INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 3

2024

The Global Diffusion of Antitrust and Merger Control

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ABSTRACT

The core idea of institutional theory is that social institutions, such as rules, networks, culture, and conventions that govern business dealings, are necessary for markets to operate. The lack of institutional frameworks that govern business transactions hinders intercountry spaces because these institutions are mainly established and operate within national borders. This argument is in sharp contrast to those favouring deregulation, which maintain that market integrations can happen by eliminating current regulations rather than passing new ones. My empirical research really shows that when antitrust laws and merger controls are enacted, adopting nations observe an increase in the number of incoming cross-border mergers and acquisitions. By informing adopting countries that they uphold international norms for market-oriented reforms, antitrust laws promote foreign acquisitions. Merger control streamlines foreign acquisitions by giving purchasing corporations in adopting nations clarity on otherwise unclear legislation.

***Keywords**: WTO - World Trade Organisation ; GDP - Gross Domestic Product; IMF - International Monetary Fund.*

I. INTRODUCTION

Policy is transported between nations. Many governments import policies from other countries instead of creating their own. A policy's instrumental functions are not the only factors considered in its approval. Symbolic and cognitive processes, on the other hand, are heavily involved. This is due to the systems that disseminate norms, values, and cultures that are accepted as valid on a worldwide scale. Over time, nations have become isomorphic because they share a global culture and are similar to members of a polity. Researchers have investigated the mechanisms underlying this isomorphism. We currently possess a wealth of knowledge regarding the processes involved in the worldwide diffusion of policies, thanks to the numerous empirical studies that have attempted to separate out the various mechanisms behind state adoption of certain policies. Provide a helpful typology of the mechanisms that arise in the

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transmission of global policies among the various classifications of diffusion mechanisms. Powerful institutions like the World Bank, the International Monetary Fund, the European Union, and the US government can exert pressure on a country to enact certain policies. At times, nations implement measures to manage economic rivalry, such reducing tax rates to draw in foreign investment. Another mechanism may operate when policymakers are exposed to ideas and norms prevalent in other countries, and then adopt policies based on those of other nations[5]. Researchers have verified the existence of each of these diffusion mechanisms using advanced longitudinal data.

Vicarious learning is one specific diffusion process that hasn't received enough empirical testing, though. I characterize policy diffusion by vicarious learning as the process by which a policymaker adopts a new policy based on his or her observation of the outcomes and efficacy rather than just the policy's prevalence in other nations. While the term "learning" is used in a significant number of research in this subject, few really examine whether adopter countries are impacted by causal relationships between policy adoptions and consequences. Researchers frequently fail to discern between true learning and other forms of emulation. Only a small number of research have used empirical data to study policy learning to date. The idea of vicarious learning is based on the idea that decision-makers watch other people to get insight into the effects of policies. It is crucial to investigate which states students visit in order to get knowledge about policies. Network theorists contend that various forms of transnational networks link nations to one another and serve as vital conduits for the exchange of ideas across nations. Nevertheless, current learning analyses do not account for inter-country networks and instead presume that countries within the same region will serve as the primary providers of vicarious learning. A logical extension of this work would be to analyze vicarious learning using IGO networks. According to recent sociological studies, the IGO is one of the main channels for the transmission of concepts, customs, and norms. A number of different kinds of IGOs serve as a representation of contemporary global culture and are important players in promoting cross-border exchanges of concepts and methods. Studies on vicarious learning through IGO linkages have not yet been conducted.

II. Global spread of antitrust and merger control

During the period of CBA expansion in the 1990s and 2000s, antitrust and merger laws spread rapidly around the globe. Antitrust laws support a core concept of capitalism: market

[5] Strang, David and Michael W. Macy. 2001. "In Search of Excellence: Fads, Success Stories, and Adaptive Emulation1." *American Journal of Sociology* 107(1):147–82.

competition. They aim to prohibit activities that are thought to harm or limit market competition. The activities that these laws generally ban are quite common across countries: (a) price-fixing, (b) market allocation, (c) abuse of dominant market power, (d) price discrimination, (e) setting market entry barriers, (f) application of dissimilar conditions to equivalent transactions, and (f) concerted practices, whether horizontal, vertical, or conglomerates[6]. Antitrust laws were mostly passed in emerging nations with substantial enterprises and markets up until the 1980s. But once the Soviet Union collapsed in the late 1980s, these laws played a significant role in the development of international standards for market-oriented change. Strong intergovernmental organisations started to view antitrust legislation as a necessary component of the contemporary market economy. To improve competition, the World Bank and the IMF started advising their borrowers to enact antitrust laws. Antitrust law was identified as a recommended policy by the World Trade Organisation and the General Agreement on Tariffs and Trade. Prior to granting membership, the European Union started requesting prospective members to enact antitrust rules. Around this time, antitrust laws started to be quickly and enthusiastically adopted by developing nations as well as by many least-developed nations. Furthermore, the late adopters did not create the wheel, as experts in global politics would expect. Instead, they passed antitrust legislation that was based on developed nation laws. Many emerging and least-developed nations enacted antitrust laws in the 1990s and 2000s. Antitrust laws sometimes contain provisions pertaining to mergers and acquisitions (M&As) that are intended to prevent anticompetitive effects. A government agency reviews an acquisition plan under a standard merger statute. After a waiting time of two to six months, the agency determines whether to approve or reject the proposal based on its assessment of the deal's anticompetitive effects. This agency's clearance is required before the agreement can be concluded. In the United States, merger control first appeared in the early 1900s. The Clayton Act, the world's first merger control law, was approved by Congress in 1914 and forbade mergers that would have an anticompetitive effect.

The law was intended as a way to cope with the wave of mergers that followed the adoption of the Sherman Act of 1890, the first antitrust law, which banned cartels among large corporations and made mergers a more attractive alternative to firms seeking to control the level of competition[7]. The main goal of merger control is to control large corporations and shield the general people from their monopolistic power. Nonetheless, a county does not always embrace

[6] Kennedy, Kevin. 2001. "Foreign Direct Investment and Competition Policy at the World Trade Organization." *The George Washington International Law Review* 33(3/4):585.
[7] Fligstein, Neil. 1990. *The Transformation of Corporate Control*. Cambridge: Harvard University Press.

merger control in response to a necessity. For instance, merger control was implemented in 2009 in Mauritius, a nation of approximately a million people that had no discernible "big business" or "merger wave." Mauritius was by no means an exceptional case; numerous other small nations that faced no concerns from large corporations swiftly followed suit with the adoption of similar legislation. As a result, the merger review regime is currently in place in more than 120 nations globally.

III. Mechanisms of policy diffusion

This section reviews existing theories on four diffusion mechanisms. There has been ample previous research on international policy diffusion over the last two decades. This line of research brings a contrasting view compared to the traditional perspective, which holds that national policies are developed within each nation and are unaffected by foreign countries. This perspective assumes the national policies of each country are determined only by internal domestic factors such as economic growth, population, political party, and labor power[8].

But throughout the past 20 years, it has gained widespread acceptance that states are not isolated from one another but rather are a part of a global society. This viewpoint holds that the world culture of the global society is made up of valid cultural norms as well as political, economic, and legal frameworks. This group of academics has provided a wealth of empirical research showing how national policies spread internationally. "What are the mechanisms of policy diffusion?" has been a fundamental study subject in this area. The four tangible mechanisms identified in previous research constructivism, coercion, economic competition, and learning are summed up by Dobbin, Simmons, and Garrett. According to constructivism, laws are passed because they uphold the state's legitimacy and conform to norms rather than because they have been shown to have actual consequences or because they are enforceable. The countries who are embracing this clearly understand this. In organisational sociology, this point of view is a novel contribution of new institutionalism. It conveys the cultural and phenomenological perspective that suggests rationalised myths rather than fact-based science should be the understanding of contemporary organisational activities. This viewpoint holds that there is a perfect kind of rationality, and that states' practices spread when they think they meet this ideal. There are also global forms of rationality or rational activities that are ideal. We refer to these as world cultures. They specify how states ought to appear. The third mechanism of diffusion, economic competition, focuses on the phenomenon of the intense “competition for capital”

[8] Flora, Peter and Arnold Joseph Heidenheimer. 1981. *The Development of Welfare States in Europe and America*. New Brunswick, N.J.: Transaction Publishers.

among states[9]. Developing nations that lack the cash to invest in growth turn to the international market for investments through market-oriented reforms. Numerous of those policies validate the notion of a "race to the bottom" by providing preferential treatment for foreign capital in the form of loose labour laws and reduced corporate taxation. Economic competition differs from coercion in that it gives the policy adopter greater discretion. Countries can boost their competitiveness in a number of ways under the diffusion of economic rivalry.

Last but not least, the learning process explains why policymakers evaluate a policy's efficacy or outcome before adopting a new one. For instance, a system of competition for reduced corporate taxes will only take place if rival nations implement the same policy. The focus country will embrace it if competitor countries do in order to maintain their economic competitiveness. Nonetheless, the learning mechanism paints a picture of how policymakers investigate whether the competing nation's reduced corporate taxation actually drew in foreign investment, increased GDP growth, or increased employment rates. It is difficult to analyse learning processes because, of course, in the social world, the relationship between cause and effect is fuzzy and complex.

(A) Diffusion by Policy Learning

Scholars have paid the least attention to learning among the four mechanisms discussed above. Gilardi, whose area of expertise is policy learning, recently examined the decline in unemployment in OECD nations. He discovers that when debating whether to implement a policy, decision-makers do not evaluate how the policy would affect the overall state of the economy. Rather, they focus on the political outcomes, such as the implications for the next election, which are, to put it cynically, more significant to them. Additionally, there is a dearth of empirical study on dissemination via learning in organisational studies. One notable exception is Pernell-Gallagher, whose research examined the diffusion of collateralized debt obligations (CDOs), a risky financial instrument, across US commercial and investment banks via education. Pernell-Gallagher discovered that, notwithstanding the lack of a direct causal relationship between the innovation and high performance, banks superstitiously attribute other banks' stellar performance to the newly implemented innovation (i.e., CDO). Although particular policy learning data has not been gathered, researchers have discovered that countries are selectively affected based on the legitimacy of policies via IGO networks. Torfason and Ingram discover that IGO networks helped democracy grow throughout the world, but there's a

[9] Elkins, Zachary, Andrew T. Guzman, and Beth Simmons. 2011. "Competing for Capital: The of Bilateral Investment Diffusion." *International Organization* 60(4):811–46.

catch: autocracy did not spread via IGO networks, whereas democracy did. A policy does not move across IGO networks effectively if it is not seen as valid. Rogers provides a good summary of this selective spreading mechanism that depends on legitimacy. Innovations that are "incompatible with the values and norms of a social system will not be adopted as rapidly as those that are compatible," the author notes. Some counter that it is a contemporary statute that guards the markets from mergers that would harm competition. This suggests that nations are less likely to have a strong theory or belief regarding merger control that predates them.

IV. Conclusion

In the 1990s and 2000s, antitrust and merger control laws spread quickly across the world. The number of nations passing these laws increased dramatically beginning in 1990, offering an excellent platform for evaluating hypotheses regarding the diffusion of policies. Three conclusions come from my analysis of the data. First, one of the factors that may be most responsible for the spread of merger and antitrust laws is policy learning. When a country has more IGO partners who benefit from the same law, it is more likely to implement antitrust regulations. Additionally, when IGO partners exhibit better economic success, countries are more likely to embrace merger control. The fact that there haven't been many empirical investigations of the learning process thus far makes this conclusion valuable to the literature on policy spread. It is important to remember that not all learning factors exhibit the anticipated effects, and that (a) the learning variables could only pass the test at a 90% confidence level not a 95% confidence level.

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