

The Politics of EU Economic Policymaking: Values, Institutions and Social Outcomes

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Abstract: At the heart of European integration lies a 'Single Market' wherein production and trade across national borders take place relatively freely within the framework of EU-wide legislation and policies. Although many actors and commentators reject the term, research has convincingly shown that many of these interventions in the economy amount to industrial policy in some shape or form. However, much less is known about the politics driving how these policies have been made and the orientations they have taken. Indeed, a lack of knowledge in this matter has been caused by failures to define precisely this very politics and, consequently, an absence of research which targets it directly. In seeking to escape from this analytical *cul-de-sac*, this paper has two more specific aims.

The first is to propose a sharp and operational definition of politics as being *the mobilization or suppression of values in order to change or reproduce the institutions which structure economic activity*. This definition has been derived from a melding together of constructivist, institutionalist and Weberian theories and concepts. From empirically-oriented constructivism an initial premise adopted is that we live in a world of contingency within which actors shape not only their own strategies, but also the very 'problems' they seek to reduce, regularize or mediate. However, as historical and sociological institutionalism has convincingly shown, for such representations of reality to become 'social' and thereby impact upon collective and public action, they have to be judged 'appropriate' to changing or reproducing the 'institutional orders' which structure societies, economies and polities. When studying such change or reproduction, adding Weberian sociology to this framework guides research to focus upon confrontations between values, i.e. beliefs about what is 'good' or 'bad', that lie at their heart. Even within the constructivism and institutionalisms I draw upon, the role played by values is too often obscured by important, yet ultimately secondary, issues of argument and alliance-making.

The second aim of the paper is to test the heuristic value of this value-centered approach to politics using two case studies of EU-scale regulation: one of the pharmaceutical industry, the other of inter-firm competition. As will be highlighted, focusing upon the role played by values during these instances of policymaking provides a means of revealing the key choices that have been made, the alternatives stifled and the patterns of domination that have resulted or been reproduced. In so doing, a further goal will be to go considerably beyond visions of the EU in general, and its economic policies in particular, as 'neo-liberal' and depoliticized. Although, many actors involved in this scale of government can be depicted in general terms as neo-liberals and do indeed seek to technicize the making of EU policies, this tells us little about the fundamentally political content of their value systems. For both analytical and normative reasons, this politics simply must be researched then debated more directly and openly than European Studies has thus far been able to do.

¹ This paper is the first draft of a chapter from a book provisionally entitled *The Politics of Economic Activity*.

Introduction

Those of us old enough to remember the period 1985 and 1995 when Jacques Delors was president of the European Commission, will probably recall the discourse that the EU is different to the rest of the world and, moreover, that being part of the EU makes a significant difference to its member states, public and private organizations and, above all, its citizens. As highlighted by research which documents not only Delors' speeches, but also his acts within and without the Commission (Ross, 1995), representing the EU as different from the rest of the world has entailed emphasizing its quest to combine a single market with the retention of high levels of social protection. Using the terms deployed in this book, the declared aim was to conciliate the values of freedom with equality, and this as a means of enhancing both the security of European citizens and protecting their traditions. According to those who supported, and continue to support, Delors' project for the EU, this ordering of values is not only logically and practicably conciliable, it is precisely what makes the EU a well-defended rampart against 'globalization' by legitimizing a range of interventionist policies, and in particular the 'economic policy' promised by many of the initial advocates of monetary union. Accompanying this view, has also been the claim that the actions of the EU make a difference to the global political economy because, by taking the moral high ground, it has become 'a normative power' (Manners, 2002), well equipped for leading global debates on issues ranging from abolishing the death penalty to climate change.

Not surprisingly, the first part of the Delorist narrative has been consistently attacked by neo-liberals who see freedom as the only plausible primary value. Given the deepening of neo-liberalization at the scale of the EU that has taken place since the mid-1990s, however, critics from the left have been even more vociferous in dismissing the EU's commitments to a different, 'more social' Europe made during the Delors era. Meanwhile, the supporting argument that the EU is a normative power has been criticized from those who, instead, consider that 'a retreat from liberal internationalism' has taken place (Youngs, 2010).

Rather than take sides in the normative debate outlined above, the aim of this chapter is to test the heuristic value of a value-centered approach to the EU's actual involvement in economic activity using research I have recently conducted on the pharmaceutical industry and upon competition policy². For each of these case studies, this book's analytical framework is first applied to set out in a disciplined manner the extent to which the EU's government of an industry or a trans-industry regulation has changed as the dependent variable of our empirical studies, i.e. what is to be explained. From this base, the concept of political work is then mobilized as the independent variable which explains why parts of both these examples of the politics of economic activity have recently been challenged. Comparing pharmaceuticals to competition policy also has an additional interest in that, despite such challenges, the government and politics of the former has essentially been reproduced whilst that of competition has undergone considerable change.

² The data presented here is drawn from a programme of research I co-led with Bernard Jullien from 2009 to 2012 which examined closely four industries (wine, pharmaceuticals, cars and aquaculture) and four transindustry regulations (competition, trade, sustainable development and employment). Entitled 'le Gouvernement européen des industries' (GEDI), this programme was funded by the French *Agence Nationale de la Recherche* and has been published in book form (Jullien & Smith, 2014). My thanks go to the 15 members of the GEDI team for their respective input. However, the analysis presented here, and thus responsibility for it, are mine alone.

As will be highlighted throughout, focusing upon the role played by values during these examples of EU government, and thus their politics, provides a means of revealing the key choices that were made, the alternatives that were stifled and the patterns of domination that have resulted or been reproduced. In so doing, a further goal will be to go considerably beyond visions of the EU as inextricably and inevitably 'neo-liberal' and depoliticized. Although, many actors involved in this scale of government can be depicted as neo-liberals, and just as many do indeed seek to technicize the making of EU policies, this tells us little about the fundamentally political content of their beliefs and actions. For both analytical and normative reasons, this politics simply must be researched then debated more directly and openly than social science, and European Studies in particular, has thus far been able and prepared to do.

1. Freedom vs. Equality: Governing Pharmaceuticals

Pharmaceuticals is often described in the media as a quintessentially 'global' industry, and this because it features huge multinational firms (e.g. Pfizer, GlaxoSmithKline, Sanofi-Aventis), products marketed throughout the world and apparently convergent rules set either multilaterally via the WTO, or within bilateral agreements. However, a closer look reveals that despite the Institutional Order of this industry becoming deeply multi-scalar, and the scale of the EU taking on greater importance, many of its key practices continue to be structured nationally. This is particularly so around the issue of pricing, a political activity within which the values of freedom and equality are constantly in tension and frequently in conflict³. How then, and in the name of what hierarchies of values, have EU-scale actors sought to make a difference and/or endeavoured to make this scale different from others?

1.1 An Institutional Order Under Threat

Over the course of the 20th Century, the pharmaceutical industry both grew in size and became governed around a set of institutionalized practices. By the mid-1970s, these were stabilized throughout OECD countries by legislation and policy instruments, but also by norms and expectations deeply rooted in societal, value-based constructions of problems and legitimacy.

Beginning with US Federal legislation in 1902, a *Sourcing IR* emerged as a means of defining legitimate medicines, encouraging constant improvement in their safety and, consequently, providing a durable structure for markets around which firms developed long-term investment, production and commercial strategies. Specifically, the principal regulatory instrument of this IR entails the according (or not) of a 'Market Authorization' ostensibly upon the basis of each drug's safety. Indeed, in the name of security, an application procedure involving clinical trials, then therapeutic assessment by panels of medical experts, can take ten years or more. In European countries this instrument was only formalized and tightened in the 1960s and 1970s along lines first

³ This research has been carried out with Matthieu Montalban, Philippe Gorry and Marie-Claude Belis-Bergouignan from the GREThA economics research centre in Bordeaux University, as well as with Cyril Benoit from the same university's Centre Emile Durkheim.

developed in the US and after a series of 'scandals' (notably concerning the drug thalidomide). During the 1980s and early 1990s, most West European states then proceeded to distance the assessment and approval of medicines from ministers and ministries of health through the creation of agencies akin to the US's Food and Drug. Moreover, in 1995 a national scale of government was partly replaced by the introduction of a European Medicines Agency (EMA) based in London (Permanaud, 2006; Hauray, 2006). Notwithstanding this 'agencization' and partial EU governmentalization, nor the sporadic emergence of further therapeutic scandals (e.g. the French 'Mediator crisis' of 2010/11), over the last four decades the industry's Sourcing IR has nevertheless remained remarkably stable, and this largely because the value of security has been uncontested.

Pharmaceutical markets have of course also been politically shaped by this industry's *Commercial IR* and its two principal sets of regulatory instruments concerning patents and pricing. Since the late 19th century, firms have sought to protect and enhance their investment in research and development through an industry-specific system of Intellectual Property Rights (IPR). By formally conciliating the values of freedom and security for 'innovative firms', the registering of a patent for a medicine forbids competitor firms from copying it for up to 20 years (including ten years after its initial marketing). Since 1995, the World Trade Organization (WTO) has consolidated a global scale of government for this IPR through its TRIPS agreement (on Trade related Intellectual Property and Services) (Abbott & Dukes, 2009). Moreover, over the last two decades repeated attempts have been made to create a European patent. Nevertheless, in Europe the actual registering, policing and judicial review of patents, and thus the balancing of freedom with security, still occurs essentially at the national scale.

The continued significance of this scale also predominates in the setting of medicine prices, and this chiefly because the pricing of prescription medicines is actually an administered process within which ministries of health and social insurance organizations play major roles. Crucially, it is here that the value of equality is mobilized, or not, to defend particular approaches to the price of medicines. More specifically, because the fixing of such prices overlaps with the setting of rates of reimbursement by insurance that is public or private, and thus impacts directly upon national health costs and budgets, in each European state representatives of the civil service and insurance intervene heavily in pricing. Moreover, in the name of security -defined here more in terms of durable supply than safety- many states have used pricing as a means of encouraging the development of indigenous production, and thus as an industrial policy. As will be shown below, over the 2000s both the key instruments of the pharmaceutical industry's *Commercial IR* -patents and pricing- have been increasingly challenged. Nevertheless, it is important to underline that the IR itself has remained particularly stable.

Of course, the development of pharmaceutical firms and their invention of medicines could not have occurred without capital. At least in Europe, initially a myriad of small, family-owned firms emerged, often alongside chemical producers in search of diversification (Chauveau, 1999). After WW II, many of these firms progressively merged or were taken over, often benefiting from financial injections from national governments (e.g. Rhône Poulenc in France, the precursor of today's Sanofi-Aventis). Since the 1990s, however, the *Financial IR* of this industry has been considerably

affected by the liberalization of financial markets, a trans-industry regulation founded upon the value of freedom and its handmaiden, liberal political economy (Froud et. al., 2006). The most obvious impact of this regulation has been to encourage a rise in mergers or takeovers which cross national borders (e.g. GlaxoSmithKline in 2000). Another major effect of this 'financialization' (Montalbon, 2008) has been to increase the power of large shareholders within the governance of these large corporations. Two highly evident consequences have been a change in the profile of their managers (with priority now given to personnel trained in finance) and an acceleration of quests for shorter-term investment to secure more rapid returns on investment. As with the increased prominence given to the value of freedom, the liberalization of financial markets has certainly been encouraged by EU scale discourse, initiatives and legislation (Posner, 2009). However, government at the European scale of this trans-industry government of capital is less evident. Indeed, as the case of pharmaceuticals testifies, the generation and mobilization of capital now depends upon a plethora of policy instruments set at varying scales and without consistent hierarchy between them.

By contrast, this industry's *Employment IR* continues to be governed essentially at the national scale. Most, if not all, producer state governments claim to be committed to retaining qualified personnel, in particularly scientists, in order to keep medical invention and clinical trials within their borders. Various instruments are used to address this 'problem' which include education and training policies, tax credits, subsidies for bio-tech start ups, and hospital research grants. Meanwhile each country's general employment laws and social protection systems are also invoked either to attract trained personnel from abroad, or as an argument for more government interventions in order to compensate for the supposed comparative advantage enjoyed by lower wage countries, particularly for clinical trials (e.g. Poland or the Ukraine). The value of security is thus regularly invoked in the discourse of both firms and public authorities. However, and in contrast to other industries such as automobiles where massive 'relocation' has objectively occurred, but also been fiercely resisted, within the pharmaceutical industry the *Employment IR* is not where most political work has taken place. Instead, the prevalence of an essentially stable, national scale of governing employment issues in this industry is viewed as a given.

In summary, the Institutional Order (IO) of the pharmaceutical industry at the EU scale currently fits relatively seamlessly with its global and national ones (see table 4.1). Its Sourcing and Employment IRs have remained remarkably stable and unchallenged since the 1970s, and this despite the addition of EU-scale government during this period. The industry's Finance IR experienced considerable upheaval in the 1990s, but again this did not challenge either the setting of problems and instruments, nor the registers of legitimation typically deployed. Finally if, as will be highlighted below, although this industry's Commercial IR has recently experienced deeper threats to its institutions, since the late 1990s the IO as a whole has been largely reproduced.

Table 4.1: The Institutional Order of the Pharmaceutical Industry in 2014

| | <i>'Problems'</i> | <i>Instruments</i> | <i>Legitimacy</i> | <i>Values</i> | <i>Scale of govt.</i> |
|----------------------|-----------------------------|--|-----------------------------------|-------------------------------|-----------------------------|
| <i>Sourcing IR</i> | Safety, therapeutic quality | Market Authorizations | 'Evidence-based medicine' | Security | National & EU |
| <i>Commercial IR</i> | Effectiveness | Patents (IPR), prices and rates of reimbursement | 'Rewarding innovation' | Freedom vs Equality, Security | National and global (IPR) |
| <i>Financial IR</i> | 'Free' capitalization | Stock exchanges, R & D or 'innovation' policies | 'Free movement of capital' | Freedom | Global, partly EU, national |
| <i>Employment IR</i> | Qualified labour | Labour law, social insurance, training policies | 'Maintaining industrial capacity' | Security | National |

1.2 Politics causing reproduction: Pricing, Evaluation and 'National Sovereignty'

The construction, then reproduction, of this industry's IO since WW II can be explained broadly using Neil Fligstein's analysis in terms of 'conceptions of control'. For Fligstein 'a conception of control is a story about what the organization is and its location *vis à vis* its principal competitors. It is also an interpretive frame used to interpret and justify actions *vis à vis* others' (2001: 69). As of the generalization of Market Authorizations based upon systematized clinical trials in the early 1970s, this industry's conception of control became dominated by large firms capable of:

- protecting each 'innovation' with a patent;
- developing a continuous 'pipeline' of new products undergoing trials then applying for Market Authorizations;
- marketing the product throughout the world so as to make the most of its protection from imitations;
- financing all these processes through recourse to stock markets;
- concentrating research on the production of 'blockbuster medicines' that generate sales of more than \$1 billion per year;
- attracting the support of public health authorities (through high prices) and financiers (through investment).

As Pignarre (2004) recounts in fascinating detail, although this model took much of its legitimacy and support from its supposed dependence upon rigorous 'science' and 'original' medicinal discoveries, very quickly it routinized and came to actively discourage much fundamental research and a striving for innovation. However, given the institutionalized character of the IRs underlined above, and the resources developed by the organizations who by then had been built to defend this state of affairs (e.g. the ABPI in the UK, the LEEM in France and the EFPIA in Brussels⁴), at least in Europe, the domination of this 'blockbuster model' rolled on virtually unchallenged into the 2000s. Indeed, despite a noticeable slowdown in the development of new medicines, it is only over the past two decades that the blockbuster model has begun to be challenged from two angles: patents and pricing. The former has been researched thoroughly by others,

⁴ ABPI = Association of the British Pharmaceutical Industry; LEEM = *Les Entreprises du Médicament*; EFPIA = European Federation of Pharmaceutical Industry Associations.

particularly over challenges to the TRIPS agreement sparked by the availability of treatments for AIDS in Africa (e.g. Muzaka, 2011). Here the case of pricing is concentrated upon instead. This is because it has suffered from relative neglect, but also to show how this book's framework reveals both the politics of pricing's institutional reproduction and the value conflicts that lie at its heart.

Far from being the direct consequence of the 'play of market forces' so dear to liberal political economy, since WWII the setting of pharmaceutical prices in Europe, as well as much of the rest of the world, has essentially been an administered process. More precisely, firms have requested prices for their products which differing configurations of civil servants and representatives of insurance organizations have analysed, debated and reached compromises over. For example, in France this process takes place within and around meetings of the *Comité économique des produits de santé* (CEPS) within which representatives of the ministries of health and industry, together with those of social and 'mutuelle' insurance, possess institutionalized roles (Benoît & Nouguez, 2015). Since the late 1990s, most such actors have sought to reduce pharmaceutical prices in order to lower the cost of medicines in the name of equality. Specifically, the argument is that because drugs account for at least a fifth of health care expenditure, savings made here could be transferred to other parts of the sector where inequalities are increasing (eg. the availability of hospital beds). If the exception to this trend includes 'innovative' firms and representatives of ministries of industry (both sets of actors arguing instead for higher prices in the name of 'innovation' and security), a general consensus has nevertheless been built across Europe that medicines should not only cost less, but that their cost-effectiveness should be examined more closely. However, and despite this consensus and the emergence of a field of expertise (Health Technology Assessment: HTA) explicitly wedded to achieving its goals, national pricing systems in Europe for the most part remain inflationist and largely in line with the wish list of Big Pharma. Once again, the story of institutional reproduction revealed below can only be fully told by highlighting the conflicts between values that lie at its centre.

Problematization – The conception of control that has dominated Europe's pharmaceutical industry since the early 1970s defines the public problem of pricing as follows: prices must be set high enough to encourage 'innovation' by guaranteeing a sufficient return on investment. When unpacked, this theory legitimizes nothing less than a form of active industrial policy which, far from being restricted to 'the usual suspects' like France, is present within all European states where pharmaceuticals continue to be produced. For example, as a civil servant from the British Department of Health stressed on interview: 'we have an approach that is surprisingly Colbertist!'⁵. This problematization of pricing has nevertheless recently been challenged from two angles.

The first features representatives of health ministries and insurance organizations who have all sought to lower prices and, in general, to achieve this by introducing processes of evaluation between the moment a Market Authorization is awarded to a medicine and before its price is set. In some national cases (eg. the UK), the problematization promoted is one of only rewarding medicines that can prove their added value in terms of therapeutic advances but especially in terms of 'value for money'. In others, notably France, problematization in this area is less formalized and, in any case, focused

⁵ Interview, London, December 2010.

essentially upon identifying therapeutic added-value rather than cost-effectiveness.

Alongside this first potential source of reprobematizing prices in the pharmaceutical industry, a second has emerged in the shape of a community of experts in HTA. Containing physicians, epidemiologists, health service managers and economists, the HTA community has become a consistent advocate of pricing reform since as early as the mid-1970s (Benoît & Gorry, 2013). However, their coalition has only institutionalized since the early 1990s, notably around projects financed from the unlikely source of the EU, and more precisely the European Commission's DG SANCO (Health and consumers). HTA problematizations always strive towards the 'evidence-based decision-making' that has so frequently been sought in other sectors over the past two decades. Although differences of opinion and approach exist within the HTA movement, the reprobematization of medicines pricing proposed from this angle consists of beginning with both an assessment of societal needs and a questioning of the supposed novelty of the medicine in question. In short, the values of freedom and security that Big Pharma and its supporters so frequently invoke as their inextricably linked sources of inspiration and legitimacy, have both been questioned from three angles. Firstly critics, such as representatives of French 'mutuelle' health insurance organizations working within *La Mutualité Française*, argue that the much vaunted freedom of large pharmaceutical companies is a myth given the support they have been given by public authorities since the 1950s. Secondly, they maintain that security in this industry, i.e. both the safety of its products and its durability, could be achieved without recourse to policy instruments that lock in the rents of its biggest operators. Finally, and above all they have sought to reinstate equality as a value from which the health sector, and thence the pharmaceutical industry, should be reinstitutionalized.

Despite the increasingly cohesive character of HTA alliances and their deepening linkages with ministerial and insurance representatives, however, a fundamental reframing of prices in this industry has yet to eventuate. As alluded to earlier, an initial explanation of this reproduced problematization lies in the support given to previous framings by ministries of industry and other allies of Big Pharma (patient associations, centrist and right wing MPs or MEPs, local politicians, etc.). Deeper explanation, however, lies in the institutionalized character of the 'high prices as reward for innovation' theory of action that has dominated public problem setting, together with the policy instruments and registers of legitimation it has fed into and fed upon. Throughout the hierarchical role accorded to the value of 'freedom' has protected institutionalized problems, instruments and modes of legitimation.

Instrumentation – Although decision-making arenas such as the French CEPS possess sets of criteria for grading the social worth of new medicines, even omnipresent actors within such bodies recognize that they do not know how to evaluate the cost-effectiveness of medicines with precision⁶. Instead, they depend upon statistics on the existing usage of competing medicines and their costs, an opinion on the therapeutic value of the medicine provided by the agency *La Haute Autorité de la Santé* (HAS), data from the Market Authorization procedure and any statistics the Ministry of Industry cares to mobilize (often provided by pharmaceutical firms and/or the LEEM).

By contrast, the UK possesses a price-setting procedure which has systematically used

⁶ Interview, French Health Ministry, Paris, January 2012.

wider economic data and methods from economics in order to calculate the cost-effectiveness of each new medicine. Run within the National Institute for Clinical Excellence (NICE), these calculations have been formalized as a policy instrument, known as 'Quality life years' (QALYs), which has since become a central part of the British pricing system (Drummond, 2007; Drummond and Sorenson, 2009). Indeed, this instrument and, more generally, NICE's involvement in pricing have clearly modified the problematization of pricing in that country.

The HTA movement in general, and the parts of it financed and encouraged by the European Commission in particular, has largely taken on board the instruments developed by NICE. However, their success rate in terms of encouraging other national decision-making systems to shift their policy instruments towards the British model has thus far been limited. As the French case testifies particularly clearly, the pricing of pharmaceuticals was initially institutionalized at a time when cost savings were not a priority and when doctors dominated decision-making. Since then, the medical profession may have lost its aura in some countries, but in order for its expertise to be replaced, competing sources of knowledge need to emerge. In the British case, this has largely been provided by the growing (sub)discipline of health economics, itself a by-product of changes to the UK's higher education system initiated in the 1980s. The latter encouraged 'applied' economics and systematic grant-seeking by its academics in particular. Indeed, cleaved internally between those whose primary value is freedom (ex. experts closest to the Conservative Party) and those who instead hierarchize equality (ex. many of the academics working for NICE), to some extent British health economics can be seen as a policy instrument which contributed significantly to reshaping the problem of health care in ways which perpetuate its very existence. At least in countries like France, this phenomenon has not emerged to anything like the same extent. Indeed, 'a lack of expertise in health economics' is often cited by actors in ministries and insurance organizations as one of the reasons why, over the last twenty years, the instruments of French medicines pricing have been reproduced. A study is currently being undertaken on the social groups involved in this process in order to deepen and objectify this assertion (Benoît, 2016). From this research, it is already clear that in this country a network of HTA experts who give primacy to the value of equality has not emerged. Instead, the field has largely been left open to liberal economists for whom hierarchizing the values of freedom, while subordinating to it that of security, has encouraged the proposal of only incremental change to existing policy instruments.

Legitimation – Certain professions have therefore not only supported the instrumentation of decision-making over issues like drug prices, they have also more fundamentally participated in legitimizing or delegitimizing both policy instruments and public problems. Meanwhile, however, the actors who, at least in the health sector, continue to hold the most resources for legitimizing policy reproduction or change are either national civil servants or politicians. Both these sets of actors readily brandish 'the general interest' and 'national sovereignty' as justifications for not changing pricing practices in line with what either the HTA movement or representatives of the European Commission advocate. What such terms cover up, however, are potent hierarchies between the values of freedom, security and equality which systematically favour the former while emptying the latter of any practical content and, therefore, impact.

Indeed, 'the general interest' is generally used alongside arguments of the type 'our

population would not accept', and this in order to present each national case as singular and incomparable. Here, some national civil servants are aware that this discourse often puts them in a schizophrenic position: on the one hand they claim to be open to ideas from the rest of Europe, on the other they consider that they alone know what their national public will accept. Nevertheless, this claim to monopolize knowledge over what constitutes 'the general interest' provides powerful support to politicians and civil servants who would rather not take the risk of institutional change and, consequently, prompt the ire of 'their' pharmaceutical companies. In so doing the value of security is harnessed to the primacy of freedom, while that of equality is quietly ushered out of policy-making equations.

Such positionings take even more strength from legitimation based upon 'national sovereignty' which, notably by invoking clauses on health in 2009's Lisbon treaty, consistently minimize the importance of exchanges over HTA at the scale of the EU while reiterating that only national administrations are authorized to structure and spend health budgets. Notwithstanding the effects prices in one member state have upon those in others, nor the increased interest of DG ECFIN in this subject area because of the scope it holds for cutting public expenditure, pharmaceutical pricing continues to be legitimized as a '*régalien*' (regal) national competence and, thus, as belonging in the same category as fiscal and defence matters. Faced with this discourse, opponents of the status quo currently consider that they have little option than to refocus HTA development on the therapeutic (i.e. quality and safety) dimension of the evaluation of medicines. Having built legitimacy using the register of universal science, some forecast they will subsequently be in a better position to ensure that issues of cost and efficiency become part of what can be debated around the pricing of medicines. However, in doing so, these critics of the pharmaceutical industry's Institutional Order have unwittingly assisted in sidelining the value of equality. This in turn has enhanced the legitimacy of continuing to proclaim that combining freedom with security produces the most effective and just public policies and socio-economic outcomes.

In summary, the case of pharmaceutical pricing, and the modest role played by the EU-scale therein, illustrates once again the heuristic value of analysing the value-driven processes of problematization, instrumentation and legitimation that make up the political work which has caused the institutions and substantive outcomes outlined above. Rather than vaguely concluding that in today's Europe regulation of this industry is 'a patchwork' on EU and national measures (Mossialos, Permanand, Baeten and Hervey, 2010), this analysis has indicated not only how and why this industry's Commercial IR has been reproduced over the last 15-20 years. It has also revealed why this IR has been so central to the pattern of domination of pharmaceuticals' Institutional Order as a whole. Although some scalar shifts have certainly occurred, to date the representatives of Big Pharma have successfully 'tamed' such displacements and, in most cases, bent them to their own ends. Far from the fatalism of material determinism, these case studies have underlined that in each instance contingency has existed. However, thus far Big Pharma domination has also been fostered by public authorities not giving themselves the capacity to contest, or even seriously question, institutionalized prisms, arguments and symbolic action. From this respect, growing European integration has thus far only served to reinforce an Institutional Order within which the subordination of the value of Security to that of Freedom has prevented change in the name of greater Equality. From this perspective, the EU has very clearly

not made a difference. Instead, it has contributed to aligning practice at the European scale with that which has dominated at national and global scales since at least the 1970s.

2. Equality vs Security: Governing Competition

Today competition policy often makes the headlines when a high profile corporate merger has been blocked for creating an oligopoly (eg. the proposed merger between Deutsche Börse and NYSE Euronext in 2012 rejected by both the European Commission and the US Department of Justice) or when the Commission prevents an EU member state from subsidizing one of its companies (eg. Poland and the airport of Gdynia in February 2014). But this has not always been the case by any means. In fact, given the prior strength of protectionism and the neo-mercantilist thinking that legitimated it, at least in Europe and in many other countries other than the US, competition policy has only really had significant and consistent effects upon economic activity since the late 1980s. Many 'power' and 'interest' theorists attribute this development to competition policy being a key tool in constructing the EU's single market and, more generally, to it becoming an instrument central to the 'neo-liberalization' of both politics and economic policy (Wigger and Nolke, 2007; Van Apeldoorn, Drahoš, Horn, 2008). However, both these interpretations are misleading and fail to capture the full relationship between politics and economic activity. The first confuses a consequence with a cause and overlooks that the original single market programme actually contained no competition policy element (Armstrong & Bulmer, 1998). Meanwhile, and more significantly, conflating competition policy with neo-liberalism greatly underestimates the depth of political divisions within this ideological family, particularly between 'ordoliberalists' and the 'Chicago school of law and economics'. These schools of neo-liberalism have grown precisely over their competing hierarchies of values used to evaluate legitimate economic activity in general, and inter-firm competition in particular.

Indeed, as I show below, the full story of the changing fortunes of competition policy is both more complex and more revealing of the politics-economics nexus. It is more complex because it has entailed many more actors within and outside public authorities than are generally admitted, several scales of government and intense debate over doctrine and policy instruments. It is also more revealing because the story of how competition policy has, or has not, been applied in different polities illuminates profound fault lines within contemporary political economy. Indeed, this is particularly so when competition policy is conceptualized as a trans-industry regulation which ostensibly applies to all industries and, at least in Europe, across three scales of government (EU, national, regional). Examining how different industries either conform or seek to derogate from competition policy provides an additional heuristic lens.

Building upon a vast literature in law, history economics and political science and my own research⁷, this section's analysis of competition policy will be structured in two

⁷ Three sets of work have been undertaken on this issue area. The first concerned Leon Brittan's role as commissioner for competition then trade from 1989 to 1998 (Joana & Smith, 2002). Second, research was conducted on the role of competition policy in the EU's government of industries in general, and that of pharmaceuticals and cars in particular

parts. Having first set out the Institutional Order that has developed around this policy, hypotheses will then be presented regarding the value conflicts, and thus the politics, that has brought about this highly significant, yet not all-encompassing, trans-industry regulation.

2.1 The Institutional Order of Economic Competition

Considerable public debate remains over how competition policy should be problematized, instrumented and legitimized, debate soaked in value conflicts frequently criss-crossed by inter-scalar tensions. From an analytical point of view, it is salutary to begin examining such debates and conflict via the concept of an Institutional Order and the four Institutionalized Relationships (IRs) it helps unpack and compare.

Competition policy's *Finance IR*, this has had a major impact upon the politics of governing economic activity through two channels. The first concerns the outlawing of aid to private or indeed public businesses from the public purse. In an age when public finances are framed as particularly tight and multinational corporations tend to dominate most industries, it is easy to forget that until the 1980s national governments throughout the world frequently gave large sums of money directly to certain companies either simply to keep them in business or, more strategically, in the name of supporting their 'national champion' in their efforts to compete both intra and internationally. Here analysis of the rise of neo-liberalism has considerable analytical purchase because it highlights the manner through which this ideology was used to reproblemate how governments ought to support 'their' industries, introduce new policy instruments (eg. the encouragement of inward investment) and legitimize the 'independent' private firm whilst stigmatizing both all public ones and those that had taken the government's shilling but continued to fail ('lame ducks'). From steel, to coal and the car industry, since the 1970s most governments throughout the world have progressively reduced their systematic granting of subsidies. Usages of competition policy have certainly driven forward this trend and institutionalized it to the extent that government intervention is now seen as 'a-normal' and 'unnatural'. Of course, as repeated examples entailing European car manufacturers illustrate, this does not mean that many attempts are not still made to derogate from state aid policy, nor that many such attempts are temporarily successful. Similarly, there is little doubt that states such as China continue to pump money into their largest firms despite having established a competition agency. Nonetheless, because the value of Equality (of opportunity between firms) is rarely contested in this issue area, in general how competition policy impacts upon the Finance IR of all industries is rarely as controversial as it was thirty years ago.

More controversy, however, still frequently surrounds the second aspect of regulating competition that concerns company finances: the control of monopolies and mergers. Whereas virtually all the expert and actors engaged in this issue area accept that large companies should never be allowed by government to 'abuse their dominant position' in particular markets or industries (for example by raising prices to the consumer or dropping them to eliminate competitors), much disagreement persists about what constitutes 'dominance' and 'abuse'. Indeed, far from being just technical terms with

(Montalban, Ramirez Perez, Smith, 2014). Finally, analysis of policy transfer between DG COMP and the French and British competition authorities has been tackled (Smith, 2013).

legally codified definitions and criteria, both frequently split the neo-liberal camp around the hierarchies of values their application invariably entails. For ordoliberalists to whom Equality is a value to which Freedom must remain subservient, any dominant position within a market is bad, no matter whether it has actually been taken advantage of or not. Consequently mergers or take-overs that create such positions of dominance should be prohibited by competition agencies. By contrast, for supporters of 'the Chicago School' to whom Freedom can and should frequently trump Equality, a dominant position does not in itself represent a threat to consumers. Indeed, they argue, the efficiency gained through this position is actually beneficial because it will lead to lower prices. In short, 'efficiency' trumps legal rectitude, equality of opportunity and, many would say, 'fairness'. The next section returns to this debate in more detail. For the moment it is sufficient to conclude that recurrent conflict over monopolies and mergers goes to the very heart of the politics of contemporary economic activity.

If, as we have just seen, competition policy impacts heavily upon the way businesses are financed, throughout much of the world its *Sourcing IR* has come to have similar effects upon the way such entities purchase their raw materials and transform them into products. Often called 'anti-trust' law, the official aim here is to outlaw 'restrictive practices' in general and those that produce cartels (ie. collusions between firms) in particular, both seen as interrupting and biasing the 'free flow' of inter-firm competition. In many industries, sourcing takes place through a relatively straightforward relationship between suppliers and purchasers. For example, farmers who rear ducks set up and generally honour private contracts with the hatcheries that provide them with ducklings. Here, a practice judged to be restrictive would only occur if such contracting was seen as imposed or unfair. However, in many other industries, rules and norms exist regarding how and where a raw material has been produced which clearly infringe general competition law but have been authorized in the name of other values. Here a case in point concerns Parma Ham. As we saw through similar cases in chapter 3, in the mid-1990s, producers of ham in this region decided that for a product to bear its name, its curing had to take place within a locality defined as 'Parma'. Codified in a product specification, this restriction was contested by certain operators on the grounds that it infringed competition law. However, the European Court of Justice upheld the right of Parma Ham producers to impose this restriction in the name of both 'enhancing regional development' (Security in the sense of sustainability) and 'protecting a tradition'. Far from being exceptional, such arguments and restrictions are relatively commonplace, for example just as all Rioja wine has to be bottled in that region, so does all Scotch have to be matured and bottled in Scotland. What all these cases highlight is that the actual implementation of competition policy is never value-free and thus a-political. Rather its application within specific industries and markets always entails hierarchizing values through the political work of argument and alliance-making.

In so doing, many of the arguments made over product sourcing spill over into competition policy's *Commercial IR* which concerns how goods and services are distributed and sold. Once again, in many industries the relationship between sellers and consumers can appear relatively straightforward. So long as all sellers have access to the market, consumers simply choose between competing products, thereby entering into a more or less implicit contract with the respective producer. A first contentious issue may, however, arise whenever the distribution of a good or service is dominated by large operators such as supermarket chains. As the case of basic farm produce such

as milk testifies, such intermediaries may make huge profits by significantly reducing prices to farmers while increasing them to consumers. More fundamentally still, inter-firm competition may be affected by a range of norms that restrict the access of goods and products to markets in the name of a variety of values. Here one of the classic examples concerns patents for medicines. As we saw earlier, since at least the 1970s patents have been consistently used by pharmaceutical firms not only to protect their respective inventions, but also to ensure that during each period of legal protection they can achieve high returns on the investments which, they argue, were made in order to generate such 'scientific progress'. In short, for such actors patents are instruments that respond to the problem of 'rewarding innovation' in the name of equality, whilst 'innovation' itself is seen as their primary legitimizing resource because it concretizes a relationship between Freedom and Security. If for many years patents were indeed seen by competition authorities as an acceptable restrictive practice, in 2009 this representation of the just was put to the test when the European Commission's DG COMP launched a 'sector inquiry' into how market entry was actually occurring within this industry. As explained fully elsewhere (Montalban, Ramirez Perez, Smith, 2014), officials in DG COMP suspected large pharmaceutical companies of abusing patent law in order to prevent generic products entering the market and lowering prices (thus locking in a hierarchy of Security over Freedom). Although patents as a property right were ultimately re-legitimized as acceptable restrictive practices, the importance that had automatically been accorded to scientific innovation has been destabilized and increasingly questioned. Specifically, the hierarchy between Security and Freedom has been opened up to debate. In so doing, this case illustrates once again how markets never regulate themselves. On the contrary, their regulation is constantly dependent upon the value-based choices made by those able to participate in their institutional ordering.

Finally, although the *Employment IR* is not directly affected by competition policy, it certainly has been indirectly. On the one hand, as the case of Parma Ham again illustrates, saving or creating jobs in specific regions (Security) is often used as an argument to obtain derogations from competition policy. On the other hand, and more generally, the underlying problematization of economic activity that pervades competition policy is one of businesses only being durably viable when they are 'competitive', i.e. not dependent upon government subsidies or an illicit dominant position or set of restrictive practices. Implicitly, as the case of coal in the United Kingdom in the 1980s illustrates, the view taken here is that it is preferable that 'uncompetitive' businesses go to the wall so that their ex-employees themselves seek out viable employers and industries. Because 'viability' is often a heatedly contested concept, however, this then begs further questions. In the case of British coal, for example, trade unions accused employers and the UK government of deliberately exaggerating costs of production and reducing forecasts of the amount of coal that could still be viably mined.

More fundamentally still, the controversies that frequently still break out over competition policy highlight just how disarmed proponents of problems and instruments designed explicitly to save employment are compared to their neo-liberal opponents. Indeed, as stated earlier and as table 4.2 highlights, if the latter are regularly divided over interpreting competition policy, social democratic thought has singularly failed to produce a sustained alternative viewpoint which does not fall back upon the

easily discreditable principles of neo-mercantilism.

Table 4.2: Competition policy doctrines and economic activity

| | <i>Neo-mercantilism</i> | <i>Ordoliberalism</i> | <i>Chicago school</i> |
|----------------|-------------------------|-----------------------|-----------------------|
| Finance IR | Monopolies | No monopolies | Efficient monopolies |
| Sourcing IR | Cartels | No Cartels | Efficient cartels |
| Commercial IR | Price fixing | Free pricing | Free pricing |
| Employment IR | Interventionist | <i>Laissez faire</i> | <i>Laissez faire</i> |
| Dominant value | Security | Security | Freedom |

2.2 A politics where explicit values give way to expertise and sovereignty

The reason table 4.2 does not feature a column on social democratic competition policy doctrine is not simply that such a set of ideas has yet to be convincingly brought together (although this is indeed a key point). Rather the translation of socio-democratic principles into problematizations of competition policy, instruments and legitimating discourse has been obstructed by this domain becoming dominated on the one hand by the narrowness of what constitutes ‘expertise’ in competition policy and, on the other, by the translation of ‘sovereignty’ into what I call a ‘pseudo-value’.

The autonomization of experts and depoliticization

Political science and sociology have consistently shown the extent to which ‘experts’ with specialized knowledge have come to play powerful roles in policy-making throughout the world and across virtually all issue areas. Indeed, the most interesting work on this question traces this influence back to at least the end of the 19th century when Western state bureaucracies began to densify (Saint-Martin, 2000). Ever since, just who constitutes an ‘expert’ has become a deeply political question because far from stemming simply from formal qualifications or ‘the complexity’ of an issue and its instrumentation, the very legitimation of their knowledge is the product of work to build the reputations of, and thus attach values to, both individuals and their professions (Robert, 2010; Roger 2010). Indeed, the vague nature of the very term ‘expertise’ in fact highlights the fluctuating and contingent nature of just who is qualified as an ‘expert’ and by whom. In some instances, it is bureaucrats employed by public authorities (eg. the civil servants in DG COMP) who are seen to be the experts. In others, this term is instead reserved for external advisers who work within academia, for consultancy firms or even for interest groups. From the point of view of research, therefore, identifying who has been legitimized as an expert in a given policy field, as well as the resources they hold or that are attributed to them, and above all their hierarchies of values, constitutes an essential first step. The second is to discover to what extent these experts have developed autonomy for themselves and, in particular, a freedom from oversight by actors charged with protecting the public interest (notably parliamentarians).

In the field of competition policy, the overwhelming majority of experts have been trained in, and take much of their legitimacy from, the academic disciplines of law and economics. Moreover, the dominance of both is also reflected in the career trajectories of officials who work within competition regulatory agencies. Indeed, many of the latter have moved seamlessly between such bodies and these parts of academia, thereby

consolidating cognitive links with relational ones. Meanwhile, law and economics dominate the wide range of journals (eg. *World Competition*) which both facilitate communication across an international 'community' of competition policy experts, while encouraging a standardized problematization of its thought and action. Indeed, research has strongly suggested that competition policy is considerably affected by transnational networks and an 'epistemic community' of scholars, bureaucrats and even judges (Van Waarden and Drahos, 2002; Wigger, 2008). Moreover, administrations such as the European Commission have further encouraged this trend through and around the establishment of a European Competition Network which, since 2004, has imposed highly structured 'co-operation' upon competition policy agencies and their experts across the EU.

Notwithstanding these pressures to transnationalize the doctrines and practices of competition policy, important differences remain regarding how experts trained in law or economics are mobilized within each polity. In France, for example, law continues to be the dominant source of expertise drawn upon by the *Autorité de la Concurrence* and its predecessor the *Conseil de la Concurrence*. In the field of anti-trust, this organization made 335 decisions between 1999 and 2011, but economic analysis was evoked in only 24 of them (Smith, 2013: 428). Moreover, if it has possessed a Chief Economist complete with dedicated staff since 2007, these actors are in a tiny minority when compared to the legally-trained officials law which surround them. By contrast, in England both the Office of Fair Trading and the Competition Commission regularly use economic analysis to problematize, instrument and legitimize their decisions (eg. over restrictive practices the former did so to the tune of 19 out of 67 decisions between 2001 and 2011, whilst the latter did in 23 out of 25 of its reports: Smith, 2013: 434-5). In short, the tension between law and economics plays out differently in each polity.

This said, it is important not to see such tension as simply an opposition between users of either the law or statistics. Firstly, skilful representatives of either discipline repeatedly deploy both. Secondly, as seen earlier, the key division which orientates doctrine and practice lies in a value-driven cleavage between ordoliberalism and proponents of 'the Chicago school of law and economics'. For the former, law is certainly the field of expertise its supporters have traditionally and most spontaneously drawn upon. But it is important to realize that ordoliberalism also has its economists who, in the name of placing Security above Freedom, use arguments from their own discipline to problematize, instrument and legitimize its policy recipes. Conversely if, as its full name underlines, the Chicago school has always sought to combine arguments from both disciplines, it is vital to grasp the key role played by lawyers, and even supreme court judges (eg. Posner or Bork), within its development. It is certainly true that just as today economics has a much higher public profile than law in most polities, economists are the most well known promoters of Chicago School interpretations of competition policy. Ultimately, however, it is the combination of law and economics, mobilised around a hierarchy of values wherein Freedom trumps Security, that deserves the most analytical and public attention.

Indeed, what research could usefully be doing, but to my knowledge rarely does, is to examine the activity of key competition regulators, such as DG COMP, in order to identify precisely how doctrinal debates are influenced by broader discussions within and between law and economics. Such research should, however, not only focus upon the

highly detailed and technicized arguments made. In so doing, attention also needs to be devoted to the values that reside in the assumptions and judgements that drive and derive from these arguments. This politics of competition policy has yet to get the academic attention it deserves, and this largely because the disciplines best equipped to do so –political science and sociology- have thus far largely ignored it. Small wonder then that when public authorities such as parliamentary committees turn their hand to examining competition policy, they too largely overlook the value-based choices that are constantly being made in its name and which merit much more public and political deliberation. Indeed, it is only through opening competition policy up to discussion of the politics of competition that there is any chance that the ordoliberal vs. Chicago School opposition might one day be destabilized by the emergence of another set of doctrines (and perhaps even one based upon social-democratic values and priorities).

Sovereignty: a thought-obstructing and alliance-blocking value

Opening up the sources of expertise on competition policy could also help to unblock a second important aspect of competition policy which concerns its possible introduction at a global scale. An EU-led initiative to move in this direction emerged in the early 1990s but has since run into virulent opposition using the card of national sovereignty. As will be shown, however, despite the legitimate concerns expressed about this issue, particularly within the developing world, this opposition has tended to polarize debates around a pro. vs. anti competition policy axis. The alternative viewpoint presented here is that be they explicit or implicit, competition policies exist throughout the world and therefore have a deep impact upon trade and thus the relationships between firms, nations and societies. Invoking national sovereignty as a value, i.e. something that is intrinsically 'good', obstructs thinking about the overlapping regulation of both trade and competition, misleads the public and perpetuates the inequities of the *status quo*.

Academics first began to problematize international competition law in the early 1990s. Specifically, a professor of law at the Max Planck Institute at Munich University, Wolfgang Fikentscher, headed a 'Munich Group' that worked up its proposal into a draft international antitrust code presented to the director of the GATT in 1993. In parallel to this intellectual enterprise the European Commissioner for competition (1989-92) then for trade (1993-99), Sir Leon Brittan, spearheaded an initiative, eventually backed by the Commission then the EU as a whole, to transpose many of the instruments developed to regulate competition within the EU into propositions for an extension of the WTO's mandate. More precisely, Brittan, a lawyer and renowned neo-liberal attracted to Chicago school thinking, considered that the problematization and instrumentation of competition policy that had proved so successful in relaunching DG COMP's authority, could and should be used to tackle the 'beyond the border' issues he considered were continuing to obstruct and harm free trade (Joana & Smith, 2002). Within the Commission a working group on the issue was created which published its report in December 1995. A year later, Brittan himself then presented formal EU proposals for adding competition policy to the mandate of the WTO at the latter's ministerial meeting in Singapore.

The immediate upshot of the proposals made in Singapore was the creation of a WTO working group on the interaction between trade and competition policy which, from

1998 to 2001, then published a series of reports. These, together with work conducted in parallel by staff of the United Nations Conference on Trade and Development (UNCTAD), essentially sided with the EU proposal and saw it as positive for developing states. The reports then fed into draft proposals for a Multilateral Agreement on Competition Policy (MAC) that began to circulate amongst WTO member countries. The EU delegation immediately backed this proposal and were supported by the representatives of Japan, South Korea and Canada. More generally, widespread consensus then existed that a MAC would be particularly useful and legitimate in improving transparency over contentious competition cases, outlawing non-discrimination between firms on the basis of nationality and prohibiting cartels. However, these consensual elements were quickly drowned out by two series of opponents.

The first were dominant actors within competition regulation in the US. Not only did they see the MAC as unworkable in practice and liable to just create 'bureaucracy' (a common charge made against international institutions by US representatives). More deeply still, the very logic of competition policy being proposed was denounced as being at odds with competition regulation in their own country. As Fox underlines, US antitrust policy itself is essentially 'defensive' since its aim is 'to prevent obstructive acts that harm consumers but not to create environments or duties that might help them' (2009: 153). In other words, US competition policy is clearly dominated by the value of Freedom whereas that of the EU and many of its members tempers this commitment with another to Security. Given that the main aim of the MAC was indeed to create an 'environment' within which the value of Security would have a role, US representatives were at best sceptical of the prospect of achieving global competition regulation.

But US ambivalence about the MAC quickly paled into insignificance when compared to a second and more damaging type of opposition led by developing countries. Firstly, their representatives criticized the draft proposal as being excessively focused upon the WTO's traditional mandate of guaranteeing market access. Rather than problematizing the MAC as a means of protecting international competition in trans-border markets, and thus legitimizing competition as an international public good (Drexler, 2004), the draft was seen as favouring the large companies of the global North. Secondly, like the US delegation, many representatives of developing states were concerned that during its implementation the MAC would give even greater powers to the WTO's dispute settlement procedure, thereby undermining national competition regulators and courts. In so doing, they were particularly concerned that an overly rigid codification of the very principles of competition policy would be enshrined at a global scale, thus preventing developing states from engaging in any form of industrial policy. Finally, these opponents of the MAS considered that at least three issue areas of particular concern to them -export cartels, anti-dumping and Intellectual Property Rights- were largely absent from this draft agreement (Bhattacharjia, 2006). In a nutshell, competition policy was delegitimized as a profound threat to national sovereignty.

Led by delegations such as that of India, but also fuelled by many NGOs, opposition to the MAC came to a head in September 2003, just before the WTO's Ministerial meeting in Cancun. Moreover, given that WTO decision-making is rarely just single issue focused, opponents of the MAC were able to take further strength from other politicized North-South conflicts of that period, in particular over the trading of cotton. Ultimately, such

actors insisted that, 'competition policy is different from any other trade topic. It relates to the very philosophy of world trade law and, therefore, is of a quasi-constitutional character' (Drexler, 2004: 456).

It therefore came as little surprise when, in July 2004, the MAC proposal was formally dropped by the WTO's General Council. Ever since, official emphasis has instead been placed upon 'improving' national competition regulators and the signature of bilateral agreements (eg. within trade agreements signed by the EU and individual states). More fundamentally, however, the global politics of competition regulation has been relaunched as a domain for experts in general and the International Competition Network (ICN) in particular. Founded in 2001, largely at the initiative of the International Bar Association backed by the US government, the ICN brings together national competition regulatory agencies. Structured around working groups, an annual conference and a range of publications, this network now constitutes the main forum within which 'best practice' is defined and from which 'technical assistance' is given to developing countries (Fox, 2009). In this way, and most obviously, the urgency and politicization that marked the period 1996-2003 has been taken out of this issue area. This political work of technicization has been facilitated and legitimated by evocations of sovereignty as a value which, despite appearances to the contrary, actually stifles debate about how it should be hierarchized as regards genuine values such as Freedom, Security and Equality. Indeed, by naturalizing existing nation-states through discourses and practices of 'banal nationalism' (Billig, 1995), and thus using sovereignty as a 'pseudo-value', debate about the very principles behind competing visions of competition policy has been made particularly unlikely.

On this deep level, what has also virtually disappeared is debate about the principles and application of competition policy in arenas whose legitimation is not as experts, but as guardians of 'the general interest'. Of course, scrutiny of regulators who are ostensibly independent is not without its own problems. As Koviacic's work (1982 & 1988) on the impact of the US congress on the Federal Trade Commission underlines, legislatures and legislative committees can also be deeply biased over, or feature fluctuating approaches to, competition policy. Moreover, one should also recall that such scrutiny is not even attempted in the EU where the European Parliament has virtually no say over the orientation and application of competition policy by the Commission. Indeed, as with other areas of economic life such as central banking in Europe, in the name of 'independence' competition policy has repeatedly been technicized and depoliticised. As Vauchez underlines, however, this absolutely does not signify that 'independent' agencies are not political. What it means instead is that researchers and actors alike all need to overcome the fact that having been brought up under the ideals of parliamentary democracy, we are 'intellectually under-equipped' to grasp and engage with the politics within which these agencies are now centrally important (2014: 10).

Conclusion

As Vauchez also underlines (2014: 35), we needed to *retrain* our way of looking at politics in general, and its role in economic activity in particular. The constructivist *and* institutionalist approach tested once again in this chapter provides a means of doing so by rejecting images and implicit ontologies of economics as 'messy', 'anarchic' and

outside politics. On the contrary, as these examples from the worlds of medicines and inter-firm competition have sought to highlight, this approach firstly guides research to discovering the institutions and other socio-political constructions which structure and shape economic activity. Secondly, it encourages identification of the political work, itself rooted in confrontations of values, which has been their cause. To underline just one of the lessons that comparing the governing of pharmaceutical and competition from this angle reveals, national sovereignty has clearly been accorded the status of a value in both cases. However, rather than this having been inevitable or 'natural', my analytical framework has begun to show how this construction and legitimation of social reality has come about, been perpetuated and had considerable socioeconomic and political consequences.

These points take on particular importance when one seeks to discover whether the EU makes a difference to the politics of economic activity. Research is right to highlight its findings that, at least since the mid-1990s, a discourse that the EU possesses a 'social' approach to economic policy has become increasingly empty. Similarly, there is less and less evidence that the EU is either a rampart against the effects of a liberalizing world trade or a leader in the making of global institutions and organizations. This said, by focusing upon the value-driven decisions made over economic policies of varying types, one can and should also stress that there has been nothing inevitable about these trends emerging, nor anything inevitable about them continuing in the future. Politics as the mobilization of values has produced the EU of today, just as recasting this politics could redirect the European government of economic activity towards new goals in the years to come.

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