the constellation of domestic institutions between the US and the EU allowed the US to more successfully shape IASB standards.

None of these accounts properly explains how this convergence took place. There was considerable disagreement rather than similar preferences over how accounting standards should be regulated. Nor does US hegemony serve as a sufficient explanation, given that the causal factor remained constant across periods of strong divergence and strong convergence. Although developments within the EU help explain how its bargaining power increased vis-à-vis the US, they do not explain why EU and US *preferences* shifted so dramatically, leading both to converge on a solution that they had previously systematically rejected.[89] Nor can liberals, who depict the IASB as a stalking horse for US interests, explain why it has caused EU regulations (which they would expect to be self-entrenching)[90] to shift dramatically and decisively.

A better account would explain this change, and, more specifically, would explain why the European Commission and the SEC, the key regulatory agencies in the EU and US respectively, shifted preferences and converged on the solutions offered by the IASB. For roughly twenty years, the IASB existed in relative obscurity, either neglected or contemned by the SEC and the European Commission. Yet suddenly, these preferences shifted so that both accepted IASB standards rather than their own, with knock on consequences for firms in both of their jurisdictions.

[88] Porter, 2005.
[89] Posner and Véron, 2010
[90] Büthe and Mattli, 2011.

Our explanation focuses on international accounting harmonization not as a clash between competing national systems, nor as a simple decision by firms over which set of standards to comply with, but as a cross-jurisdictional struggle between investors, creditors, and regulators over distributional costs and sovereignty losses. Following our argument, a transnational coalition supporting investor interests built a cross-national layer that over time unsettled internal domestic bargains and allowed a transformation of global rules.

A Transnational Opportunity for Investor Interests

From its earliest history, the IASB relied on a transnational coalition of accountants interested in investor protection. Large accounting firms saw the transnational effort as a way to transform accounting from a set of corporate rules into an investor protection regime, in which they could expand their markets as firms expanded their multinational presence.[91]

Moreover, the organization had more specific aims. Representatives from the United Kingdom saw it as creating an alternative to European policy. When Britain joined the EU in 1973, accountancy bodies from the UK worried that intra-EU debates might drive future regulatory change. They wanted to avoid the switching costs of harmonization of UK rules, which benefited investors, and Continental rules which often focused on patient capital. The IASB allowed these bodies to build a network with others who preferred an investor-focused regime. Anthony Hopwood, founder of the European Accounting Association, explains in 1994,

[91] Nölke and Perry, 2008.

> the British accountancy bodies [who] were worried by the potential consequences of what they saw as the imposition of continental European statutory and state control…Wanting to have a more institutionalized manifestation of British commitment to a wider transnational and Commonwealth mode of accounting, with the cooperation of its partners in the primarily English language audit community, the IASC was established.[92]

This attracted potential defectors from within countries with less-investor focused regimes. German representatives on the IASB, for example, came from global accounting firms like KPMG or Arthur Anderson and multinational companies such as Daimler.[93]

The IASB thus began to create its own set of accounting standards. Like the standards used in the US (the US Generally Accepted Accounting Principles, or USGAAP standards), they were crafted to favor the interests of investors, rather than the kinds of patient capital characteristic of small or medium sized enterprises. However, they also differed from US standards in both their form (which was looser) and their goal (setting an international coordination point that would both buttress UK finance against Continental pressures, and mobilize defectors from less investor-friendly regimes).

Developing a Core Set of Standards – SEC Accesses the Transnational Opportunity

The US, like the EU, had substantial internal divisions over accountancy standards in the 1980s. A core group of regulators including the Financial Accounting Standards Board (FASB), a private standard setter in the US, as well as

[92] Hopwood, 1994, 243.
[93] Perry and Nölke, 2005.

key players within the SEC, favored the US-dominated USGAAP as the international standard. Foreign jurisdictions increasingly accepted USGAAP without reconciliation and many practitioners within the US expected that they would eventually converge on US standards. An important group of actors within the US, including the FASB and the dominant faction within the SEC, saw the extraterritorial spillover of US rules as promoting USGAAP. They resisted efforts to negotiate common standards with other countries via the IASB.

Donald Kirk, the FASB chair in the early 1980s, had little patience for the international harmonization exercise. In 1983, he concluded, "We have our plate full with the problems just in this country. I personally am very pessimistic about any super-national standard setting."[94] This skepticism persisted through the 1990s. FASB Vice-Chair, Jim Leisenring, concluded in 1998 that IASB standards were "sacrificing quality for the sake of convergence."[95] Similarly, SEC chairman David Ruder and Linda Quinn, head of Corporate Finance at the SEC, were extremely cautious of international harmonization efforts.[96] They were not willing to allow convergence efforts to water down US standards.

The SEC, however, was also developing an explicit international competence. Starting in the 1980s, the SEC began to study and address the consequences of regulatory differences with foreign markets. Several SEC leaders, including chairman Richard Breeden, Arthur Levitt and Charles Cox used international issues

[94] Camfferman and Zeff, 2007, 163 .
[95] Camfferman and Zeff, 2007, 339 .
[96] Interview with Lynne Turner, former SEC Chief Accountant, SEC Historical Society, June 16, 2005.

as a way to enhance the agency's profile.[97] In 1987, the agency created an international affairs department to better cooperate with peer regulators from other jurisdictions as well as standard setters such as the IASB.[98]

This began to expose the SEC to cross-pressures. On the one hand, many within the US still supported USGAAP standards. On the other, the New York Stock Exchange, which was attempting to increase its share of global companies, saw USGAAP as a competitive disadvantage and lobbied Congress and the SEC to ease the regulatory burden. This became even more serious when the London Stock Exchange allowed foreign companies to use IASB without reconciliation. The New York Stock Exchange actively promoted the IASB effort so as to undercut domestic regulatory burdens. As Mark Sutton, chief accountant at the SEC during the 1990s, explains,

> Again, everything really focuses on an intense desire on the part of foreign registrants, and the stock exchanges in the U.S. to make it easier for foreign issuers to come to the U.S. market. There were all kinds of concerns about the U.S. market losing its pre- eminence and more capital going into the London markets...[99]

This lobbying effort successfully persuaded Congress to include a provision in the National Securities Markets Improvement Act, which charged the SEC to study and move forward with support for international accounting standards. The SEC's 1997 report made clear its continued skepticism of IASB standards.[100] But the presence of the IASB standards as a transnational layer offered the New York Stock

[97] Seligman, 1982.
[98] Interview with Michael Mann, former head of SEC International Division, SEC Historical Society, June 13, 2005.
[99] Interview with Michael Sutton, former Chief SEC Accountant, SEC Historical Society, June 14, 2005.
[100] Commission, 1997.

Exchange a clear alternative to USGAAP, which it could mobilize others around. As James Cochrane of the NYSE concluded in 1993, "European companies have indicated that all they need is US acceptance of IASC principles and they'll be knocking down the door of the NYSE and US capital markets."[101]

At the same time, the SEC feared that foreign firms listing on US exchanges lacked adequate regulatory oversight. Engaging the IASB process, potentially allowed the SEC to improve standards globally and protect its own domestic regulatory sovereignty. As Sutton continues,

> the stock exchange lobbied rather heavily to influence the Commissioners to accept—at least to get on a path to accept international standards in U.S. filings. And the core standards project was a way of not necessarily accomplishing that, but establishing a process by which… there was a critical analysis and a critical look at the important differences between U.S. standards and international standards.[102]

The SEC, through the International Organization of Securities Commissions (IOSCO), engaged with the IASB to refine IASB standards. Members of the IASB and IOSCO attempted to revise IASB core standards so as to eliminate variation and develop a functioning set of international standards. This collaboration offered both sides important benefits. IASB members had become increasingly dissatisfied with the limited diffusion of IASB standards. The leadership within the IASB saw IOSCO, and implicitly SEC, endorsement of its standards as a critical path towards legitimacy. At the same time, the SEC feared that market internationalization might spur a race to the bottom, which would in turn undermine US market regulations.[103]

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[101] Camfferman and Zeff, 2007, 339 .
[102] Interview with Michael Sutton, former Chief SEC Accountant, SEC Historical Society, June 14, 2005.
[103] Singer, 2007.

IASB-IOSCO collaboration offered the IASB increased legitimacy and the SEC a partial buffer against regulatory competition. Ralph Walters, a former member of FASB and chair of the comparability project at the IASB concluded,

> The purpose of the IASC is to improve the usefulness of accounting internationally. To succeed in this, one needs to harmonize existing national standards to eliminate, or at least minimize, free choice alternatives. Pressure was building from IOSCO, in which the SEC was the most influential. Both the UN and OECD were making noises about getting involved, and I think most thoughtful people wanted to head them off. It was clear that if the IASC was to have any effect on this area, because it had no authority or powers of enforcement, it would be necessary to obtain the recognition and acceptance of the IOSCO group (e.g., SEC).[104]

The SEC was reluctant to cede regulatory sovereignty and instead used the carrot of IOSCO endorsement to force major changes in IASB standards.

The membership of the IASB made adjustment to SEC demands easier. Consisting primarily of representatives from the big 4 international accounting firms, international banks, and multinational corporations, they largely supported the investor protection paradigm advocated by the SEC. Equally important, many of the more nationally oriented continental firms that relied on patient capital were not represented on the board.[105] The cross-national layer, thus, privileged certain interests over others.

By the end of the IOSCO-IASB interaction, the core standards had been significantly narrowed and strengthened. IASB could credibly argue that their standards formed the basis for a global convergence project. The international faction of the SEC succeeded in steering this process, so as to shape the content of IASB standards, but was also challenged in the end by the skeptical faction that

[104] Camfferman and Zeff, 2007, 297 .
[105] Perry and Nölke, 2005.

resisted lowering standards.[106] Unfortunately, for the IASB, IOSCO withheld a sweeping endorsement of the core standards. In 2000, the SEC released a call for comment on the standards in which many US players including FASB (the US private sector standard setter) continued to raise concerns about the quality of the standards.

Hence, *contra* Simmons' power based approach (2001), this was not a simple process of market adjustment. Instead, the SEC played a highly activist role in developing IASB standards, even while remaining ambiguous about their ultimate role. This public-private actor interaction also challenges conventional liberal accounts of the IASB as primarily an expert driven enterprise. IASB legitimacy was integrally tied to the support of the SEC and its participation in the compatibility project. Neither theory would have anticipated the SEC's shift in strategy away from extraterritorial spillover to active engagement with constructing a cross-national layer at the IASB.

The EU minds the GAAP – Regulatory Overlap Alters Regulatory Preferences

The SEC neither endorsed nor rejected the IASB standards, since it was trapped between businesses who wanted an end to regulatory confusion that threatened their business model (the New York Stock Exchange), and those regulatory actors still hoping that USGAAP standards would prevail. The EU change of heart, when it came, was far less equivocal. It endorsed IASB standards for use by

[106] Camfferman and Zeff, 2007.

European firms conducting consolidated reports and listed on qualifying exchanges.[107]

This U-turn was extremely surprising given that the EU had regularly disparaged and opposed IASB standards. Up through the 1990s, the Commission viewed accounting standards as an internal market matter. The EU had started its own harmonization process in the 1970s, culminating in Directives that provided broad latitude to national level authorities to win approval from supporters of both shareholder value and patient capital. It had been highly skeptical of the IASB, refusing an invitation to become an observer member (the FASB, in contrast, accepted). The representative of DG Market responsible for accounting issues, Karel Van Hulle, repeatedly rejected IASB's mission and cast doubt on its work, dismissing the interests of multinational companies hoping to list abroad, and describing harmonization as "unthinkable".[108]

However, during the early 1990s, the Commission found its efforts to create a European regulator blocked internally, because of opposition from the United Kingdom. At the same time, the Commission and several member states enjoyed no success in persuading the SEC to recognize European standards.[109]

As regulatory overlap with the US increased during the 1990s, the Commission began to alter its position. The finance bubble of the 1990s pulled European firms to list on US stock exchanges, obliging them, under SEC rules, to reconcile their accounts with US GAAP, requiring double reporting that raised many

[107] Posner and Véron, 2010.
[108] Camfferman and Zeff, 2007, 425, .
[109] European Commission, 1995 .

questions about MNC profitability. Daimler Benz in 1993, for example, went from showing DM 615 million profit to a DM 1,839 million loss based on differences in how liabilities were considered under the different regimes. Different reporting requirements created overlapping rules that left multinational firms very unhappy.

As firms switched to US GAAP and national European governments began to accept it for domestic reporting requirements, the Commission began to worry about losing its own authority. The IASB became dramatically more appealing. It not only provided an alternative to pure US dominance, but began to represent the interests of multinational companies that were defecting from European rules. The Commission shifted its strategy away from a home-grown European standard to the transnational initiative,

> Large European companies seeking capital on the international markets, most often on the New York Stock Exchange, are obliged to prepare a second set of accounts for that purpose…Moreover, it involves companies in conforming with [US GAAP] which are developed without any European input…There is a risk that large companies will be increasingly drawn towards US GAAP…Of the various international bodies working on accounting standards, for the time being only the IASC is producing results which have a clear prospect of recognition in international capital markets within a timescale which corresponds to the urgency of the problem.[110]

The IASB offered an important second best strategy for the Commission. Under conditions of regulatory overlap, the Commission realized that it could not develop and control its own regional standards. While delegation to the IASB would involve some sovereignty losses, it would shore up Europe against the extraterritorial

[110] Commission, 1995 paragraphs 1:3, ,3:3, 4:4.

extension of US GAAP. Regardless, Van Hulle concluded that the new approach was a "radical change".[111]

In a surprising move, the European Union passed a regulation in 2002 that required all European firms listed on a qualifying exchange to use IASB standards for their qualifying reports. This created a huge market for IASB standards Importantly, the EU created an endorsement process under which a technical committee within the EU reviewed IASB standards before accepting them for the European market, providing some leverage over IASB.

This had international consequences, including, most strikingly, an SEC decision to allow foreign issuers to use IASB's standards without reconciling to USGAAP. The SEC is currently considering permitting domestic issues to do so as well, weakening the domestic hold of the US standard.[112]

Our account highlights the divergences *within* the EU and US, and shows how regulatory actors who were dissatisfied with their existing national bargains sought to create networks that could broker cross national alliances in pursuit of change. UK accountancy bodies (which wished to preserve the UK system) came together with potential defectors on the European mainland in order to create a loose network aimed at creating international standards that might spring them from their trap.

This network only really started to influence outcomes when interdependence and rule overlap began to bite on both sides of the Atlantic. In the US, stock exchanges pushed against national standards, which they feared were

[111] Camfferman and Zeff, 2007, 431 .
[112] Posner, 2010.

dissuading business. In the EU, firms that needed to crosslist in order to raise money in the US found themselves trapped between very different accounting systems that hurt their market credibility. Business actors in both jurisdictions began to press their regulators to adopt IASB standards – not because of their specific content, but because they provided the most obvious solution to this conundrum.

This led to regulatory change on both sides of the Atlantic. An initially half-hearted embrace of the IASB allowed the SEC substantially to influence its standards, without positively endorsing them. The EU, recognizing that it could not produce its own standards because of internal divisions, decided to adopt IASB standards more forthrightly, albeit through a mechanism which allowed the EU influence over IASB rules too. Hence, the final result was not a win for either the EU or US. Although both had much to gain from the outcome, each would have preferred to see its own standards prevail.

If it was a win for any group, it was a win for the coalition that supported IASB activities, a transnational alliance of accountancy bodies, accountancy firms and others who hoped to provide a global accounting standard based in investor protection and shareholder value. The IASB offered public and private interests an alternative policy platform than was possible in their domestic settings. However, it did so in a quite discriminating fashion – while it had representatives from 'patient capital' countries, these nearly invariably represented interests that were at odds with the dominant approach of their home jurisdiction.

This group succeeded in creating a transnational agreement that altered the domestic *status quo* in both the US and EU. In the US, it gradually undermined

support for USGAAP in international issues, and is inexorably encroaching on domestic issues too. In the EU, it has come to be the dominant standard *tout court*. A transnational set of rules and regulations has altered domestic markets in both jurisdictions in quite fundamental ways and in turn global rules.

Conclusion

In this article, we build on arguments from earlier literature on interdependence and historical institutionalism in comparative politics to derive a new account of international regulatory politics. We show how our cross-national layering framework applies in cases drawn from two major (and otherwise very different) strands of work in the politics of international regulation – disputes over surveillance information sharing and over accounting standards.

Our argument emphasizes how increased interdependence affects both the incentives *and* the power of sub-national regulatory actors. Interdependence both destabilizes domestic regulatory status quos, as transnational firms face conflicting jurisdictional demands and call for certainty, and offers some of these regulatory actors the opportunity to forge transnational alliances so as to shape solutions to cross-border regulatory problems. Regulatory actors with access to transnational networks are better able to set the agenda for international soft law agreements building cross-national layers that may undermine existing domestic agreements. Our argument, then, can account for dynamic processes through which international interactions transform internal regulatory rules and in turn global regulation.

In the empirical section of the paper, we demonstrate how these processes in the realm of surveillance and accountancy served over time to recast regulatory disputes. In the case of surveillance, transnational collaboration among security experts altered the strategy of the European Parliament and thereby changed rules in the EU that had previously privileged privacy over security, allowing for much more robust international information sharing. In accountancy, a coalition of those advocating for investor interests forged a transnational agenda within the IASB, altering the positions of the SEC in the US, and the Commission in the EU, and hence recasting domestic regulation. In both, transnational alliances played a critical role in creating new layers of rules and interaction, which in turn altered the preferences and strategies of blocking actors. The findings are of course limited to the transatlantic relationship, but given the importance of the EU and US for most global regulatory issues it offers an important first step in developing the argument. The 'most different' case selection suggests the generalizability of the findings, but future research will be needed to examine how the claims developed here travel to other regulatory domains.

These findings have important implications for international political economy more generally. They build on previous work on transnationalism,[113] extending it by laying out specific mechanisms and plausible conditions for when interdependence unsettles existing policy equilibria – rule overlap – and can provide new political platforms for change agents – transnational opportunity structures. More broadly, they re-open a debate about the structural implications of

[113] Risse-Kappen, 1995; Cerny, 2010; Slaughter, 2005.

interdependence.[114]

Additionally, our argument points to new directions forward for power-oriented scholars, who have begun again to consider how international interactions alter the domestic institutional structures of states.[115] Specifically, it extends their arguments beyond imperialistic efforts by one state to reshape the domestic rules of another, to show how cross-national coalitions of sub-state regulatory actors, with different levels of bargaining power, struggle to reshape those domestic institutions.

Finally, it sharpens debate over the role of soft law in global politics. Existing work often casts these agreements as informal coordination mechanisms with limited capacity to resolve distributional conflicts.[116] By showing how soft law may reshape domestic institutional bargains, our argument provides a more robust account of soft law. It is especially important that we consider these processes *over time.* While a snap shot account might conclude that such agreements are not implemented, we show how they can give rise to new dynamics of domestic institutional change and thus have significant distributional consequences.

[114] Nye and Keohane, 1971, Kaiser, 1971.
[115] Krasner, 2011.
[116] Abbott and Snidal, 2000; Kahler and Lake, 2003; Slaughter, 2001.

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