“Putting the EU in Its Place: Policy Strategies and the Global Regulatory Context”

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From bank capital standards to rules about Internet censorship, the making of regulation – the rules that govern markets – increasingly involves actors, processes and institutions beyond national frontiers (Mattli and Woods 2009; Jordana and Levi-Faur 2004; Farrell and Newman 2014). Market rules are not only promulgated by formal international organizations such as the World Trade Organization (WTO) but often within transnational regulatory networks and through the extraterritorial application of laws decided in jurisdictions with large international participation in their markets (Newman and Posner 2011). Regulatory disputes, inside and across political borders, are fraught with overlapping jurisdictional claims, conflicting domestic legal standards, and competing regulatory actors jockeying to set the terms for global market participants (Büthe and Mattli 2011). These terms have significant consequences for polities competing to attract investment and economic activity and for corporate strategy as companies are frequently forced to absorb sizable costs as they adjust to international rules. Global standards, moreover, can upend long-standing consumer protections and redefine the relationship between governments and their citizens.

It should thus not be surprising that scholarly research and policy analysis on the European Union (EU) have turned their attention to the polity’s role in global regulation (Lütz 2011; C. Bretherton and Vogler 1999; Lavenex and Schimmelfennig 2009; Müller, Kudrna, and Falkner 2014; Vogel 2012; Jacoby and Meunier 2010; Farrell and Newman 2010). Despite a proliferation of studies on topics ranging from agriculture to finance, the findings of this growing literature can seem wildly disconnected. On the one hand, research has trumpeted the EU’s influence, emphasizing, alternatively, the ideas and values that animate EU efforts or power resources rooted in the size and institutional configurations of its internal market (Falkner 2007; Manners 2006; Bradford 2012; Damro 2012). On the other hand, a significant literature details the limits of EU efforts pointing to its failure to shape global rules in high profile issue areas (Sbragia 2010; Leblond 2011; Bretherton and Vogler 2013; Young 2014). The skeptics argue that even in cases where the EU has clear preferences (consistent with its reputation as a soft and normative power) and bargaining leverage because of well-developed markets and capacities, such as in the Genetically Modified Organizations (GMOs) dispute, it has not always been able to assert its interests globally or even to adopt strategies towards that end (Pollack and Shaffer 2009). How, then, can we reconcile such conflicting findings?

This paper’s answer turns on EU embeddedness in the broader *global regulatory context* (Weber 1994; Copelovitch and Putnam 2014; Falleti and Lynch 2009), variance within which conditions EU foreign regulatory goals, strategies and behavior. Thus, while not making predictions about EU influence, per se (that is, when it will be a rule maker, a rule blocker, or a rule taker, Young 2015), the paper looks to the global regulatory context to deduce scope conditions under which the EU can (or cannot) be expected to adopt different policy strategies. In doing so, it connects arguments about the power attributes of the EU to the political process of international cooperation and seeks to understand the strategies that the EU adopts to achieve its preferences.

We define the regulatory context as the socio-political setting in a given period of time, which bounds, shapes and constitutes causal connections between the exercise of authority and global rule-making (Falleti and Lynch 2009). For theoretical and empirical reasons developed below, we narrow in on two institutional features of the global regulatory context: the distribution of regulatory capacity across the major economies, and institutional density at the global level. In contrast to the typical treatment of regional institutional arrangements in the literature on the EU as a global actor, we maintain that regulatory capacity is a relational concept. That is to say, it is not solely an EU attribute, but rather a property of the “system” and properly defined in terms of its international distribution (Bach and Newman 2007; Bach and Newman 2010). At the same time, the setting in which the EU engages other regulatory actors varies considerably by forum and mode (traditional international organizations, informal networks, extraterritorial competitive bargaining) and degree and type of agreed rules (non-binding soft law, binding international agreements); as the locus of rule-making shifts and the rule density and type change, the strategies employed by the EU to shape global rules ought to vary (Axelrod and Keohane 1985; Ruggie 1998).

Moving beyond arguments maintaining that the EU ‘matters’ in a uniform and static way, our study, a largely deductive exercise, identifies potential causal linkages between context and strategies and suggests that as the context changes, so too does the EU’s foreign regulatory engagement. The article’s core, then, develops an analytic framework that predicts different strategies under alternate conditions and indicates how shifts in these conditions are likely to alter strategies (George and Bennett 2005). In particular, we posit that temporal and spatial trends in the regulatory context are likely to result in four distinct strategies: *regulatory export, first mover agenda setting, mutual recognition, and coalition-building*. In instances, for example, of a large gap in regulatory capacity between the great powers, the EU is more likely to engage in rule projection strategies such as regulatory export or first mover agenda setting. Alternatively, high institutional density in concert with parity in regulatory capacity can constrain such rule projection strategies, creating incentives for the EU to move to more negotiated interactions with regulatory partners. The analytic exercise helps identify both sources of and constraints on potential EU behavior as the polity engages in the politics of global regulation (Young 2015). Given the special issues’ focus on the role of the EU in influencing global regulation, we limit our empirical illustrations to examples that involve the European polity. That said, our analytic framework could in principle be extended to explain the strategies of other regulatory great powers such as the United State or potentially China.

Our synthetic approach, moreover, unifies a number of existing theoretical arguments about rival standards, first mover advantages, and regulatory export into a single framework (Drezner 2007; W. Mattli and Büthe 2003, Young 2015). It also highlights the limits of existing literature that pits various power resources (normative or civilian power) against one another to explain EU influence. Such resources do not operate in opposition but are integrated and embedded in the broader regulatory context. Finally, the article contributes to a growing literature in International Relations, comparative politics, and European studies highlighting the role of context for conditioning causal relationships (Copelovitch and Putnam 2014; Falleti and Lynch 2009; Müller, Kudrna, and Falkner 2014). As such, it is part of a broader trend toward the incorporation of history and temporality into regulatory politics (Büthe 2002; Farrell and Newman 2010; Posner 2010; Fioretos 2011).

The article proceeds in four parts. First, we briefly lay out the stakes involved in global regulatory debates. Second, we review the relevant literature on EU influence and power, emphasizing the empirical puzzles. Third, we develop the framework described above, from which we derive a typology of expected EU strategies. Finally, we conclude with implications for research on the EU as a global actor as well as International Relations theory about time, context and causal relationships.

**The EU as a Regulatory Hegemon? Civilian and Normative Power**

With the increase in cross-national economic interdependence, regulation has moved to the center stage of the international political economy. As people, goods, and information move across borders, multiple states have jurisdictional claims over their behavior. On the one hand, this can produce intense regulatory conflicts, in which states make competing claims over the rules that govern these global markets (Newman and Posner 2011). Such disputes have emerged in a growing range of sectors and issue areas such as chemicals, banking, food, aviation, and the Internet to name a few. On the other hand, there is pressure to resolve these conflicts so as to facilitate further globalization. Regulatory cooperation, however, is complicated by the fact that many national regulations were created prior to globalization and as a result coordination requires considerable distributional adjustments by those states with rules different from the global ones (Mattli and Büthe 2003). The ability to set the terms of global regulations, then, becomes an important advantage for domestic firms competing internationally.

A burgeoning literature has singled out the EU as playing a disproportionate role in global contests over rules governing international business. From data privacy to chemicals, the EU has been able to set the global agenda and persuade other countries to adjust their own domestic rules to reflect EU standards (Bach and Newman 2007). This has led scholars like Annu Bradford and Chad Damro to coin terms like the ‘Brussels Effect’ and ‘Market Power Europe’ to capture growing European influence (Bradford 2012; Damro 2012).

Approaches to EU global regulatory behavior tend to fall into explanations based on civilian or normative power. The first, locates EU policies and influence largely in the development of the internal market and the introduction of the single currency (McNamara and Meunier 2002; Bretherton and Vogler 1999; Bradford 2012; Damro 2012). According to this line of argumentation, the EU has grown to be a second, relatively equal, regulatory power along side the US. The channel of influence usually takes one of two means. Following the logic of James and Lake’s (1989) Second Face of Hegemony or David Vogel’s (1995) Trading Up, firms hoping to compete in the European market must follow European rules. This creates competitive pressure on export-oriented and foreign-sales-reliant businesses to lobby their home markets to converge on European rules so as to minimize the transaction costs of following multiple regulatory rulebooks. In contrast to this more passive channel, the EU at times actively exploits the potential extraterritorial reach of its rules so as to shape the behavior of political and market actors (Lavenex and Schimmelfennig 2009). Equivalency clauses in EU legislation are the clearest example as they condition market access on the demonstration of equivalent rules in home markets. In terms of empirical expectations, civilian power arguments predict growing EU influence as integration has unified disparate national markets and provide the EU with a powerful ‘single voice’.

Normative power arguments, by contrast, pay much less attention to the economic and institutional weight of the European market but on the ideas that animate EU integration – democracy, human rights, rule of law and modes of cooperation (Manners 2006; Bicchi 2006; Laïdi 2008). In such accounts, the EU leads by offering an example of a peaceful, rule driven society. States, particularly in the periphery of Central and Eastern Europe, emulate EU approaches and standards in order to be seen as viable members of the western political order. Moreover, the EU has the ability to construct the given by defining types of appropriate behavior that may diffuse through economic, political and societal linkages from the EU to other societies (McNamara, forthcoming).

Civilian and normative power explanations have added to our understanding of the EU’s importance in global regulation. In particular, they identify two distinct sources of influence. On the one hand, the integration of the European market creates a powerful cost/benefit incentive for actors in other jurisdiction to adjust to European rules. Market access requirements and trading-up dynamics mean that EU regulations can shape the reversion point of global regulation – the character of the status quo absent coordination (Richards 1999; Gruber 2000). Once the EU alters its rules, the economic reality of globally active firms shifts as they either have to comply with EU rules or suffer the transaction costs associated with complying with multiple rules across jurisdictions. Second, the EU frequently enjoys agenda setting powers whereby it can define the terms of the rules under discussion. At times, such powers are used to develop and promote specific policy proposals but they can also be used to forge the background conditions of what is viewed as legitimate. In short, the EU can alter the costs and benefits as well as the terms around which coordination may occur.

Despite focusing attention on the coercive power of the European market and the EU’s agenda setting authority, these approaches suffer from two main weaknesses. The first concerns the tendency to focus on a limited set of possible EU goals and strategies (Young, 2015; Müller, Kudrna, and Falkner 2014). Civilian power approaches tend to emphasize EU efforts to win foreign conformity with its models and standards or to gain first-mover advantages; whereas, normative arguments tend to emphasize diffusion processes. Powerful regulators like the EU serve as “teachers” to the rest of the world (Finnemore 1996) and, in particular, the exemplar of cooperation techniques and strategies, such as mutual recognition, peer reviews and experimentalist governance architectures (Sabel and Zeitlin 2010; Búrca 2012). Moreover, neither approach devotes much attention to other possible outcomes, such as transnational coalitions between EU actors and those in other societies (Risse-Kappen 1994; Andonova 2004). We seek a single framework that would offer explanations for a fuller range of observed outcomes.

Second, we join other critics who have had no difficulty poking holes in both civilian and normative power explanations by identifying non-conforming cases ( Young, 2015; Young 2014; Bretherton and Vogler 2013; Pollack and Shaffer 2009). The larger point, in our view, is that the EU-as-a-global-power explanations tend to take reductionist and monocausal approaches. That is, they gauge the EU’s internal power resources in relative isolation from factors outside the polity (that is the reductionist part) and focus on their favored causal variable, civilian or normative power (that is the monocausal part). In fact, the current debate unnecessarily creates a dichotomy between different power resources, ignoring important points of interaction between substantive norms and institutions of regulation. The result is a frequent overestimation of EU influence and an inability to make sense of important empirical observations such as variance in EU authority across time and sector, cases in which the EU initially had little influence but later found its voice (Posner 2009), or the failure of influence despite a large market and distinct norms, such as in the case of GMOs or food safety (Pollack and Shaffer 2009; Young 2014). In fact, there has been a growing body of research highlighting the limited nature of EU influence across regulatory domains.

**Embedded Power – the role of global regulatory context**

Seeking explanations for these empirical puzzles and the wide range of observed EU influence, we develop a framework that deduces scope conditions of EU external regulatory behavior from different configurations within the global regulatory context. Our approach thus embeds EU power attributes within the larger socio-political setting. By incorporating some of the relational, contextual and temporal components of authority, we extend the recent turn toward institutional context among historical institutionalists as well as the call by EU scholars to think more systematically about the interaction between the EU and its global engagements (Falleti and Lynch 2009; Müller, Kudrna, and Falkner 2014). We also note that the approach harks back to two insights long made in IR theory: that the behavior of powerful countries cannot be understood in isolation but rather needs to be examined within the political system of interacting great powers (Waltz 1979; Oatley 2011); and that power is context specific and cannot be assessed in universal terms (Jervis 1997; Wendt 1998).

While the global regulatory context could include a range of socio-political factors, in this first exercise, we highlight two institutional features that existing research suggests should be particularly important: the distribution of regulatory capacity and the density of institutionalization. In considering variance in these two dimensions of the regulatory context, we deduce a set of likely EU policy strategies. The results of the analytic typology synthesize bodies of research frequently treated separately and in parallel and offer insight into the limits and constraints on EU authority. In the conclusion, we consider a number of extensions that consider other factors associated with the global regulatory context.

*Relative differences in regulatory capacity*

The two dimensions featured in our contextualization of the EU’s external regulatory behavior (the relative capacities of great powers and the international density of rules and institutions) are the core variables in distinct literatures. By taking the *ratio of regulatory capacity* among the major economic powers seriously, we extend that portion of the research on EU market power that already takes a relational approach (Drezner 2007; Simmons 2001). The central idea is that the number of jurisdictions with large markets in a given sector and the relative size of the EU market compared to other such rule makers are driving forces of external regulatory behavior. Polarity (to use the IR parlance) refers to whether there is a dominant jurisdiction (unipolarity or hegemony), two relatively equal players whose markets are significantly larger than the rest (a bipolar sector), or three or more great regulatory powers (multipolarity). For example, the deep and liquid trading platforms in the US gave its regulators a source of unparalleled market power in finance up through the 1990s (Simmons 2001). With regulatory integration of financial markets in Europe (including London), the EU began to rival US authority (Drezner 2007; Posner 2009). In the post-crisis era and with the emergence of alternate trading venues in Asia and the Middle East, some have wondered whether finance is entering a multipolar phase.

The market power label has become a misnomer, as this literature has taken a decisive institutionalist turn, captured in the concept of regulatory capacity (Bach and Newman 2007; Young, 2015; Posner 2009). An increasing body of research demonstrates that relative market size (even the relative portion of international participants in a given market) alone is not a sufficient predictor of regulatory bargaining leverage or influence. Rather, to harness market size, a polity must have the regulatory capacity to define, monitor, and defend a specific set of market rules (Bach and Newman 2007; Newman 2008). In other words, a polity must have the institutional expertise, internal arrangements and governance mechanisms to develop a set of rules, identify breaches in those rules, and sanction non-compliance. The United States, for example, has a large market for cosmetics but due to a quirk of legislative history has few regulatory institutions with authority to oversee that market, let alone export them to other jurisdictions (Bach and Newman 2010). As a result, the regulators of this relatively large market enjoy few advantages in global regulatory debates. A similar finding has been made in insurance and other sectors (Quaglia 2013). Importantly, the regulatory capacity approach subsumes both normative and civilian market power arguments to the extent that it identifies areas in which a polity has a substantively distinct regulatory apparatus as well as the institutions to monitor and defend those rules.

Additionally, a polity’s regulatory capacity is relative to other rulemaking jurisdictions. It is not enough to examine the regulatory institutions of the EU in isolation. Rather, the analysis must consider how they relate to similar ones in other regulatory powers such as the US – first, in terms of institutional development but also the latter’s timing, as research reveals the frequency of first-mover advantages. The EU, for example, has had considerable influence in shaping global debates over Internet privacy because of the absence of regulatory institutions in the US (Newman 2008). Similarly, the EU was long handicapped in global financial debates owing in part to the fragmented and self-regulatory nature of oversight in markets such as Germany and the United Kingdom up through the early 1990s (Posner 2009). Thus, because the distribution of regulatory capacity among the major regulatory players has been shown to be an important determinant of how great powers seek to manage regulatory differences and a critical component of the global regulatory context, we use it as one of the two core dimensions of our framework.

*Institutional Density*:

Institutional density is the second dimension of the global regulatory context explored. In answer to the question how great powers go about smoothing the regulatory bumps of globalization, the wide-ranging research on the institutionalization of international regulatory space points to an expansive set of pathways by which institutions shape the behavior of the great powers and contribute to their efforts to coordinate rules, overcome distributional conflict and, ultimately, facilitate cross-border economic activity (Keohane 1984; Axelrod and Keohane 1985; Ruggie 1998; Büthe and Mattli 2011; Mattli and Woods 2009). In short, the main premise is that whether and how frictions are resolved is in large part contingent on the institutional setting. Depending on the particular theoretical perspective, the institutional environment is seen to channel, structure, reconstitute or constrain the behavior of powerful actors, offering in return the benefits of ensuring commitment, reducing uncertainty and informational asymmetries, and changing preferences and strategies as well as the contours of internal political contests.

In some areas, institutionalization is considerable as regulation proceeds through treaty-based international bodies that enjoy some degree of formal rule-making and rule-enforcing authority. The WTO’s role in the dispute over Genetically Modified Organisms offers the quintessential example. But in many regulatory domains, such formal institutions do not exist. In these cases, global rules are set through soft law regulatory networks. These collections of regulatory authorities, which may be public or private, cooperate transnationally to develop best practices for market behavior. At times, the standards developed are embedded within the domestic law of large markets or adopted and enforced by treaty-based international organizations or private monitoring organizations. The network members meet routinely, follow agreed procedures, monitor compliance and often enjoy considerable rule-making authority; but they tend to have few formal enforcement powers of their own. Research on such networks tends to view them as a fast and flexible alternative to more cumbersome formal cooperation (Slaughter 2004; Porter 2005; Green 2014). Skeptics see their utility limited to simple cooperation problems where there are few distributional consequences (Abbott and Snidal 2000). We emphasize a third perspective: The forums housing the networks have become rulemaking arenas where the outcomes have salient distributive effects. Thus, it can matter a great deal who sets the agenda and who gets the rules they want.

Finally, in some instances, the density of regulatory institutions at the global level is extremely weak. There are no formal international organizations and no active regulatory networks, public or private.

*EU Policy Strategies Given the Global Regulatory Context: An Analytic Typology*

In this section, we put forth a framework that deduces propositions and captures the interaction effects of relative capacity and institutional density. It suggests that differences in the global regulatory context alter – in patterned ways –the causal impact of institutions and power on regulation-making outcomes of importance. We identify the role of different global regulatory contexts in determining four distinct and widely observed strategies of powerful regulators: exporting home regulation, winning first-mover advantages, forging mutual recognition, and building coalitions. These strategies demonstrate the limits and opportunities associated with regulatory power at the global level and help to resolve empirical puzzles and to fill holes in the existing literature.

The analytic framework outlined in Table 1 isolates the two primary dimensions of the global regulatory context discussed above. We make a few simplifying assumptions for analytical purposes. First, while future iterations of the framework could expand the number of powerful actors, we focus here on instances when there are two primary potential rule-makers. Starting with a bipolar world also reflects contemporary reality in most areas of international regulation (Drezner 2007). Second, we assume preference divergence among the regulatory actors. The assumption allows us to highlight cases where simple coordination is most difficult and where high switching costs are likely to raise the stakes of the strategic use of power. Third, in the real world, the various strategies discussed below often overlap and are used simultaneously. By treating strategies as if the EU employs them one at a time, we are better able to isolate the causal processes at work.

**Figure 1: Policy strategies given variation in Global Regulatory Context**

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Density of International Institutions | |
|  |  | Low | High |
| Relative Regulatory Capacity among Great Powers | Capacity Gap | Regulatory  Export | First-Mover |
| Capacity Parity | Mutual  Recognition | Coalition  Building |

In terms of regulatory capacity, we imagine a continuum in which the relative distribution of institutional capacities can range from a significant gap to parity. Similarly, density of international institutions range from less densely institutionalized where there are few institutions that exist capable of rule-development or rule-enforcement to more densely institutionalized where there are clear rules at the global level concerning decision-making and implementation.

We posit that the four combinations of this two dimensional regulatory context create different incentives for the external strategies of the regulatory players: regulatory export, first-mover bids, mutual recognition regimes, and coalition building. We derive four hypotheses and develop them in the following section:

*H1: The lower the density of international institutions and the larger the gap*

*of relative regulatory capacity among great powers, the more likely the EU adopts a strategy of regulatory export.*

*H2: The lower the density of international institutions and the smaller the gap of relative regulatory capacity among great powers, the more likely the EU adopts a strategy of mutual recognition.*

*H3: The higher the density of international institutions and the larger the gap of relative regulatory capacity among great powers, the more likely the EU adopts a first-mover strategy.*

*H4: The higher the density of international institutions and the smaller the gap of relative regulatory capacity among great powers, the more likely the EU adopts a strategy of coalition building.*

*Regulatory Export*

In cases where there exists a large gap in regulatory capacities between two regulatory authorities and the international regulatory environment is less densely institutionalized, then the actor with greater regulatory capacity is well positioned to follow a strategy of regulatory export. Given the lack of another actor capable of defining, extending and defending an alternative approach and the lack of an international institutional environment to serve as a constraint, the better endowed regulator is likely to see itself well positioned to promote its own domestic standards globally (Lavenex and Schimmelfennig 2009; Newman 2008). The strategy might include market access rules that contain extraterritorial provisions. The European Union frequently employs these under the label of ‘equivalency’ clauses. Such rules prohibit participation by foreign firms within the EU’s internal market unless their home jurisdictions have similar rules and enforcement deemed (by the EU) as equivalent. The extra-territorial provisions can create asymmetrical negotiating leverage and a trading up dynamic, as foreign firms face a competitive disadvantage in European markets based on their domestic regulatory setting (Young 2003; Birchfield 2015; Young 2015b). Equivalence provisions thus incentivize internationally active firms to press for regulatory reform at home.

This quadrant is the regulatory context that is often assumed by those that champion EU regulatory influence. Given the sparse international institutionalization, large disparity in regulatory capacities is the primary source of strategic incentives. In Gruber’s (2000) terms, the EU enjoys the go-it-alone authority to alter the reversion point of global regulation. While a few prominent cases – for example, the environment and chemicals – have received a lot of attention (Falkner 2007; Kelemen and Vogel 2010), we know that few regulatory domains are characterized by this dynamic. Focusing on the regulatory context, thus, helps better articulate the scope conditions for such unilateral pressure.

*First Mover Agenda Setting*

Globalization creates considerable uncertainty, as market actors are subject to multiple and overlapping rules. International standards may resolve many of these uncertainties by serving as coordination mechanisms and by providing a level-playing field for global competition. When authorities believe future transnational standards, codes and guidelines are potentially salient and sticky (that is, once rules are in place, actors have disincentives to change them), they will want to minimize domestic adjustment costs and thereby have incentive to shape them and the organizations and processes that create them (Lall 2014). We posit that, under conditions of dense international institutionalization, regulators with relatively strong capacities will be tempted to pursue a strategy to win first-mover advantages and set the agenda of such international forum.

Here, international institutionalization catalyzes a particular dimension of regulatory capacity – relative institutional fit. Mattli and Buthe (2003) argue that the level of institutional fit between domestic and international institutions conditions the ability of a regulatory actor to play the role of first mover. International rulemaking forums and bodies follow a wide variety of decision-making rules and procedures. In terms of decision-making rules, for example, some international bodies operate under the one-country, one-vote system, while others follow consensus, majority- or qualified-majority rule. In terms of procedures, some organizations allow for considerable stakeholder input, while others restrict input to a small group of technocratic actors. Likewise, there are a wide variety of possible arrangements at the domestic level. Regulatory oversight may be fragmented across several agencies or unified under one body. Formal procedures and informal processes may include active stakeholder input or may follow a more arms-length model of oversight. The two levels of varying institutional arrangements generate a wide range of possible domestic-international combinations. According to the institutional fit logic, some combinations are more likely than others to give the respective domestic regulators influence over international rulemaking.

Mattli and Buthe (2003) found, for example, that the decentralized regulatory process within the US for developing product standards, compared to the more hierarchical structure in the EU, put the US at a disadvantage globally at the International Standards Organization (ISO). The US domestic regulatory structure produced several, competing standard setters that due to ISO rules, which rely on national representatives, left several voices on the sidelines of negotiations. Moreover, the ISO structure incentivized some US representatives to guard information and keep it from competitive US standard setters. By contrast, the European multi-level governance process organized a hierarchy among EU standard setters, creating an efficient flow of information between national firms and their standard setters.

The case of first mover offers perhaps the most robust case for EU influence based on agenda setting authority. When the regulatory area is densely institutionalized at the international level and the EU is on the right side of a capacity gap, it is well positioned to make its rules the transnational focal point. In contrast to the more diffuse and market-based mechanism of regulatory export, first-mover advantages are triggered by thick institutionalization at the global level, which catalyzes and amplifies disparities in regulatory capacity.

*Mutual Recognition*

In those regulatory domains, which are lightly institutionalized and there exists relative parity between the regulatory capacity of the two major jurisdictions, the EU is likely to find itself in a much weaker position to influence the behavior of the other power and thus to shape global standards created by transnational bodies. In this context, market actors face conflicting rules of the two most important regulators, both of which are equally capable of exerting their jurisdictional authority. Yet if the regulators insist on extending their respective standards to govern the firms based in the other’s jurisdiction, they invite retaliation. In such settings, powerful regulators might make a show of extending their standards or establishing first mover advantages. Yet doing so is likely to be a mere effort to improve bargaining position, as regulators anticipate the potential for tit-for-tat downward spirals and thus failure of such unilateralist strategies. In short, parity in regulatory capacity weakens the effect of reversion point tactics. Instead, regulators are likely to pursue a more defensive strategy, in which they attempt to preserve domestic standards at home but do not directly challenge the standards of the other major economic actor. With both jurisdictions making similar calculations, the outcome is likely to be negotiated mutual recognition, a form of sovereignty sharing (Farrell 2003; Nicolaidis and Shaffer 2005). That is, the two powerful jurisdictions would allow market access by the other’s firms, so long as each accepted that the other’s regime met a negotiated minimum set of standards, said by each to be equivalent of their own. Typically, then, under these conditions, the jurisdictions retain discretion to determine equivalency. That said, such agreements become more difficult to conclude the greater the difference in substantive norms that animate domestic regulatory regimes.

The case of accounting standards is a prominent example in US-EU relations. For much of the post-war period, foreign firms interested in listing on US markets had to reconcile their financial accounts to US Generally Accepted Accounting Principles (USGAAP). For many European firms listed on US markets, this meant that they had to absorb the extra costs of what amounted to reporting in two different formats, a European national standard and the US one. And this duplicative reporting could have profound consequences for the way investors and others interpreted their market capitalization, among other aspects of their financial condition.

European national and EU officials had pressed, in vein, for US recognition of domestic and international accounting standards – without reconciliation. The US finally agreed in 2007, a decision that created a de facto mutual recognition regime. The Security and Exchange Commission (SEC) only agreed to allow foreign firms to report in accordance with international accounting standards after the EU required all publically listed companies to use International Financial Reporting Standards (IFRS) and developed relatively equal capacities (to those of the US) to require foreign firms raising capital in the EU to meet equivalence tests. It is true that, in building new capacities, the EU adopted IFRS and thereby increased the salience of the international accounting institutions. Yet it is also clear that the US accommodation and thus the mutual recognition regime was more a reflection of the new parity in regulatory capacities than a changed view of international accounting institutions (Posner 2010). If the latter were the case, SEC officials would have allowed US, not just foreign, companies to adopt IFRS, and they would have accepted mutual recognition sooner, perhaps in 2002 when the EU adopted IFRS, rather than in 2007 shortly after the EU introduced the legal provisions to require an equivalence determination before US firms using USGAAP could raise capital in Europe. The case thus illustrates how relative parity in regulatory capacities, under conditions of light international institutionalization, encourage great powers to forge mutual recognition arrangements.

While mutual recognition agreements offer an elegant solution to regulatory conflict between the major regulatory players, they have proven elusive in most areas -- suggesting that an additional variable, such as a shared normative framework, might be necessary for the successful negotiation of mutual recognition regimes (Nicolaidis and Shaffer 2005). If each side retains discretion to determine equivalent foreign regulations, firms from jurisdictions with the more stringent rules will fear an unfair playing field and their regulators will thus be hesitant to enter mutual recognition regimes. The sluggish progress toward reaching a Transatlantic Trade and Investment Partnership, for instance, shows the potential limits of such a strategy. This is in part due to stakeholders who are unwilling to allow equal market access to foreign market players; but it is also due to the significant differences in regulatory preferences and approaches. The interaction of parity in regulatory capacity and the relatively weak institutionalization could very well incentivize the creation of rival rules instead of the kind of sovereignty sharing necessary for extensive cooperation (Drezner 2007).

*Coalition-Building*

Finally, in domains characterized by parity in regulatory capacity, powerful jurisdictions may use densely institutionalized arenas to advance their interests through strategies more frequently associated with domestic political arenas. As in the first mover strategy, regulators hope to leverage international institutions to lock-in transnational standards that reflect their interests. In contrast, to the first mover quadrant, however, regulatory powers are not able to use their asymmetrical regulatory capacity to out maneuver other great powers in terms of agenda setting. Instead, in this context – approaching what we might call a rule-based ‘global politics’ -- the coalitional dynamics to arise more closely resemble domestic regulatory contests as the EU and other participants play by the rules of international institutions (Risse-Kappan 1995; Davis 2004; Tarrow 2001; Sabel and Zeitlin 2010; Alter 2014; Kissack 2015).

Coalition-building in international institutions can be quite complex, involving a host of different negotiating parties – public and private – behaving in accordance with the different rules of different organizations (Jupille 1999; Meunier 2005). The EU will be best positioned to influence global standards when it can build a winning coalition of supporters behind its rules and block the rules of an alternative coalition supported by other regulatory great powers. Depending on the decision-rules of the rule-making body, EU success, then, depends to an important extent on the differences in its preferences from those of other decision-makers in the organization. In those cases where the EU is a preference outlier, it will have little power. In those cases, however, where the EU can forge a bloc of like-minded partners, either through linkage strategies or deliberative approaches, it will be able to use the organization to promote its rules. Alasdair Young (2014), for example, demonstrates this argument in food and safety standards developed through the Codex Alimentarius, where EU preference extremes stymie its efforts to change global standards. And in those cases where the EU builds a change coalition, the outcome is not always identical with EU internal rules. In short, such coalition building requires compromise. Similarly, Meunier (2005) has argued that the EU is best positioned to influence global trade negotiations when it supports a status quo position as the EU needs few partners to block negotiation progress.

In contrast to the mutual recognition quadrant, in which the EU has little capacity to shape global rules, the coalition-building quadrant demonstrates the powerful role that institutions play. Yet in order to overcome the status quo, the EU must find a significant number of regulatory allies. In those cases, however, the EU may not find support for the simple extension of EU rules.

**Conclusion**

Drawing on the concept of context effects developed by historical institutionalist scholars, this article attempts to better define the boundary conditions of EU influence. It does this by suggesting how EU power is embedded within the broader global regulatory context. Using two key dimensions of this context – relative regulatory capacity and institutional density – we derive an analytic typology of EU policy strategies.

For reasons of theory, clarity and space constraints, the framework focuses on institutional dimensions of the global regulatory context and thus holds many other related factors constant. As a simplifying assumption, we consider cases where there is significant distributional conflict centered on clashing regulatory practices. Future work will thus want to examine the ways in which the global context shapes normative alignment (Newman and Posner, 2014). A strong ideational frame such as ‘the Washington Consensus’ or neo-liberal principle may become part of the global regulatory context and as a result shape EU influence (Abdelal 2007). We would expect that in cases of strong normative consensus, the EU may either play a relatively inconsequential role as one of many regulatory followers or as part of the leading coalition among like-minded regulators. In either case, we would expect the context to be a strong determinant of the result, as there would be less space for political contestation.

Despite these limitations, we believe the framework improves on current understanding of global regulation and the EU’s role in developing it. In keeping with the ‘new interdependence’ approach presented by Farrell and Newman (2014), the paper underscores the global aspects of domestic institutions. Rather than depict domestic institutions as simple veto points that filter and aggregate domestic preferences or as sources of national capacities for individual states, the framework suggests why scholars should treat them as important elements of the global systemic context.

Specifically, our approach helps to understand competing empirical claims, discussed above, about EU influence and impotence and sharpens the logic behind theoretical propositions. Empirically, Table 1’s four types of strategies lay out in sharp relief why scholars can arrive at radically different conclusions: the EU is likely to adopt different strategies under different configurations of the global institutional context. Accordingly, EU influence is expected to be less likely when conditions give rise to coalition-building strategies, as in the case of food and safety standards developed through the Codex Alimentarius, than when the context pushes the EU toward first-mover agenda setting strategies, as in the case of standards development in the International Standards Organization. Likewise, the outcomes in bilateral EU-US negotiations over financial services regulation, where the EU has operated largely under a mutual recognition strategy, will differ from those in disputes over chemical regulations, where the EU has adopted regulatory export strategies. The approach thus integrates a number of empirical claims that have either been depicted as competing arguments or have largely ignored one another.

Theoretically, using our framework, the sometimes-wide divide between civilian and normative power approaches becomes a secondary issue. Regulation is based both on the substance of rules and the institutions that enforce them. Thus, the concept of relative regulatory capacity subsumes and integrates elements of both types of power. Moreover, our approach underscores that the embeddedness of normative and civilian power – specifically, the context -- emerges as the primary determinant of EU foreign regulatory engagement. In this sense, the analytic framework reorients the theoretical debate away from an artificial distinction between substance and process and contextualizes an array of causal processes within the broader global environment. Put another way, EU power resources (regardless of their particular attributes) must be situated both in terms of their relationship to the power resources of other great powers as well as to the institutions in which great powers interact. In so doing, the framework suggests the policy strategies available to the EU (as well as other regulatory great powers) and better estimates the likelihood of EU influence in global regulatory debates.

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