The Politics of Global Regulatory Enforcement: Evidence from Cartel Prosecutions Involving Foreign Firms

Chase Foster[1]

August 2022

Abstract

Economic globalization has created new opportunities for economic patriotism, or the promotion of national prerogatives in integrated markets. Yet, few scholars have investigated whether globalized regulatory enforcement is systematically used as a tool to promote territorial interests. Examining the case of global cartel enforcement, I show that foreign corporate prosecutions have become a diffuse and increasingly reciprocal instrument of regulatory enforcement as more regulators have investigated and sanctioned multinational corporations. At the same time, these enforcement actions are systematically biased against foreign-domiciled companies. Multi-level regression models of several thousand cartel sanctions demonstrate that foreign firms receive fines that are more severe than similarly sized domestic firms that were members of the same cartel. Judicial review, independent competition agencies, and transnational regulatory networks do not moderate, and may even exacerbate, this bias. The findings suggest that foreign corporate prosecutions are a tool that a variety of jurisdictions can use to hold multi-national corporations accountable to global norms; however, the effectiveness of foreign corporate prosecutions may depend on enforcement remaining tied to territorial politics.

[1] Senior Research Fellow and Lecturer, Chair for International Relations, Hochschule für Politik München/ TUM School of Governance. Email: chase.foster@tum.de.

Introduction

Foreign corporate prosecutions, or regulatory enforcement actions involving foreign firms, have become a core component of the work of domestic market regulators.[2] Many of the most sweeping and expensive corporate prosecutions in recent years, from the European Commission's competition judgments against Google and Apple (Kokkoris, 2017) to the US Department of Justice's crusades against foreign tax havens (Verdier, 2020), have involved firms domiciled in foreign jurisdictions. From environmental protection to worker safety, financial regulation to antitrust, multinational corporations must now comply with the regulatory rules of a wide range of domestic jurisdictions, many of which pursue high profile investigations that can result in significant monetary penalties and behavioral remedies.

Although foreign corporate prosecutions have become an inextricable component of market regulation, research on this subject remains limited in the field of international political economy. Scholars have thoroughly explored the question of extraterritorial enforcement by U.S. regulators and courts, finding that officials have leveraged the power of the American marketplace and financial system to strategically enforce domestic rules against foreign domiciled companies as a way to both address perceived regulatory failures abroad and encourage the harmonization of regulatory standards toward established American approaches (Kaczmarek & Newman, 2011; Newman & Posner, 2011; Putnam, 2009, 2016; Raustiala, 2011; Woll, 2023). However, we know much less about the politics of foreign corporate prosecutions outside of the United States, especially in jurisdictions that do not possess outsized market and infrastructural power, as well as in run-of-the-mill enforcement actions that do not directly impinge on salient questions of economic and security policy.

[2] By foreign firm, I mean a firm that is domiciled (or headquartered) outside of the regulatory jurisdiction doing the enforcing. Given the increasing difficulty of distinguishing between domestic and extraterritorial enforcement, and the ongoing evolution of 'jurisdictional' extension (Putnam 2008), I use foreign corporate prosecutions to include all regulatory enforcement actions against foreign firms, whether these are better understood as "domestic" or "extraterritorial."

Now that an increasing number of regulators around the world frequently investigate and sanction foreign as well as domestic companies for their conduct at home and abroad, how should we conceptualize the politics of foreign corporate prosecutions? And what implications does the rise of foreign corporate prosecutions have for global governance?

One longstanding view in international relations is that transnational regulatory policy is profoundly shaped by the geopolitical or geo-economic interests of the jurisdictions doing the enforcing (Baldwin, 2020; Luttwak, 1990). International political economists have argued that the strategic economic and security objectives of governments as well as the commercial ambitions of dominant domestic firms conditions the foreign corporate prosecutions that are initiated as well as how such cases are resolved (Ferguson, 2022; Roberts, Moraes, & Ferguson, 2018; Woll, 2023). From a structuralist perspective, the establishment of transnational systems of cooperation and technocratic modes of decision-making thinly veils both international inequalities in the use of foreign corporate prosecutions as well as the geopolitical and geo-economic interests that continue to shape transnational regulation and its enforcement.

Liberal institutionalists take a more benign view of the development of extraterritorial and transnational enforcement. They argue that the disaggregation of the component parts of the state into independent agencies which operate with significant insulation from elected governments, and the development of bilateral and multilateral forums for cooperation between these agencies, has transformed domestic regulators into engines of multilateral cooperation and cosmopolitan legalism (Aydin, 2010; Cho & Büthe, 2021; Raustiala, 2002; Slaughter, 2004, 2009; Slaughter & Zaring, 2006). From this perspective, foreign corporate prosecutions, even if historically rooted in asymmetrical systems of power, can play an important gap-filling role in global governance systems, providing a hard law mechanism that ensures corporations comply with global regulatory norms and facilitating channels for

learning and regulatory capacity building across jurisdictions that complement international systems of cooperation (Raustiala, 2002; Slaughter, 2004).

To better understand the politics of foreign corporate prosecutions, this paper empirically analyzes the pattern of enforcement actions in a crucial case: international cartel enforcement. The combination of economic globalization with the expansion in the stringency of cartel laws, has resulted in a significant increase in the number of foreign firms prosecuted by competition regulators around the world. In recent decades, nearly every OECD jurisdiction, as well as every member of the G20, has investigated foreign domiciled companies for cartel activity. Many of these cases touch on questions of extraterritoriality as well as foreign economic relations. At the same time, cartel law represents an area of policy where international cooperation is extensive and regulatory decision-making increasingly technocratic. Not only is there a well-developed transnational regulatory network and numerous cooperation agreements (Aydin & Büthe, 2016; Raustiala, 2002; Verdier, 2009), but most domestic competition enforcement occurs through independent regulatory agencies that are formally insulated from elected officials and whose decisions are subject to judicial review (Bradford, Chilton, Megaw, & Sokol, 2019). Thus, international cartels can be seen as a hard test of the economic patriotism thesis. If evidence of economic patriotism can be found here, in an area that liberal institutionalist theory would see as least likely to be shaped by the pressures of geopolitics and geoeconomics, then we would expect to also find systematic evidence of economic patriotism within a range of other less technocratic and ostensibly cosmopolitan regulatory spheres.

To adjudicate between the structuralist and liberal institutionalist perspectives, I examine three features of actual enforcement practices that Woll (2023) has identified as helpful for assessing whether cartel enforcement is characterized by economic lawfare, as predicted by economic patriotism theories, or cooperative system of global enforcement, as

predicted by liberal institutionalists. These criteria include (1) the degree to which the rules being applied are shared across the jurisdictions involved; (2) whether the pattern of enforcement is asymmetrical or symmetrical; (3) and whether regulatory enforcement is systematically biased against foreign firms (134). To assess each of these factors, I use several established databases of global competition norms and enforcement, which I have enhanced with data that I have collected on my own. All in all, I analyze more than 5,000 cartel sanctions finalized in 74 jurisdictions between 1990-2019.

The empirical analysis shows that international cartel enforcement is characterized by a mix of features that challenge both the structuralist and liberal institutionalist viewpoints. Although global regulatory enforcement was once predominated by large jurisdictions such as the United States, cases with extraterritorial and transnational implications are now pursued by a wide range of jurisdictions, including jurisdictions without substantial market power. These cases are characterized by a great degree of shared norms in terms of both substance and procedure. This suggests that international cartel enforcement is characterized by a good deal of reciprocity and cooperation, in line with the liberal institutionalist view.

At the same time, I find evidence of systematic home bias in the treatment of foreign firms. Using multi-level regression analysis, I estimate that foreign firms systematically receive sanctions that are on average 100-150% more severe than similarly sized domestic firms that are members of the same cartel. And I find no evidence that the tendency to assess more severe sanctions on foreign firms is moderated by institutions that ostensibly encourage more technocratic or cosmopolitan approaches to regulation. Indeed, participation in global regulatory networks is associated with an increase in foreign bias.

Together, these empirical contributions point to the need to develop more nuanced theories about the relationship between extraterritorial enforcement and effective global governance. The dominant view within the geo-economics literature is that foreign corporate

prosecutions are a tool whose effectiveness depends on market power. For this reason, the analysis has mainly centered on the extraterritorial enforcement of large jurisdictions such as the United States, European Union or China. The findings in this paper point to the more diffuse and reciprocal nature of domestic prosecutions of foreign corporations. What may have started out as asymmetrical unilateral enforcement predominated by large jurisdictions such as the United States has evolved into a more symmetrical pattern of global enforcement characterized by large and small jurisdictions alike prosecuting multinational corporations.

The presence of systematic bias in international cartel enforcement, however, challenges liberal institutionalist theory. It suggests that the cosmopolitan socialization processes inculcated through international networks do not in fact delink territorial concerns from regulatory enforcement choices. And it shows that technocratic institutional designs such as independent regulatory agencies and judicial review will not necessarily guard against economic patriotism. If such biases can exist in an area of policy characterized by a high degree of international norms, cooperative mechanisms, and technocratic decision-making, then we can expect such bias to be even more pronounced in other policy areas, which are less mediated by such institutions and closer to the core military and economic concerns of state actors.

At the same time, the presence of bias does not, in and of itself, mean that foreign corporate prosecutions cannot still play an important role in holding global capitalist actors accountable to common regulatory norms. Insofar as we believe that regulators engage in underenforcement and many multinational corporations are not held accountable for violating regulatory rules, then foreign corporate prosecutions can help reduce regulatory arbitrage and address global regulatory gaps. By providing political incentives for regulators to investigate and sanction multinational corporations that might otherwise not face regulatory scrutiny, economic patriotism might even be helpful for enforcing regulatory rules. If based on shared

global norms and reciprocally applied, territorial politics could, in this way, be viewed as providing a partial antidote to the lack of effective enforcement mechanisms at the international level.

The rest of the paper is structured as follows. The next two sections outline the theoretical framework that is used to analyze the potential role of economic patriotism in regulatory enforcement and the institutions that may constrain it. A fourth section explains why international cartel enforcement is an appropriate policy area in which to examine globalized regulatory enforcement. A fifth section presents the empirical analysis. A final section discusses some implications of these findings for the political economy of law enforcement and concludes.

2.0 Foreign Corporate Prosecutions as Economic Lawfare

The literature on economic nationalism provides a helpful starting point for developing a theoretical framework to understand the politics of foreign corporate prosecutions. Building on work in classical political economy that emphasizes the role of the nation state in the development of capitalism (Gerschenkron, 1962; List, 1856; Polanyi, 1944; Shonfield, 1965), scholars contend that markets, in the present as in the past, remain nationally-mediated institutions that cannot be separated from the political communities that create them. Consequently, even in the current moment, when economic liberalization and regulatory reform have placed new constraints on the state's policy autonomy to direct economic and industrial development (Berger, 2000), states still face the need to "negotiate compromises between abstract economic objectives and territorially bound political obligations" (Clift & Woll, 2012, p. 308).

One way they can do this is by using the process of economic liberalization itself, as well as the new regulatory policy instruments created to manage it, in ways that "discriminate

in favour of particular social groups, firms or sectors understood by the decision-makers as insiders because of their territorial status (Ibid).” Another way is to ‘weaponize the interdependence’ that results from economic globalization, by using the state’s control over central nodes of commerce to extract information from and impose costs on private corporate actors in line with strategic goals (Farrell and Newman 2019). This is often achieved through what Woll (2023) terms “economic lawfare,” defined as “the use of legal instruments in order to gain strategic advantage in interstate conflict” (23).[3] The contemporary political context means that instruments of economic patriotism or economic lawfare are often more ‘liberal,’ (Bulfone, 2020a) ‘supranational’ (Rosamond, 2012), ‘hidden’ (Block, 2008), and ‘indirect’ (Thatcher, 2014) than the conservative forms of protectionism employed in previous eras. But nevertheless, state actors retain a variety of tools and policies that can be used to promote the strategic military and economic interests of the state as well as the interests of particular firms and sectors within increasingly open and integrated regional and global markets.

Foreign corporate prosecutions, with important exceptions (Kaczmarek & Newman, 2011; Woll, 2023), have not been a major focus of economic lawfare and economic patriotism studies (Putnam, 2009, p. 469). However, there are strong reasons to think that enforcement, and in particular foreign corporate prosecutions, could be deployed by states in ways to gain the upper hand in interstate conflicts or to benefit territorially defined interests, whether these be security or economic. Contemporary market regulation may now be mediated by independent regulatory institutions, global epistemic communities, and technocratic discourse that each, in their own way, militate against the protectionist policies of previous eras, but regulators continue to enjoy enforcement discretion, defined as independent decision-making within certain bounds (Thatcher & Sweet, 2002). This

[3] Woll’s definition shares some similarity to Dunlap (2008) and Kittrie (2016) who examine the use of the law as a substitute for military action.

discretion stems from the fact that most laws require prosecutors or regulators to allocate limited investigative and enforcement resources between a range of legal mandates (Zacka, 2018). As important, they must determine how specific cases should be treated and resolved when they do find evidence of regulatory violations. As a result, even in policy areas characterized by high levels of technocratic sophistication and transnational mediation, regulators retain the ability to "block, alter, modify, falsify, distort, or eliminate actions prescribed by law" (Dewey, Woll, & Ronconi, 2021, p. 6).

One result of enforcement discretion is pervasive underenforcement, since governments can never fulfill the Weberian expectation that all violations of the law will be met with "physical or psychological coercion" applied by state officials (Weber 1978, 34). Considering that economic globalization has not eliminated and in some ways reinforced the ties between domestic firms and nationally-organized political communities (Doremus, Keller, Pauly, & Reich, 1999), it is reasonable to expect that enforcement discretion could be deployed in ways that either benefit domestic firms or exacts higher regulatory costs on foreign firms. This could take the form of *forbearance*, or "intentional and revocable government leniency toward violations of the law" (Holland, 2016, p. 233). Alternatively, domestic firms might simply be given better deals in deferred prosecution agreements or regulatory sanctions recommendations (B. L. Garrett, 2011; Woll, 2023).

A second way through which discretion could be used to achieve geopolitical and geo-economic goals is through *selective enforcement*, where the state "target[s] certain social groups rather than others, according to extralegal criteria" (Dewey at al. 2021: 11). Globalized regulatory enforcement offers governments a rare chance to intervene directly in the affairs of foreign corporations without running afoul of international agreements and liberal norms or having to go through other governments. In many areas of regulation, this includes companies within sectors such as information technology, energy, or raw materials

which are strategically important to governments. Enforcement discretion means that governments can focus their enforcement resources on foreign companies whose activity directly implicates military or economic goals, or which represent competition threats to important domestic market players. Kaczmarek and Newman (2011), for instance, have shown how selective extraterritorial enforcement by powerful states can be used as a tool to push dependent countries to adopt a favored regulatory approach. In a similar vein, Emmenegger has explored how the US DOJ's enforcement discretion was used to prosecute hundreds of Swiss firms and thereby push the Swiss government to adopt major policy changes (Eggenberger & Emmenegger, 2015; Emmenegger, 2017).

Scholars note a range of territorially-based public and private sector interests that might shape foreign corporate prosecutions. IR scholars often view enforcement actions as being shaped by core state interests, especially military and security goals. In their respective works on lawfare, Dunlap Jr (2008) and Kittrie (2016) focus almost entirely on military and security concerns, defining lawfare parsimoniously as a substitute for military action. For international political economists, a much wider range of public and private pressures other than core state interests can shape regulatory policy and its enforcement. Although often focused on terrorism and other security concerns, asymmetrical interdependency theories can be used to account for both economic and security goals, which benefit both public and private interests (Farrell & Newman, 2019). For Woll (2023), these include incentives built into a regulator's career path which might lead them to pursue large cases against foreign companies, differences in the political connections between foreign and domestic firms and policymakers which might result in biased treatment; differences in the ability of regulators to sanction a large company without facing political punishment; and differences in the resources that foreign and domestic firms devote to corporate lobbying (74-77).

The influence of economic patriotism in transnational regulatory enforcement is often viewed as a normatively problematic development. Whether it takes the form of forbearance or selective enforcement, or is driven by public or private pressures, the result is still home bias, or a difference in the treatment of foreign firms for reasons that go beyond the case at hand. Insofar as these biased outcomes are perceived as discriminatory, then this undermines the legitimacy of transnational enforcement actions. Moreover, because power is not evenly distributed in the world, and transnational enforcement depends on control over large markets and key financial resources, foreign corporate prosecutions are often seen as an instrument of coercion that powerful countries can wield over less powerful ones. In her book on negotiated corporate justice, Woll (2023) concludes that foreign corporate prosecutions have been used "to constrain foreign actors and push American interests, making prosecutors the wheels that turn the machinery of American hegemony." Eggenberger and Emmenegger (2015) highlight uneven enforcement as the dark side of foreign corporate prosecutions, noting that it "allows powerful states to obtain competitive advantages and to force rules upon others, while at the same time avoiding following those rules themselves" (107). From this vantage, foreign corporate prosecutions are if not an instrument of U.S. imperialism, a tool that provides unfair advantages to corporations based in powerful jurisdictions and which reinforces inter-state power inequalities within the international system.

3.0 Foreign Corporate Prosecutions as Facilitating Effective Global Governance

Liberal institutionalists provide a more benign account of the development of foreign corporate prosecutions. For Slaughter (2004, 2009), transnational enforcement is a necessary response to the decline of Westphalian sovereignty and the mismatch between global regulatory problems and a lack of effective global enforcement tools. In such a world, the ability to govern effectively and address global problems requires transnational systems of

cooperation and enforcement. Although acknowledging that transnational networks and enforcement can never be fully divorced from power politics, she views such institutions as engines of improved global regulatory cooperation, learning and capacity building.

Slaughter makes the strongest normative case for transnational governance, but she is far from the only scholar to view transnational regulatory networks and extraterritorial enforcement as potentially playing a constructive governance role. In a series of studies on the globalization of regulation, Büthe emphasizes the many ways that transnational regulation and enforcement can complement economic liberalization and global governance (Büthe, 2015, 2019; Büthe & Mattli, 2013). Pointing to instances of cooperation in transnational enforcement as well as examples of 'middle income' countries acting as rule-makers as well as rule-takers, he rejects the notion that regulatory globalization is either inherently conflictual or fundamentally skewed toward the interests of dominant powers such as the United States (Cho & Büthe, 2021; Lavenex, Serrano, & Büthe, 2021). Many legal scholars come to similar conclusions. In a study of transnational networks, Raustiala (2002), largely concurs. Even if regulation is dominated by the United States, transnational enforcement can still "perform a gap-filling role: where liberal international solutions are politically or economically precluded, TGNs provide an alternative approach to cooperation."

Building on these perspectives, we can expect foreign corporate prosecutions to be most effective as instruments of global governance when combined with two sets of institutions. First, there is the possibility that the internationalization of public policy through transnational regulatory networks may moderate economic patriotism by leading regulators to develop a more cosmopolitan understanding of state interests and a greater commitment to technocratic approaches to enforcement. Second, there are reasons to expect that the organization of regulatory policy through technocratic institutions at the domestic level, such

as the establishment of independent regulatory agencies, or the expansion of the role of courts in regulatory processes, will make it more difficult to show favoritism to domestic firms.

3.1 Transnational Epistemic Communities and Regulatory Networks

Over the last few decades, public policy communities have become increasingly organized on the transnational and global levels. Well-defined "epistemic communities," or transnational networks of knowledge-based experts who share common sets of normative and causal beliefs about a particular set of policy problems, have been established within many policy areas (Djelic & Sahlin-Andersson, 2006; Haas, 1992). These epistemic communities have often developed through and alongside transnational regulatory networks of government agencies that use a combination of information sharing, standard setting and ongoing coordination to encourage the development of common approaches to public policy challenges (Levi-Faur, 2005, 2011; Slaughter, 2001, 2002; Verdier, 2009). Although the effectiveness and accountability of these communities and networks is debated (Slaughter & Zaring, 2006; Verdier, 2009), there is general agreement that these developments have altered the politics of public policymaking by creating a new wedge between agencies and their political principals (Thatcher, 2007).

As Haas (1992) has emphasized, transnational epistemic communities and networks can sometimes lead domestic policymakers to redefine the "self-interests of a state or a faction within it" (15). One important aspect of this redefinition is a shift from parochial to more cosmopolitan understandings of state interests. This is not only because the interconnected and transnational nature of many policy problems are more clearly seen within international fora, but also because transnational epistemic communities encourage the development of "outward policy outcomes that benefit society beyond the nation" (Cross, 2013, p. 157). Even when extraterritorial enforcement entails clashes between governments,

as has frequently occurred in the context of US-EU relations, the presence of networks can lead such conflict to be productive, and cooperation enhancing, if it generates new information, facilitates learning and capacity building and addresses regulatory blind spots at home (Slaughter 2004).

In the context of globalized regulatory enforcement, the internationalization of regulatory policymaking should temper economic patriotism. Membership in transnational regulatory networks should lead regulators to conceive of their mission in cosmopolitan rather than parochial terms. It should also encourage the adoption of technocratic modes of regulatory enforcement that discourage political criteria from shaping outcomes. Both of these influences, in turn, should lead regulators, in their enforcement of regulatory rules, to be less likely to differentiate between foreign and domestic firms.

3.2 Independent Regulatory Agencies

Even when regulators remain interested in using their enforcement discretion to advantage territorially defined interests, they may not always have the means. Scholars studying the rise of the 'regulatory state' have noted how shifts in the organization of regulatory institutions since the 1980's has led to more formalized and technocratic policymaking processes (Majone, 1997; Thatcher, 2002; Thatcher & Sweet, 2002). By establishing new barriers to political interference in enforcement decisions, independent regulatory agencies have led regulatory decision making to become more professionalized, formalized and transparent (Gilardi, 2005; Gilardi, Jordana, & Levi-Faur, 2006; Thatcher, 2002). Although intervention always remains possible, there is evidence that, in many contexts, independent regulatory agencies operate at arm's length from political principals (Thatcher, 2002). By establishing new barriers to political interference in enforcement decisions, independent regulatory agencies may therefore reduce the channels through which

mercantilist concerns shape globalized regulatory enforcement. Combined with the routine nature of many regulatory enforcement decisions, with regulators often considering hundreds if not thousands of investigations, independent regulatory agencies may render geoeconomics an irrelevant factor in the vast majority of cases.

3.3 Judicial Review

Independent courts could provide another institutional constraint on economic patriotism in globalized regulatory enforcement. Although courts have not been a major focus of political economy studies of the regulatory state, scholars of the law and regulation have long noted the importance of courts in regulatory policymaking and implementation (Kelemen, 2011; Kelemen & Sibbitt, 2004; Majone, 1994). Aydin and Büthe (2016), for instance, conclude that independent courts and strong rule of law are even more determinant determinants of regulatory quality and effectiveness than the existence of independent regulatory agencies (29-30).

Building on these perspectives, we can see independent judicial review as an institutional factor that should constrain economic patriotism in regulatory enforcement. A core principle in 'rule of law' discourse is that all persons, including corporate persons, should be treated equally under the law, that similar cases should be treated similarly, and that fines should be proportionate to the economic or social harm caused by a violation (Sunstein, 1989; Tobler, 1999). Although judicial review has proven to be a mostly ineffective device for addressing the problem of non-enforcement (Sarat & Clarke, 2008), judges are better positioned to ensure that, when companies are sanctioned, penalties are consistently applied. For instance, empirical studies of judicial review in competition decisions suggest that courts often use their review authority to ensure that monetary penalties conform with established fining guidelines (Geradin & Henry, 2005; Paemen &

Blondeel, 2017). It is therefore reasonable to expect that juridification, or the increasing involvement of courts in regulatory policymaking and enforcement (Ginsburg, 2008; Shapiro & Sweet, 2002), will also moderate economic patriotism in globalized regulatory enforcement.

4.0 Logic of Case Selection

International cartel enforcement provides an ideal case in which to empirically examine the politics of foreign corporate prosecutions. The case selection is motivated by both theoretical and practical considerations. From a Bayesian perspective, cartel enforcement can be understood as a "crucial case" which can be used to assess the extent of economic patriotism in regulatory enforcement (Eckstein, 1975; Gerring, 2006, 2007). Cartel enforcement is widely seen as an area that is no longer shaped by economic nationalism, and which is governed by both technocratic criteria and well developed international norms (Bradford et al., 2019). Consequently, if I observe economic patriotism in cartel enforcement, where the theory suggests it is "least likely" to emerge, this finding would increase confidence in the economic patriotism thesis (Levy, 2008, p. 12). In particular, it would increase the probability that economic patriotism would be observed in regulatory enforcement within 'more likely' sectors—such as technology policy, finance, or energy—which impinge more directly on national security and economic interests.

International cartel enforcement also provides a rare opportunity to rigorously compare the treatment of similarly situated domestic and foreign firms because of several distinctive features of the organization of cartel enforcement. First, international cartel enforcement is both diffuse and frequent. 74 jurisdictions have sanctioned more than 5,000 firms for cartel violations since 1990. This makes it possible to employ quantitative techniques to assess broader patterns. Second, in response to violations of cartel rules,

competition regulators usually assess monetary penalties on companies, which can be adjusted for the size and gravity of cartel violations (Cohen, 1996; Cohen & Scheffman, 1989; Wils, 2006). This makes it possible to systematically compare how regulators treat foreign and domestic firms in response to regulatory violations that generate similar levels of estimated harm. Third, most cartel prosecutions involve multiple firms that were members of the same cartel. Where a cartel includes both foreign and domestic members, it is therefore possible to compare the differences in how these firms are sanctioned within the context of the same investigation and cartel conduct. Using available firm-level information, I can additionally control for other relevant elements that might lead regulators to treat different firms differently such as firm size.

Finally, a study of international cartel enforcement also benefits from extensive comparative data. A team of researchers at Columbia Law School has recently compiled extensive information about competition laws and institutions in more than 130 countries (Bradford et al., 2019). As part of this project, they have also developed new measures on the stringency of cartel rules, the independence of regulatory institutions, and the quality of judicial review. The availability of these indicators makes it possible to examine the development of global norms and to assess whether differences in law and institutional design systematically affect the comparative treatment of foreign and domestic firms.

5.0 Empirical Analysis

To empirically distinguish between the structuralist and liberal institutionalist perspective, I expand upon a typology developed by Woll (2023). I focus on evaluating three dimensions of transnational regulation that are helpful for empirically distinguishing between foreign corporate prosecutions that reflect economic lawfare and foreign corporate prosecutions that complement multilateral governance. First, I examine to what extent the

norms being enforced at the domestic level are shared globally. If foreign corporate prosecutions are not based on shared global norms, then such actions are better understood as instantiations of economic statecraft. Second, I consider the extent to which the broader pattern of enforcement is symmetrical or asymmetrical. If only a small number of large jurisdictions are enforcing global rules, then it is harder to make the case that such practices are reinforcing global cooperation rather than national prerogatives. Finally, I evaluate whether there is evidence of systematic bias in enforcement actions, a question that has been explored in previous studies with mixed results. The greater extent to which the rules are applied evenly across violators, the more confidence we can have that such practices are not driven primarily by economic patriotism or economic lawfare.

The empirical analysis draws from several different data sources. The Private International Cartels (PIC) Data Set is the primary source.[4] The largest collection of anti-cartel enforcement actions involving international cartels, PIC has been used by both academics and policymakers. In 2020, the dataset was purchased by the OECD, where it will be maintained and updated for the foreseeable future. The dataset includes information about 1,304 cartel investigations, involving 11,526 companies that were investigated for cartel violations from 1990 to 2019. For around half of the companies that were sanctioned, the database includes extensive company and cartel-level information on a wide range of characteristics including industry sector, the legal domicile of companies, fine totals, cartel-affected commerce, and estimated consumer overcharge. This data makes it possible to both generate comparative estimates of fine severity while also controlling for industry- and cartel-level characteristics.

Unfortunately, the data does not include information on company size. To address this deficit, I matched the PIC database with Bureau van Dijk's flagship company database Orbis,

[4] The dataset is publicly available at < https://purr.purdue.edu/publications/2732/about?v=2>.

which includes information on more than 400 million companies, drawn from more than 170 different data sources. Among the most consistently reported measures in the database are three that can be used as an approximation of company size. The most widely available measure is Orbis' four-part classification of company size: very large, large, medium-sized, and small. I complement this with two less widely available but more precise measures: (1) company turnover in USD; and (2) employee totals. The full matching protocol can be found in the Appendix.[5]

The line between domestic and extraterritorial enforcement has become increasingly blurred in many regulatory arenas as more corporations establish foreign subsidiaries and engage in foreign direct investment. Consequently, rather than investigate extraterritorial enforcement, I examine the broader category of foreign corporate prosecutions, or enforcement actions involving foreign firms. To determine domicile status, I create a variable that indicates whether the sanctioned corporation is legally domiciled in a different jurisdiction from the regulator doing the sanctioning. To identify which cartel sanctions are applied on domestic versus foreign companies, I use information included in the dataset about where a company is legally incorporated. Since studies have shown that nation states retain close links to parent companies (Doremus et al., 1999), I use the parent company, rather than the subsidiary, to determine domicile status. However, in the online appendix, I also report all results using the domicile status of the subsidiary. A company is considered to be foreign if a company's legal domicile is different than the regulator taking the leading role in the case. In joint cases, I assess the sanction enacted by each regulator separately;

[5] To match this company-level information with the companies in the PIC database, a research assistant has developed a fuzzy matching protocol that approximates the best matches. Each company name was matched with the company names and country headquarters in the Orbis database. Each match was then investigated individually, identifying the matches that required further investigation. Where there was some ambiguity about the match, often due to the registration of multiple companies with similar names in the same country, the case was examined more thoroughly.

however, I include a dummy variable for whether the case is joint since this can be viewed as an indicator of cooperation.

4.1 Shared Global Norms

I begin the assessment by examining whether shared global norms exist in domestic cartel laws. During much of the 20th century, jurisdictions established wildly different approaches to the regulation of cartel activity. A small number of countries such as Australia and New Zealand adopted the hard-lined prohibition approach found in the U.S. Sherman Act. However, the vast majority of countries adopted laws and regulatory approaches that took more ambivalent positions to cartel conduct and horizontal coordination. In many western European countries, including Germany, France, the Netherlands, and Switzerland, cartelization was even permitted or explicitly legalized (Schröter, 1996).

The situation has rapidly changed since the 1980's. The last three decades have been marked by major international initiatives to facilitate ongoing convergence of cartel rules across jurisdictions. In the face of a number of a number of high-profile transatlantic regulatory disputes, the International Competition Network (ICN) was established as a multi-lateral forum designed to foster more effective, better coordinated, and more harmonized competition systems around the world (Damro, 2006). The ICN is perceived as making significant progress in both reducing international regulatory disputes and developing and disseminating common policies and practices across its membership (Djelic & Kleiner, 2006; Hollman & Kovacic, 2011). Close observers of the International Competition Network, for instance, have noted that the ongoing interaction, cooperation, and information sharing facilitated by institutionalized exchange encourages regulators to "focus on shared agendas instead of more narrowly defined national interests" (Hollman & Kovacic, 2011, p. 286).

Aydin (2010) has similarly concluded that the socialization process inculcated by the ICN facilitate convergence in policies and norms.

In the wake of these efforts, there are clear indicators of policy diffusion. In 1980, just 18 jurisdictions had adopted strong rules against cartels. In 2010, 132 jurisdictions, including all OECD countries and EU member states, had competition laws in place that covered horizontal cartels (Bradford et al. 2018). Anu Bradford and her research team have developed fine-grained measures of the stringency of competition rules over time. In their analysis of cartel law stringency, they find that since 1990, anti-cartel rules have both become markedly stricter, with the average stringency nearly quadrupling in just two decades (Bradford 2019). Of the 131 jurisdictions that they code, nearly all of them include prohibitions on price fixing, prohibitions on market sharing and prohibitions on output restraints.[6] An anti-cartel approach can even be seen in jurisdictions such as Switzerland or Japan which until recently were seen as having weak cartel enforcement systems and political economies characterized by significant price fixing and output restrictions among competing firms. Although important differences in law and policy continue to be observed in some areas of competition law (Foster, 2021), most observers agree that cartel rules are now among the most similar across regulatory jurisdictions (Aydin & Büthe, 2016; Gerber, 2010).

The convergence trend can also be seen in the organization of competition policy enforcement processes. Most countries have now established independent competition agencies that empower technocrats with significant control over enforcement decisions (Alemani, Klein, Koske, Vitale, & Wanner, 2016; Gilardi et al., 2006; Jordana, Levi-Faur, & i Marín, 2011). Alongside these reforms, many jurisdictions have also strengthened the role of courts in reviewing competition law decisions (OECD, 2011). Close observers have also

[6] 128 of 131 jurisdictions include bans on price fixing; 122 of 131 prohibit market sharing; and 125 of 131 prohibit output restraints.

identified increasing signs of cooperation, as evidenced by a growing number of bilateral cooperation agreements (Aydin & Büthe, 2016) and the inclusion of competition provisions in free trade agreements (Bradford & Buthe, 2015).

All in all, national cartel laws appear to be characterized by shared global norms. The convergence of substantive provisions in cartel provisions, the growth in transnational cooperation, and the adoption of similar regulatory forms and technologies means that when regulators enforce their domestic laws on multinational corporations, the norms being enforced are, in all likelihood, also institutionalized in the company's home jurisdiction.

4.2 Reciprocity of Enforcement

The second criterion relates to the symmetry of the enforcement pattern: the extent to which foreign prosecutions are used equally and proportionally across different jurisdictions. For structuralists, global enforcement actions are viewed as a tool that is primarily if not exclusively used by states that have large markets or direct control over key infrastructures in the global economy. Thus, the expectation is that enforcement patterns will be lopsided, with the largest jurisdictions enacting the most cases, and with market power serving as a predictor of frequency (Farrell & Newman, 2019). Liberal institutionalists, by contrast, view transnational regulation as more reciprocal and symmetrical. While perhaps pioneered by large jurisdictions, the development of thick international regulatory networks and ongoing processes of learning is seen as opening up transnational enforcement to a range of regulatory actors (Cho & Büthe, 2021; Lavenex et al., 2021).

One way to assess the pattern is to look at the law in books. In total 83 of 126 countries with competition laws include an extraterritorial provision in their competition

law.[7] Additionally, other jurisdictions may have developed this provision through other means such as rulemaking, jurisprudence, or even informal guidelines. Considering that the principle of extraterritoriality, both in its effects-based and citizenship-based conceptualizations, was developed by U.S. courts and regulators, it is remarkable to see similar doctrines now inscribed in two thirds of regulatory jurisdictions. At the very least, it suggests that a growing number of countries consider extra-territorial enforcement to be one of their regulatory competencies.

<Figure 1 about here>

We can also gain insight by examining the enforcement pattern. Figure 1 reports the three-year moving average for the number of cartel sanctions against foreign domiciled firms in the United States and other jurisdictions from 1990 to 2016. Over this period, the number of sanctions against foreign firms has steadily increased, moving from a few dozen per year in the early 1990's, to an average of several hundred each year throughout the 21st century. The longitudinal data shows that enforcement is no longer limited to large jurisdictions such as the United States. In fact, jurisdictions outside of the United States assessed a greater number of cartel sanctions on foreign countries—nearly three times more overall. As economic globalization has intensified, and more foreign companies have become involved in domestic markets, foreign corporate prosecutions have proliferated. This trend can be seen in both large countries such as Japan and Germany as well as smaller jurisdictions such as Chile, Latvia, and Belgium. Indeed, of the 74 jurisdictions included in the PIC database, all

[7] For instance, Bosnia Herzegovina's law states that competition rules "apply to all economic activities of [foreign companies], if their actions have a substantial effect on the market of Bosnia and Herzegovina..." (Article 2 of Bosnia-Herzegovina Act on Competition of March, 2005, cited in Bradford et al. CCL Codebook).

but three pursued enforcement actions against *both* foreign and domestic firms. The remaining three—Namibia, Nigeria and Kazakhstan—*only* pursued major enforcement actions against foreign-domiciled companies.

Table 1 reports the average and median penalties assessed on foreign and domestic companies in jurisdictions. Fine totals are reported in 2015 US dollars. Over the period 1990-2019, regulators sanctioned at least 1,385 foreign firms for cartel violations. American regulators were responsible for many of the largest penalties, assessing $7.92B of fines on 282 foreign firms over the period. However, non-US jurisdictions pursued an even greater number of foreign firms, fining 1,103 foreign corporations $18.10B. And the percentage of cases being initiated by non-OECD countries has trebled, moving from around 5% of cases before 2010, to 15% of cases finalized between 2010-2019.

<Table 1 about here>

All in all, the pattern suggests that foreign corporate prosecutions have become increasingly symmetrical. Every jurisdiction has pursued at least one case against a foreign-domiciled corporation. In some jurisdictions, nearly all enforcement actions involve foreign-based multi-national companies. By no means does such a pattern imply that the problems of asymmetrical power have entirely disappeared. The US and EU still pursue an outsized number of cases. But with a growing number of regimes now regularly prosecuting multinationals for violating cartel rules, the pattern does suggest that transnational enforcement is a diffuse and flexible tool that may not require the substantial market power implied in structuralist theories.

4.3 Systematic Discrimination

The final, and in many ways most difficult, category to assess is systematic discrimination. A number of scholars have sought to assess whether foreign firms receive more frequent and more severe penalties, finding that US regulators both disproportionately focus on foreign companies and assess significantly higher sanctions on them compared to domestic companies that commit similar violations (B. Garrett, 2014; B. L. Garrett, 2011; Verdier, 2020; Woll, 2023; Zarate, 2013). Examining the US DOJ's deferred prosecution agreements, Garrett (2011), for instance, finds that foreign firms received average fines that were on average 22 times larger than comparable domestic companies. Yet despite the presence of this systematic difference he is unable to conclude that foreign firms are treated differently than comparable domestic firms because "taken as a group, foreign firms are quite differently situated than domestic firms that are convicted" (1813). He argues that given resource constraints and the high costs of pursuing foreign investigations, the foreign firms sanctioned are likely to have committed more serious offenses or caused more harm to consumers than the domestic firms that were sanctioned. Thus, any difference in fine levels could simply reflect the fact that foreign firm conduct is more harmful or blameworthy.

To address the problem of selection bias, I leverage several distinct aspects of cartel enforcement. To compare the severity of enforcement across foreign and domestic firms, I analyze three separate measures. The first measure, *fines*, is the fine total, calculated in 2015 USD millions. The second measure, *commerce-adjusted fines*, reports the monetary penalty as a percentage of affected cartel-wide commerce. This allows me to assess the severity of the fine given differences in the size of economic activity affected by different cartel agreements. The third measure, *overcharge-adjusted fines*, reports the monetary penalty as a percentage of estimated consumer overcharge. This final measure gets closest to an estimate

of the economic harm caused by the cartel—at least according to standard measures used by neoclassical economists and many contemporary regulators.

I conduct a two-part empirical strategy. First, I examine the raw means and medians to get an approximation of differences. Second, I run more robust regression analyses that make it possible to control for a variety of relevant country-level, industry-level and company-level factors. Third, I run an analysis with cartel fixed effects, which makes it possible to estimate the severity of sanctions faced by foreign and domestic companies that were members of the same cartel and prosecuted by the same regulator. Finally, I assess whether institutional variables such as membership in a transnational regulatory network, independent regulatory agencies or judicial review moderate foreign bias.

4.3a Comparison of Means and Medians

I begin by assessing the averages. In raw monetary terms, foreign corporate penalties were slightly higher than domestic penalties. Foreign companies received a mean penalty of $18.79B, compared to $11.13B for domestic companies. A more substantial gap can be observed when we compare fine severity as a percentage of cartel-affected commerce and estimated consumer overcharge. Foreign companies received an average penalty equal to around 6.8% of affected commerce and 30.3% of estimated consumer overcharge. However, average domestic penalties were substantially lower: only 2.2% and 3.7%, respectively. As a first level of analysis, these figures suggest that foreign firms receive average penalties that are 200-700% more severe than similarly situated domestic firms.

4.3b Multi-Level Model Analysis

The reporting of country means and medians, while informative, only reveals so much about the overall empirical pattern. To start, a small number of extremely high penalty

amounts skew the penalty averages, leading the means of each measure to be significantly larger than the medians. A comparison of means also provides no information about whether the same regulators sanction foreign and domestic firms differently when they are part of the same cartel, whether these differences are conditioned by country- or industry-level factors, and whether foreign firms may receive higher penalties because of other attributes such as being larger. Nor can such totals account for unobserved changes over time that may have affected the longitudinal pattern of enforcement or differences in the underlying characteristics of firms or jurisdictions.

To conduct a more rigorous assessment of how regulators sanction foreign compared to domestic companies, I develop several quantitative regression models. In each model, I regress the binary indicator of a company's foreign domicile status onto the three fine measures described in the previous section: (1) a raw fine total in USD millions, (2) a commerce-adjusted fine measure that reports the fine as a percentage of a company's individual sales in terms of cartel-affected commerce, and (3) an overcharge-adjusted figure that reports the fine as a percentage of estimated consumer overcharge. I calculate each of these indicators using measures that can be found in the PIC dataset.

Such measures of course reflect only the companies that have been formally investigated and fined by regulators – not necessarily all of the companies that have committed violations, a problem long found in studies of enforcement. A more complete study of enforcement discretion would ideally study the informal decision-making stage when regulators hear about potential violations and decide whether or not to launch a formal investigation. Yet for our theoretical purposes, a focus only on discriminatory treatment within foreign actions does not constitute a fundamental problem since any forbearance in the pre-investigation stage is most likely to be shown to domestic companies that have privileged access to the political process. For this reason, the research design is biased against my

hypothesis; thus, any finding can be seen as reflecting a conservative estimate of foreign discrimination in regulatory enforcement.

The company-level data is hierarchically structured, with company penalties usually assessed as part of cartel-wide prosecutions by specific jurisdictions. Where individual observations are nested within larger units, standard procedure is to use multi-level models with random intercepts for each of the larger units of interest (Gelman, 2006). Multi-level models provide a way of taking into account the hierarchical nature of the data while still analyzing *both* between and within-jurisdiction variation (Bryan & Jenkins, 2013; Giesselmann & Schmidt-Catran, 2019). Since the data has a three-level nested structure, I initially run an OLS regression analysis with random intercepts for jurisdiction and cartel (Gelman, 2006). The inclusion of these intercepts makes it possible to assess the effect of foreign status on fine severity while considering the dependency relationships that exist between individual observations, particularly the fact that the sanctioned companies are part of particular cartels. A multi-level model also helps ensure that I do not underestimate standard errors, and therefore overstate the statistical significance of jurisdiction-level explanatory variables.

Since the dependent variable has a strongly positively skewed distribution, I log-transform all three dependent variables. By making the residuals more symmetrically distributed, log transformation makes regression analysis more statistically valid. To address unobserved changes over time, I include year dummies that signify the year that a company was sanctioned. 1990 serves as the baseline year. In order to assess jurisdiction-level determinants of sanctioning practices, I examine only cases where a company was sanctioned by a single jurisdiction. This means excluding around 15% of sanctions that resulted from joint investigations. Since fine amounts could be systematically affected by differences in the types of industries that are sanctioned between domestic and foreign firms, I include controls

for market type across six basic categories: raw material, industrial intermediate input, industrial capital good, generic final consumer good, differentiated final consumer good, and services. Differentiated final consumer goods serves as the baseline.

I also include a number of country-level controls. Fine severity is likely, in part, a function of the stringency of a country's competition system. To account for differences in competition law, I include a measure for the stringency of a jurisdiction's prohibition against anti-competitive agreements, developed by a team of researchers at Columbia University (Bradford et al., 2019). Economic size or circumstance may lead some jurisdictions to assess higher or more severe sanctions. Regulators may also differ in their capacity or willingness to take on the challenge of prosecuting foreign firms. Since economically larger and wealthier countries may have more capacity to pursue complex investigations of foreign cartels, I include a World Bank measure for the size of a country's GDP as well as its per capita income. Because foreign corporate prosecutions may depend on the degree to which foreign domiciled firms are active, I include a country's annual foreign direct investment as a percentage of GDP. I also include an indicator of inflation, since an increase in consumer prices may lead regulators to intensify international cartel enforcement. To account for the fact that members of the European Union are subject to the same competition law, I include a dummy variable indicating EU membership. To improve comparability, each of the country level variables have been rescaled to have a mean of zero and standard deviation of one.

In theory, a sanction of no fine could reflect regulatory forbearance, or "intentional and revocable government leniency toward violations of the law" (Holland, 2016, p. 233). However, for most countries, the existing data only reports cases which were formally pursued by regulators, not the total number of cases that regulators investigated. Even when a zero penalty is reported, the database does not distinguish between situations where companies received no penalty because the case ended in a consent decree that did not

involve fines, situations where the case was dismissed for other reasons, or situations where fine information was simply not reported. For these reasons, I have limited the analysis to sanctions that resulted in a fine greater than zero. However, to ensure that this exclusion does not systematically bias the estimations, I also run the regressions including zero penalties. These results, which do not substantially differ from the main models, are reported in an online appendix.

<Table 2 about here>

In Model 1, I analyze the effect of foreign firm status on fine severity across the three different measures. Table 2 reports the results. The initial observation that foreign firms receive higher penalties can also be found in models that account for underlying differences in cartel-level characteristics, panel-wide changes over time and the nested structure of the data. Across all three measures of penalty severity, foreign domicile status is strongly associated with higher penalties.

As can be seen in Figure 2, which reports the average marginal effect of key variables in Model 2 across the three fine severity measures, these effects are also substantively significant. The model predicts that, holding other variables at their means, foreign domiciled companies will receive fines that are 114% higher in raw dollar amounts, 116% higher in terms of affected commerce, and 153% higher as a percentage of estimated consumer charge.

<Figure 2 about here>

One may wonder whether this observed difference in foreign firms is related to firm or cartel attributes that have been omitted from the model. Of particular concern is the question of firm size, since regulators often use corporate turnover as an explicit criterion for

calculating monetary penalties as a way to foster deterrence.[8] While the figures for estimated cartel revenue and consumer overcharge account for some of these differences, they do not control for differences in company size. If foreign companies tend to also be the largest companies, and regulators do in fact systematically consider corporate size when making penalty determinations, then a foreign differential would be observed even if regulators were not discriminating against foreign companies.

A second concern relates to unobserved heterogeneity at the cartel level. Additionally, it remains possible that there are other unobserved differences across cartels that might explain differential treatment for reasons other than economic patriotism. While I have previously controlled for cartel-level differences in revenue and estimated overcharge, there are a range of other factors such as the specific type of cartel activity involved, and the breadth of products involved in cartel activities, or the duration of the cartel that could constitute a technocratic justification for penalizing certain cartels more severely. If foreign companies are more likely to be involved in more hard-core price fixing or long-term cartels, then this could help explain why they receive higher penalties.

In Models 2 and 3, I develop strategies to address these two concerns. To control for the effect of economic size, I include several company indicators including revenue, employee number, and Orbis' size categorization. To address unobserved heterogeneity in cartel behavior, I include a dummy variable for each cartel. This makes it possible to assess whether foreign firms are treated differently even when limiting the analysis to within-cartel and within-jurisdiction variation. Since both foreign and domestic companies are usually prosecuted as part of the same cartel investigation, this provides a hard test of the economic

[8] For instance, the EU uses corporate turnover as one criterion for setting penalties. See < https://competition-policy.ec.europa.eu/system/files/2021-01/factsheet_fines_en.pdf>.

patriotism thesis, assessing whether regulators punish foreign companies more severely than the domestic companies that are part of the same cartel.

<Table 2 about here>

Table 2 reports the results for Models 2 across the three measures for fine severity. Very large and large companies receive more severe penalties on average while small companies receive lower penalties. Companies with larger turnover also receive higher penalties. These results suggest that company size is a relevant factor when assessing penalties. At the same time, controlling for company size does not reduce the effect of foreign company status on penalty severity. Foreign companies continue to receive significantly more severe penalties even when accounting for differences in company size.

In Model 3, I include 1,528 cartel dummy variables to the model. This substantially reduces the scope of the analysis to variation in sanctions within the same cartel investigation. As can be seen in Table 3, foreign firm status continues to predict more severe penalties across each of our three measures of severity. This suggests that even when we limit the analysis to variation within the same cartel variations, foreign companies receive significantly higher sanctions. This relationship is robust across a number of different model specifications, including an examination of non-OECD countries, the exclusion of active regulators such as the US DOJ and European Commission, and an analysis of shorter periods of time.

<Table 3 about here>

In Models 4-6, I examine whether different institutions condition the treatment of foreign firms. Building on the theoretical framework outlined earlier in the paper, I consider whether three specific institutional arrangements limit or discourage economic patriotism in cartel enforcement. I am specifically interested in whether the effect of foreign domicile status changes across different institutional contexts. I run three separate analyses: (1) membership in the International Competition Network; (2) the independence of competition agencies; and (3) the strength of judicial review. In all of the models, I maintain cartel fixed effects as before.

To measure whether internationalization makes a difference, I use a measure for whether a country was part of the International Competition Network, which is provided in the Columbia University dataset. To measure the effect of regulatory independence on the treatment of foreign firms, I use another indicator produced by the Comparative Competition Law Database at Columbia Law School, which asks close observers to rate the independence of each country's competition system. The scale ranges from a "1," indicating that an "Agency is Not at all Independent," to a "5" indicating that an "Agency is Completely Independent." Finally, to measure the involvement of independent courts in regulatory proceedings, I use another expert indicator, which ranks the involvement of courts in a country's competition systems. Systems where "courts play an extensive role" are ranked a "5, "while systems where "courts play no role" are ranked a "1."

Table 3 reports the results for ICN membership (Model 4). As in the previous models, foreign firm status is associated with higher penalties across many of the models. However, once again the regression results provide little evidence that membership in the ICN, the strength of courts or the independence of regulatory agencies reduces foreign firm discrimination. In fact, across all three measures of fine severity, the interaction term between ICN membership and foreign firm status predicts a greater differential between foreign and

domestic firm penalties. This effect is robust to the exclusion of major jurisdictions such as the US and European Commission as well as cartel fixed effects. As a first level of analysis, this suggests that ICN membership is associated with a greater likelihood to discriminate against foreign firms.

To further investigate this relationship, I assess whether a longer membership within the ICN predicts a greater likelihood of discriminating against foreign firms. If countries join the ICN in order to gain greater capacity to regulate foreign companies, or if joining these communities facilitates such actions through best practice dissemination or greater awareness of the kinds of 'legitimate' and actionable regulatory tools that are available, then we would expect a longer membership in the ICN to be associated with more foreign discrimination. I include a variable that indicates how long a country had been a member of the ICN when it assessed its penalty. I then interact this variable with firm domicile status. Year fixed effects are included to account for unobserved changes over time. I also add a dummy variable that indicates whether the ICN existed, since it was not possible for countries to join before 2002. Each additional year of membership in the ICN predicts an even larger foreign firm differential. This effect holds when I include cartel fixed effects. Rather than reduce economic patriotism, the establishment of international fora to facilitate technocratic policymaking appears to have supported and facilitated it.

<Table 4 about here>

Table 4 reports the results when I analyze the conditional effect of independent regulatory agencies and judicial review. There is little indication that the differential treatment of foreign firms is lessened or conditioned by the degree to which decisions are scrutinized by courts. The interaction term for institutional design and foreign firm status is

not statistically significant in any of the main models. Although it is possible that different measures of court involvement would generate different results, available measures suggest that the quality of judicial review does not systematically lead to the less severe treatment of foreign firms.

The examination of the conditional effect of agencies on foreign discrimination produces more mixed results. In most of the main models, the interaction term is not significant. However, when I examine the effects when excluding the European Commission, which constitutes around 15% of the total cases, and has a unique supranational enforcement system, the interaction term is negatively associated with fine severity. This relationship is present across all three measures and is robust to the inclusion of cartel fixed effects. However, it disappears with the exclusion of other large and active jurisdictions such as the United States or when I assess agency independence using an alternative measure developed by the OECD.

3.0 Conclusion

Like all arenas of state power, regulatory policy and its enforcement is shaped by economic interests and political goals. Historically, protectionist concerns have shaped a range of economic policies, with tariffs and subsidies being only the most explicit examples. Although some scholars and commentators predicted that the state's use of economic policy to advance territorially-defined interests would wane in the neoliberal era, as states removed barriers to trade, reduced direct industrial subsidies and sought international regulatory harmonization, scholars have shown that economic liberalization and global integration has reconfigured rather than ended the geopolitical considerations that shape economic policy (Block, 2008; Bulfone, 2020b; Clift & Woll, 2012; Mazzucato, 2013; Thatcher, 2014; Volberding, 2020).

This paper has contributed to this literature by exploring the geopolitics and geoeconomics of foreign corporate prosecutions, or enforcement actions involving firms domiciled in foreign jurisdictions. Addressing a longstanding gap in the economic patriotism literature regarding transnational and extraterritorial regulatory enforcement, I have developed a theoretical framework that explains how and why regulators' extensive enforcement discretion can be used to confer advantage to territorial insiders and disadvantage territorial outsiders while staying within the confines of the rule of law and liberal international norms. I have then tested this theory by examining the pattern of international cartel enforcement, a least likely case for economic patriotism given the institutional organization of cartel enforcement through independent agencies, the prominent role of courts in reviewing enforcement decisions, and the high degree to which cartel enforcement practices are mediated by transnational regulatory networks and cooperation agreements.

I have found evidence that challenge certain aspects of both structuralist and liberal institutionalist perspectives on global enforcement. I have shown that foreign corporate prosecutions in the cartel field are both rooted in global norms and now commonly used by regulators around the world. This suggests that a regulator's ability to pursue cases with transnational implications may depend less on market power and be less constrained by large states than is sometimes suggested by economic lawfare scholars. At the same time, I have shown that foreign corporate prosecutions remain strongly tied to territorial politics and therefore may not be as unproblematic a tool of global governance sometimes suggested by legal cosmopolitans and liberal institutionalists. Utilizing an extensive dataset of international cartel enforcement which makes it possible to compare the severity of sanctions assessed on similarly situated foreign and domestic firms, I present strong evidence that foreign firms face systematic bias in enforcement actions. Moreover, I have found no evidence that the

institutional design of domestic regulatory systems or transnational regulatory networks moderate this foreign differential. Although technocratic enforcement institutions and international regulatory fora such as the ICN may have other benefits, such as strengthening regulatory professionalism or increasing enforcement capacity, they do not appear to moderate, and may even reinforce, the imposition of more severe sanctions on foreign firms.

The potential mechanisms leading to this bias are many and beyond the scope of this article. Politicians could place direct and indirect pressure on regulators to show forbearance to domestic companies or to selectively target foreign firms. Regulators could for their own reasons choose to focus on foreign firms, either because they believe they represent more of a threat to core state interests or because they see these cases as easier to win in court. Foreign firms could similarly be less knowledgeable of a domestic regulatory system and therefore less capable of successfully negotiating fine reductions. Whatever the specific mechanisms—which are likely to be many and vary across political systems—this paper has provided evidence that foreign and domestic firms are treated systematically differently. They face what management scholars have termed a “liability of foreignness,” which raises the cost of compliance with regulatory rules and reduces their competitiveness vis-à-vis domestic companies (Zaheer, 1995).

These findings have implications for both our theoretical understanding of the geopolitics of globalized regulatory enforcement as well as the potential contribution of foreign corporate prosecutions to global governance. One theme touched on in studies of the political economy of law enforcement is that regulatory enforcement entails exercising a degree of discretion (Dewey & Di Carlo, 2021; Dewey et al., 2021). Because regulators have limited resources and information, they can never fulfill the Weberian expectation that a law will be universally enforced across a given jurisdiction. Consequently, in determining where and how the law is partially applied, public officials must make choices about which

companies to investigate and how to sanction them when they are found to have violated the law. In the analysis of international cartel enforcement, I have shown that foreign corporate prosecutions provide regulators with an opportunity to pursue territorially defined interests. Although certainly not as explicit as a direct subsidy or as inflexible as a law that prevents foreign companies from entering a market, globalized regulatory enforcement can nevertheless serve as a distortionary intervention that significantly advantages certain firms over other ones. Such findings point to the need to better understand the politics of globalized regulatory enforcement even within areas of economic policy that are guided by explicitly liberal aims such as ensuring robust market competition (Büthe, 2019; Clift & Woll, 2012; Helleiner & Pickel, 2005; Levi-Faur, 1997).

Finally, this study raises important questions about the relationship between economic patriotism in global governance. Structuralists consistently criticize foreign corporate prosecutions as reinforcing international inequalities by advancing the interests of powerful jurisdictions over weaker ones. The U.S. in particular is often seen as using foreign corporate prosecutions to crack down on foreign-domiciled companies without subjecting its own companies to the same treatment, or facing equivalent actions from other jurisdictions. The findings of this study suggest that foreign corporate prosecutions, even if partially stemming from asymmetrical market and political power, can serve as a reciprocal tool that can be used by a variety of different jurisdictions. As seen in the case of cartels, the forces of economic patriotism can encourage higher overall regulatory enforcement against large multi-national companies as jurisdictions respond to transnational and extraterritorial enforcement with enforcement actions of their own. While no doubt still normatively problematic for legal cosmopolitans, such global enforcement may nonetheless help reduce regulatory arbitrage and contribute to the more effective enforcement of global economic rules.

It therefore may be more productive to think of economic patriotism and geo-economics as a feature rather than a bug of effective transnational enforcement. Precisely because it is politically easier for domestic regulators to investigate and fine foreign companies, they may be better positioned to bring multi-national corporations to justice. From this vantage, rather than seek to root out all bias in enforcement actions, it may be more fruitful to encourage the development of a more reciprocal and symmetrical patterns of enforcement. As more countries develop these capacities, the asymmetry of global enforcement will be reduced, addressing one (though admittedly not all) of the critiques of foreign corporate prosecutions. Regulatory enforcement might still be used to obtain competitive advantage or to pursue other strategic aims, but the presence of a more reciprocal and symmetrical pattern of enforcement would be a more equal system that could help ensure multinational corporations, regardless of domicile status, comply with common regulatory rules.

Appendix 1: Tables

Table 1: Summary Statistics

	N	Mean	Median
Penalties (Foreign)	1385	18.786	2.846
Penalties (Domestic)	3617	11.131	.313
Commerce-Adjusted (Foreign)	1157	6.803	.167
Commerce-Adjusted (Domestic)	3164	2.185	.009
Overcharge-Adjusted (Foreign)	407	30.313	2.243
Overcharge-Adjusted (Domestic)	1803	3.685	.053

Source: Author's Calculation using PIC Dataset.

Table 2, Determinants of Fine Severity

	Raw Penalty (1)		Commerce-Adjusted Penalty (% of Cartel-Commerce) (2)		Overcharge-Adjusted Penalty (% of Est. Overcharge) (3)	
	Model 1	Model 2	Model 1	Model 2	Model 1	Model 2
Foreign Firm	0.800^{***} (0.000)	0.909^{***} (0.000)	0.851^{***} (0.000)	0.951^{***} (0.000)	0.699^{***} (0.000)	1.022^{***} (0.000)
Generic Final Consumer	-0.408 (0.312)	-0.247 (0.588)	1.789^{**} (0.006)	1.827^{*} (0.011)	1.907 (0.059)	1.574 (0.149)
Industrial Intermediate	-0.0861 (0.771)	-0.139 (0.666)	0.416 (0.388)	0.535 (0.286)	0.403 (0.531)	0.347 (0.613)
Industrial Capital Good	-0.0361 (0.929)	-0.324 (0.463)	0.772 (0.265)	0.755 (0.287)	0.769 (0.397)	0.847 (0.403)
Raw Material	-0.743 (0.254)	-0.951 (0.165)	1.335 (0.171)	1.100 (0.268)	1.863 (0.158)	1.508 (0.241)
Services	-0.316 (0.262)	-0.329 (0.284)	-0.640 (0.165)	-0.596 (0.216)	-0.0461 (0.939)	-0.232 (0.720)
GDP Per Capita USD Thousands	-0.564^{**} (0.008)	-0.318 (0.135)	0.599^{*} (0.048)	0.638^{*} (0.049)	-0.449 (0.252)	-0.0310 (0.948)
FDI (% of GDP)	0.659^{**} (0.005)	0.916^{***} (0.000)	0.463 (0.066)	0.529^{*} (0.048)	0.145 (0.495)	0.207 (0.326)
Overall GDP	-0.172 (0.270)	0.102 (0.550)	0.0251 (0.920)	0.320 (0.316)	-0.0849 (0.753)	-0.306 (0.349)
Inflation Rate	0.630 (0.486)	0.630 (0.490)	2.208 (0.067)	2.336 (0.088)	3.330^{*} (0.012)	2.347 (0.112)
Cartel Law Stringency	1.306^{**} (0.002)	0.839^{*} (0.043)	0.301 (0.574)	-0.408 (0.484)	0.921^{*} (0.032)	-1.230^{*} (0.022)
Very Large Firm		0.896^{***} (0.000)		0.956^{***} (0.000)		1.192^{***} (0.000)
Large Firm		0.268^{**} (0.002)		0.409^{***} (0.000)		0.395^{**} (0.002)
Small Firm		-0.142 (0.057)		-0.0186 (0.820)		-0.0849 (0.470)
Employee number		0.000000641 (0.326)		0.000000997 (0.194)		-0.000000832 (0.411)
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes
Observations	5508	3568	4693	3189	2541	1730

p-values in parentheses
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 3, Determinants of Fine Severity, Cartel Fixed Effects and ICN Membership

	Raw Penalty (1)		Commerce-Adjusted Penalty (% of Cartel-Commerce) (2)		Overcharge-Adjusted Penalty (% of Est. Overcharge) (3)	
	Model 3	Model 4	Model 3	Model 4	Model 3	Model 4
Foreign Firm	0.775*** (0.000)	0.583*** (0.000)	0.841*** (0.000)	0.576*** (0.000)	0.740*** (0.000)	0.703*** (0.000)
Very Large Firm	0.768*** (0.000)	1.037*** (0.000)	0.907*** (0.000)	1.058*** (0.000)	1.064*** (0.000)	1.291*** (0.000)
Large Firm	0.244*** (0.001)	0.442*** (0.000)	0.370*** (0.000)	0.461*** (0.000)	0.391*** (0.000)	0.360** (0.003)
Small Firm	-0.148* (0.019)	-0.162* (0.033)	-0.00220 (0.975)	-0.155* (0.045)	-0.110 (0.274)	-0.0455 (0.682)
Employee number	-0.000000588 (0.256)	0.000000490 (0.537)	0.000000418 (0.520)	0.000000547 (0.501)	-0.00000178* (0.020)	-0.00000158 (0.103)
ICN Member		0.478 (0.648)		0.495 (0.637)		0.103 (0.914)
Foreign*ICN Member		0.481** (0.006)		0.503** (0.004)		0.419 (0.062)
Cartel Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes
Observations	4505	2782	3632	2735	2042	1650

p-values in parentheses
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

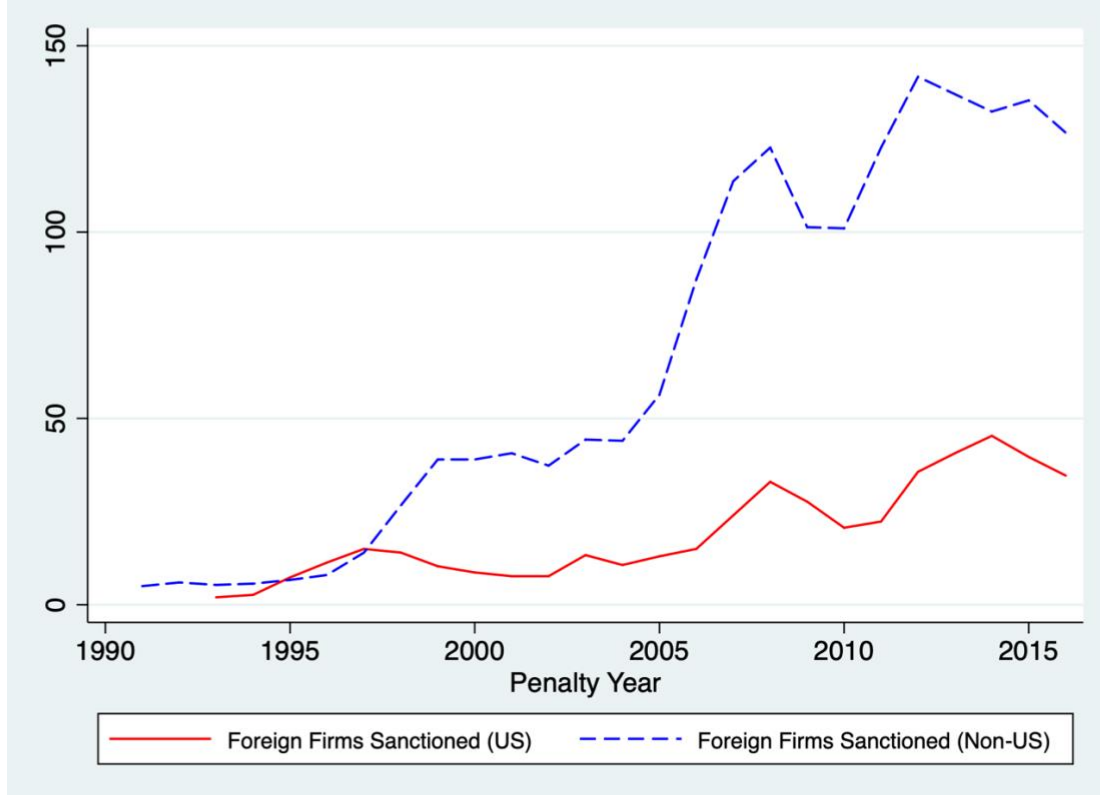
Table 4, Determinants of Fine Severity

	Raw Penalty		Commerce-Adjusted Penalty (% of Cartel-Commerce)		Overcharge-Adjusted Penalty (% of Est. Overcharge)	
	Model 5	Model 6	Model 5	Model 6	Model 5	Model 6
Foreign Firm	0.515 (0.243)	0.504 (0.075)	0.520 (0.271)	0.166 (0.603)	0.631 (0.529)	1.082 (0.103)
Agency Independence	0.968 (0.708)		1.044 (0.482)		6.159*** (0.000)	
Foreign Firm*Agency	0.0738 (0.486)		0.0664 (0.556)		0.0826 (0.721)	
Judicial Review		0.691 (0.051)		2.545*** (0.000)		0.599 (0.406)
Foreign Firm*Judicial Review		0.0817 (0.250)		0.161* (0.043)		-0.0230 (0.886)
Very Large Firm	0.873*** (0.000)	0.871*** (0.000)	0.965*** (0.000)	0.961*** (0.000)	1.263*** (0.000)	1.262*** (0.000)
Large Firm	0.280*** (0.001)	0.279*** (0.001)	0.361*** (0.000)	0.360*** (0.000)	0.494*** (0.000)	0.491*** (0.000)
Small Firm	0.0431 (0.572)	0.0370 (0.628)	0.164* (0.044)	0.156 (0.056)	0.0538 (0.631)	0.0533 (0.634)
Employee number	0.000000493 (0.410)	0.000000500 (0.403)	0.000000899 (0.175)	0.000000968 (0.145)	-0.000000851 (0.383)	-0.000000908 (0.358)
Cartel fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Observations	3642	3642	3188	3188	1756	1756

p-values in parentheses
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

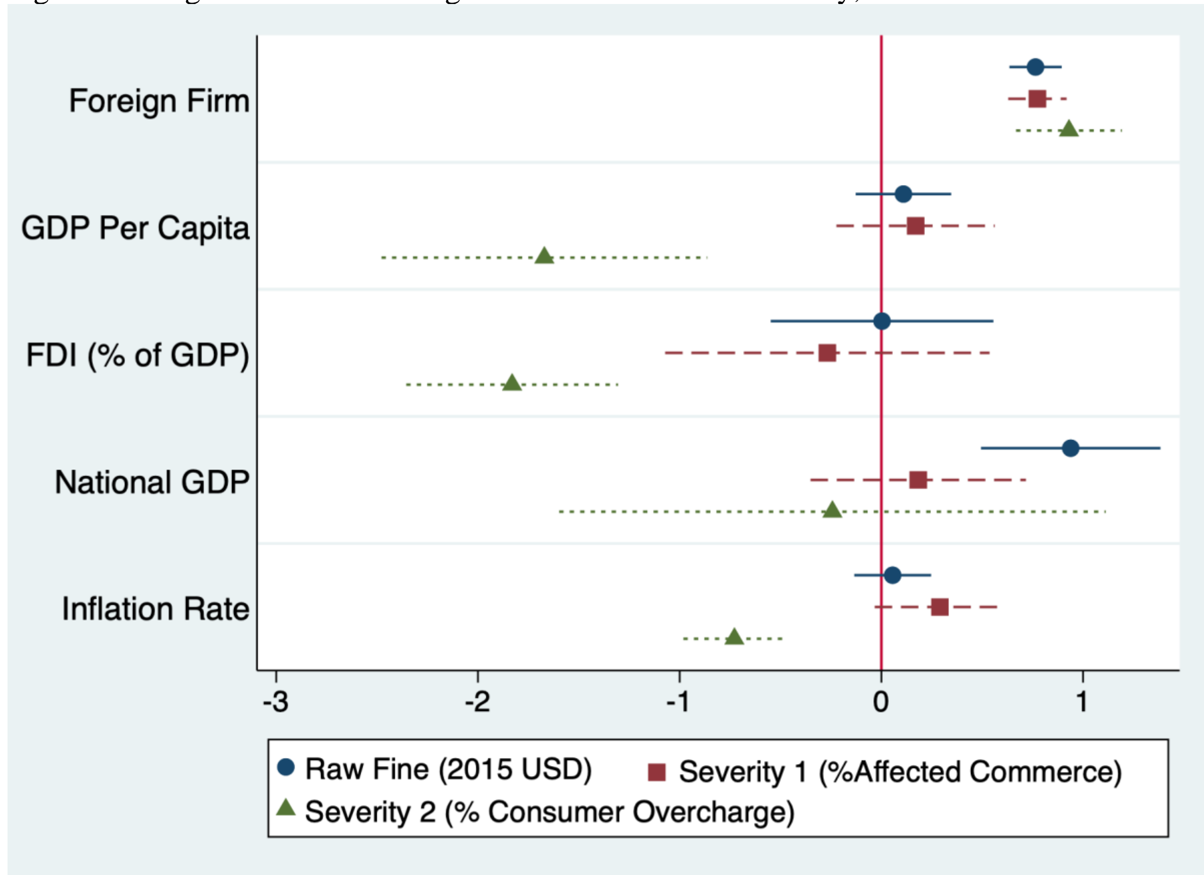
Figures:

Figure 1: Number of Annual Foreign Cartel Sanctions, 3-Year Moving Average, 1990-2016



Source: Author's Calculation using PIC Database.

Figure 2: Marginal Effect of Foreign Firm Status on Fine Severity, Model 2



Source: Author's Calculation using PIC Dataset.

Works Cited

Alemani, E., Klein, C., Koske, I., Vitale, C., & Wanner, I. (2016). New Indicators of Competition Law and Policy in 2013 for OECD and Non-OECD Countries. In F. Jenny & Y. Katsoulacos (Eds.), *Competition Law Enforcement in the BRICS and in Developing Countries* (pp. 59-102): Springer International Switzerland.

Aydin, U. (2010). The international competition network: cooperation and convergence in competition laws. *Rekabet Degisi (Competition Journal), 11*(3), 51-78.

Aydin, U., & Büthe, T. (2016). Competition law & policy in developing countries: explaining variations in outcomes; exploring possibilities and limits. *Law & Contemp. Probs., 79*, 1.

Baldwin, D. A. (2020). *Economic statecraft: New edition*: Princeton University Press.

Berger, S. (2000). Globalization and politics. *Annual Review of Political Science, 3*(1), 43-62.

Block, F. (2008). Swimming against the current: The rise of a hidden developmental state in the United States. *Politics & Society, 36*(2), 169-206.

Bradford, A., & Buthe, T. (2015). Competition policy and free trade: Antitrust provisions in PTAs.

Bradford, A., Chilton, A. S., Megaw, C., & Sokol, N. (2019). Competition law gone global: introducing the comparative competition law and enforcement datasets. *Journal of Empirical Legal Studies, 16*(2), 411-443.

Bryan, M. L., & Jenkins, S. P. (2013). Regression analysis of country effects using multilevel data: A cautionary tale. *European Sociological Review, 32*(1), 3–22.

Bulfone, F. (2020a). New forms of industrial policy in the age of regulation: A comparison of electricity and telecommunications in Italy and Spain. *Governance, 33*(1), 93-108.

Bulfone, F. (2020b). *The political economy of industrial policy in the European Union*. Retrieved from

Büthe, T. (2015). The Politics of Market Competition. *The Oxford handbook of the political economy of international trade*, 213.

Büthe, T. (2019). Competition law and policy as an emerging IPE issue. In *The Palgrave Handbook of Contemporary International Political Economy* (pp. 447-463): Springer.

Büthe, T., & Mattli, W. (2013). *The New Global Rulers: The Privatization of Regulation in the World Economy*: Princeton University Press.

Cho, M., & Büthe, T. (2021). From rule-taker to rule-promoting regulatory state: South Korea in the nearly global competition regime. *Regulation & Governance, 15*(3), 513-543.

Clift, B., & Woll, C. (2012). Economic patriotism: reinventing control over open markets. *Journal of European Public Policy, 19*(3), 307-323.

Cohen, M. A. (1996). Theories of punishment and empirical trends in corporate criminal sanctions. *Managerial and Decision Economics, 17*(4), 399-411.

Cohen, M. A., & Scheffman, D. T. (1989). The antitrust sentencing guideline: Is the punishment worth the costs. *Am. Crim. L. Rev., 27*, 331.

Cross, M. a. K. D. (2013). Rethinking epistemic communities twenty years later. *Review of international studies*, 137-160.

Damro, C. (2006). Transatlantic competition policy: domestic and international sources of EU-US cooperation. *European Journal of International Relations, 12*(2), 171-196.

Dewey, M., & Di Carlo, D. (2021). Governing through non-enforcement: Regulatory forbearance as industrial policy in advanced economies. *Regulation & Governance*.

Dewey, M., Woll, C., & Ronconi, L. (2021). *The Political Economy of Law Enforcement*. MaxPo Discussion Paper. Max Planck Sciences Po Center on Coping with Instability in Market Societies (MaxPo), Paris.

Djelic, M.-L., & Kleiner, T. (2006). The International Competition Network: Moving towards Transnational Governance. In M.-L. Djelic & K. Sahlin-Andersson (Eds.), *Transnational Governance: Institutional Dynamics of Regulation* (pp. 287-307).

Djelic, M.-L., & Sahlin-Andersson, K. (2006). *Transnational Governance: Institutional Dynamics of Regulation*: Cambridge University Press.

Doremus, P., Keller, W. W., Pauly, L. W., & Reich, S. (1999). *The myth of the global corporation*: Princeton University Press.

Dunlap Jr, C. J. (2008). Lawfare today: A perspective. *Yale J. Int'l Aff., 3*, 146.

Eckstein, H. (1975). Case Studies and Theory in Political Science. In F. Greenstein & N. Polsby (Eds.), *Handbook of Political Science* (Vol. 7, pp. 79-138). Reading, MA: Addison-Wesley.

Eggenberger, K., & Emmenegger, P. (2015). Economic vulnerability and political responses to international pressure: Liechtenstein, Switzerland and the struggle for banking secrecy. *Swiss Political Science Review, 21*(4), 491-507.

Emmenegger, P. (2017). Swiss banking secrecy and the problem of international cooperation in tax matters: A nut too hard to crack? *Regulation & Governance, 11*(1), 24-40.

Farrell, H., & Newman, A. L. (2019). Weaponized interdependence: How global economic networks shape state coercion. *International Security, 44*(1), 42-79.

Ferguson, V. A. (2022). Economic Lawfare: The Logic and Dynamics of Using Law to Exercise Economic Power. *International Studies Review, 24*(3), viac032.

Foster, C. (2021). Varieties of Neoliberalism: Courts, Competition Paradigms and the Atlantic Divide in Antitrust. *Socio-economic review*.

Garrett, B. (2014). *Too big to Jail*: Harvard University Press.

Garrett, B. L. (2011). Globalized corporate prosecutions. *Va. L. Rev., 97*, 1775.

Gelman, A. (2006). Multilevel (hierarchical) modeling: what it can and cannot do. *Technometrics, 48*(3), 432-435.

Geradin, D., & Henry, D. (2005). The EC fining policy for violations of competition law: An empirical review of the Commission decisional practice and the Community courts' judgments. *European Competition Journal, 1*(2), 401-473.

Gerber, D. J. (2010). *Global Competition: Law, Markets, and Globalization*. New York: Oxford University Press.

Gerring, J. (2006). *Case Study Research: Principles and Practices*. New York: Cambridge University Press.

Gerring, J. (2007). Is there a (viable) crucial-case method? *Comparative Political Studies 40*(3), 231-253.

Gerschenkron, A. (1962). Economic Backwardness in Historical Perspective (1962). *The Political Economy Reader: Markets as Institutions*, 211-228.

Giesselmann, M., & Schmidt-Catran, A. W. (2019). Getting the within estimator of cross-level interactions in multilevel models with pooled cross-sections: Why country dummies (sometimes) do not do the job. *Sociological Methodology, 49*(1), 190-219.

Gilardi, F. (2005). The Institutional Foundations of Regulatory Capitalism: The Diffusion of Independent Regulatory Agencies in Western Europe. *The annals of the American academy of political and social science, 598*(1), 84-101.

Gilardi, F., Jordana, J., & Levi-Faur, D. (2006). Regulation in the age of globalization: the diffusion of regulatory agencies across Europe and Latin America.

Ginsburg, T. (2008). Judicialization of administrative governance: causes, consequences and limits. *NTU L. Rev., 3*, 1.

Haas, P. M. (1992). Introduction: epistemic communities and international policy coordination. *International Organization, 46*(1), 1-35.

Helleiner, E., & Pickel, A. (2005). *Economic Nationalism in a Globalizing World*: Cornell University Press.
Holland, A. C. (2016). Forbearance. *The American Political Science Review, 110*(2), 232.
Hollman, H. M., & Kovacic, W. E. (2011). The international competition network: its past, current and future role. *Minn. J. Int'l L., 20*, 274.
Jordana, J., Levi-Faur, D., & i Marín, X. F. (2011). The global diffusion of regulatory agencies: Channels of transfer and stages of diffusion. *Comparative political studies, 44*(10), 1343-1369.
Kaczmarek, S. C., & Newman, A. L. (2011). The long arm of the law: Extraterritoriality and the national implementation of foreign bribery legislation. *International Organization*, 745-770.
Kelemen, R. D. (2011). *Eurolegalism: The Transformation of Law and Regulation in the European Union*. Cambridge, MA: Harvard University Press.
Kelemen, R. D., & Sibbitt, E. C. (2004). The Globalization of American Law. *International Organization, 58*(1), 103-136.
Kittrie, O. F. (2016). *Lawfare: Law as a weapon of war*: Oxford University Press.
Kokkoris, I. (2017). The Google case in the EU: Is there a case? *The Antitrust Bulletin, 62*(2), 313-333.
Lavenex, S., Serrano, O., & Büthe, T. (2021). Power transitions and the rise of the regulatory state: Global market governance in flux. In (Vol. 15, pp. 445-471): Wiley Online Library.
Levi-Faur, D. (1997). Friedrich List and the political economy of the nation-state. *Review of International Political Economy, 4*(1), 154-178.
Levi-Faur, D. (2005). The Global Diffusion of Regulatory Capitalism. *The annals of the American academy of political and social science, 598*(1), 12-32.
Levi-Faur, D. (2011). Regulatory networks and regulatory agencification: towards a Single European Regulatory Space. *Journal of European Public Policy, 18*(6), 810-829.
Levy, J. S. (2008). Case studies: Types, designs, and logics of inference. *Conflict management and peace science, 25*(1), 1-18.
List, F. (1856). *National Systems of Political Economy*: JB Lippincott & Company.
Luttwak, E. N. (1990). From geopolitics to geo-economics: Logic of conflict, grammar of commerce. *The national interest*(20), 17-23.
Majone, G. (1994). The rise of the regulatory state in Europe. *West European Politics, 17*(3), 77-101.
Majone, G. (1997). From the positive to the regulatory state: Causes and consequences of changes in the mode of governance. *Journal of Public Policy*, 139-167.
Mazzucato, M. (2013). *The Entrepreneurial State: Debunking Public vs. Private Sector Myths*. New York, NY: Anthem Press.
Newman, A. L., & Posner, E. (2011). International interdependence and regulatory power: Authority, mobility, and markets. *European Journal of International Relations, 17*(4), 589-610.
OECD. (2011). *Procedural fairness: competition authorities, courts and recent developments*. . Retrieved from www.oecd.org/daf/competition/ProceduralFairnessCompetitionpercent20AuthoritiesCourtsandRecentDevelopments2011.pdf
Paemen, D., & Blondeel, J. (2017). Appealing EU Cartel Decisions before the European Courts: Winning (and Losing) Arguments. *Business Law International, 18*, 155.
Polanyi, K. (1944). *The Great Transformation* (Vol. 2): Beacon Press Boston.
Putnam, T. L. (2009). Courts without borders: Domestic sources of US extraterritoriality in the regulatory sphere. *International Organization, 63*(3), 459-490.

Putnam, T. L. (2016). *Courts without borders: Law, politics, and US extraterritoriality*: Cambridge University Press.
Raustiala, K. (2002). The architecture of international cooperation: Transgovernmental networks and the future of international law. *Va. J. Int'l L., 43*, 1.
Raustiala, K. (2011). *Does the constitution follow the flag?: the evolution of territoriality in American law*: Oxford University Press.
Roberts, A., Moraes, H. C., & Ferguson, V. (2018). The geoeconomic world order. *Lawfare blog, 19*.
Rosamond, B. (2012). Supranational governance as economic patriotism? The European Union, legitimacy and the reconstruction of state space. *Journal of European Public Policy, 19*(3), 324-341.
Sarat, A., & Clarke, C. (2008). Beyond discretion: Prosecution, the logic of sovereignty, and the limits of law. *Law & Social Inquiry, 33*(2), 387-416.
Schröter, H. G. (1996). Cartelization and decartelization in Europe, 1870-1995: Rise and decline of an economic institution. *Journal of European Economic History, 25*(1), 129.
Shapiro, M., & Sweet, A. S. (2002). *On Law, Politics, and Judicialization*: Oxford University Press.
Shonfield, A. (1965). *Modern Capitalism: The Changing Balance of Public and Private Power*: Oxford University Press.
Slaughter, A.-M. (2001). The accountability of government networks. *Indiana Journal of Global Legal Studies*, 347-367.
Slaughter, A.-M. (2002). Global government networks, global information agencies, and disaggregated democracy. *Michigan Journal of International Law, 24*, 1041.
Slaughter, A.-M. (2004). Sovereignty and power in a networked world order. *Stan. J. Int'l L., 40*, 283.
Slaughter, A.-M. (2009). *A new world order*: Princeton University Press.
Slaughter, A.-M., & Zaring, D. (2006). Networking goes international: an update. *Annual Review of Law and Social Science, 2*, 211-229.
Sunstein, C. R. (1989). On the Costs and Benefits of Aggressive Judicial Review of Agency Action. *Duke Law Journal*, 522.
Thatcher, M. (2002). Regulation after delegation: Independent regulatory agencies in Europe. *Journal of European Public Policy, 9*(6), 954-972.
Thatcher, M. (2007). *Internationalisation and economic institutions: comparing the European experience*: Oxford University Press.
Thatcher, M. (2014). From old to new industrial policy via economic regulation. *Rivista della regolazione dei mercati, 2*, 6-22.
Thatcher, M., & Sweet, A. S. (2002). Theory and practice of delegation to non-majoritarian institutions. *West European Politics, 25*(1), 1-22.
Tobler, C. (1999). The Standard of Judicial Review of Administrative Agencies in the US and EU: Accountability and Reasonable Agency Action. *Boston College International & Comparative Law Review, 22*, 213-228.
Verdier, P.-H. (2009). Transnational regulatory networks and their limits. *Yale Journal of International Law, 34*, 113.
Verdier, P.-H. (2020). *Global Banks on Trial: US Prosecutions and the Remaking of International Finance*: Oxford University Press.
Volberding, P. (2020). *Leveraging Financial Markets for Development: How KfW Revolutionized Development Finance*: Springer Nature.
Wils, W. P. (2006). Optimal antitrust fines: Theory and practice. *World Competition, 29*(2).

Woll, C. (2023). *The Geopolitics of Negotiated Corporate Justice, woll*: Princeton University Press.
Zacka, B. (2018). *When the State Meets the Street*: Harvard University Press.
Zaheer, S. (1995). Overcoming the liability of foreignness. *Academy of Management journal, 38*(2), 341-363.
Zarate, J. (2013). *Treasury's War: The Unleashing of a New Era of Financial Warfare*: Hachette UK.