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Manufacturing a German Model of Liberal Capitalism:
The Political Economy of the German Cartel Law in the Early Postwar Period

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This article examines the West German cartel policy process during the early 1950s. Decartelization was one of the top priority agendas of the United States, which was operating as a new stabilizer of bourgeois Europe during this time. The combined efforts of Americans and their German allies to liberalize Germany's organized capitalism met with fierce resistance from both much of the business community and ordinary Germans. It took almost a decade for the Germans to conclude a cartel law, and it was a political process wherein different sectors of industry, Christian Democrats, and U.S. policymakers interacted with each other. A jointed approach that combines two-level games and sectoral analysis is useful to understanding the divergence of decartelization and deconcentration in Germany, which had the effect of watering down the original cartel law. The German experience provides a case of embedding liberalism into an illiberal social purpose that was to maintain cooperation within the markets.

Keywords: cartel law, decartelization, deconcentration, Germany, U.S. foreign policy, Erhard, social market economy, two-level games, sectoral analysis

1. CONSTRUCTING ANOTHER GERMAN *SONDERWEG*

This article examines the policy process of the West German cartel legislation in the early 1950s. The problem of the cartel policy was one of the crucial political arenas in which key domestic interests within West Germany and international forces driven largely by the United States contested for their own positions. The cartel issue became politicized as a result of the end of the Second World War. The United States, an occupying power, came to intervene in the policy process of the defeated nation, and decartelization was among the top priority agendas alongside denazification. Similar to the Soviet Union's transformation of Eastern Europe into a socialist community of nations, the United States sought to rebuild the western part of war-torn Germany after its own image: a liberal democracy based on the market economy. As shall be argued below, Americans were operating as a "new stabilizer of bourgeois Europe" (Berghahn 1986: 84).

Simultaneously, there was a strong presence of German interests representing different sectors of industry. It was very natural for the Germans to resist the U.S. scheme of implanting its own system onto a greatly different soil. Although the German survivors of the Nazi regime did not want to stick to Hitler's formula, they also did not welcome an alien system envisaged by the Americans. They wanted to refurbish the national economy in accordance with the "German tradition," which in no way saw cartels and other forms of market agreements as inimical to the national economy.

It is important here to point out that the German tradition was not monolithic. There were different interpretations of the German tradition as to how to organize the market. On

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the one side were the allies of U.S. authorities who believed the "Americanization of the West German economy" should be the foundation for the reconstruction of Western Europe. Those allies came from the industries which were seeking to internationalize their operations in anticipation of a renewed (and expanded) European market (Berghahn 1996), and from the part of the academia and bureaucracy who endorsed the virtues of neoliberal remedies for the German disease. On the other side stood the opponents of U.S. German policy who were small- and medium-sized enterprises that comprised the greater part of the German industry. This situation provides us with a good example of "two-level games" (Putnam 1988). The newly inaugurated West German government had to make a new set of rules for governing the economy in response to two contrasting pressures from opponents and proponents of cartels. The ruling politicians were not free to carbon-copy *the* American liberal capitalism, even though most of them had a favorable view on the suggestions of the Americans. Instead, they had to keep the force of opposition at home to a minimum so they could build a new political consensus over German capitalism's future.

But before going into the details of the two-level game, in this section, I would like to indicate that when seen from the perspective of comparative European political economy, the end result of the cartel policy process in postwar Germany shows another "German peculiarity" (*Sonderweg*). With the end of World War II, Western Europe entered into a period of unprecedented reliance on America's newly acquired hegemonic power. If one views the two world wars as the most direct and brutal confrontation between the Anglo-American liberal subsystem and the German (and Japanese) illiberal one, the end of World War II may be conceived as the defeat of the German model over leadership in the world economy.[1] The growing tension between the East and West intensified the U.S. concern with securing "an ideological conformity built around the 'open door' and liberal capitalism" (Maier 1991: 2n2) in Western Europe. Despite these international pressures, however, many West European countries managed to retain their century-old system of capitalist economy with varying degrees of collectivism. The best example comes from the case of France which was stubborn in keeping *dirigisme* intact and further expanded the scope of state intervention in the economy (Kuisel 1981). Compared with its continental neighbors, West Germany showed a pattern of deep Americanization in the economy as well as in the polity.

How can we explain this German S*onderweg* without resorting to exceptionalist approaches that draw authoritarian political culture and the continuity of modern German history?[2] A non-exceptionalist solution can be found in a combination of two-level game and sectoral conflict approach.[3] This approach allows us to better understand the role of institutions, both political and economic, in the policy process of cartel legislation in particular and the distribution of rents in general. In the case chosen here, institutions are imposed by an external power—the United States and the looming Cold War—but not without any restrictions inherited from the domestic past. The cartel law finally adopted in West Germany presaged an extraordinarily deep and rapid Americanization of its national

[1] For an attempt to understand major wars as contestations between liberal leaders and revisionist states, see Brawley 1993. Also see Cho 2003.

[2] For this problematic, I have benefited from the arguments in Blackbourn and Eley 1984. On the importance of non-exceptionalist explanations, see Zolberg 1986.

[3] Each approach of this combination is well represented in Milner 1997 and Frieden 1991, respectively.

economy. Yet it also reflected a sectoral compromise within industries which was never free from the legacy of earlier periods, especially the Weimar period. In this sense, this essay adds a corroborating case to the “path dependency” or “institutional stickiness” thesis (Thelen and Steinmo 1992).

This section is followed by an examination of U.S. German policy in the immediate postwar years. Section 3 provides a historical background against which the postwar debate over the cartel law evolved. Section 4 looks into the process wherein the Americans and their German allies took action for decartelization. Section 5 summarizes the legislative process of the cartel law, while Section 6 relates the cartel policy process to a larger one of building the social market economy. Section 7 draws on sectoral analysis to explain the final shape of the cartel law as an outcome of divergence between decartelization and deconcentration. I conclude by pointing out that the German cartel law represents one of possible institutional designs that aim to reconcile liberalism and illiberalism in governing the economy.

2. THE GERMAN POLICY OF THE UNITED STATES AS A STABILIZER

Well before the end of World War II the Allies agreed that concentration of economic power should be drastically reduced not only in agriculture but also in other sectors of the German economy. The Potsdam Agreement stated: “At the earliest practicable date, the German economy shall be decentralized for the purpose of eliminating the present excessive concentration of economic power as exemplified in particular by cartels, syndicates, trusts and other monopolistic arrangements.” All cartels and cartel-like arrangements along with firms with more than 10,000 employees or, in the French zone, with a capital stock of over DM 50 million, were bracketed as excessive concentration (Braun 1990: 151). The four occupying powers, of course, supported the clause for different reasons. For the Americans and British, German industry was the economic base of Hitler’s domestic fascism and international expansionism. The French followed the Anglo-American policy line not because it felt that cartels were an important source of the German disaster, but because of a nationalistic feeling of self-defense aroused by living next door to such an industrially strong neighbor with the past of military expansion. To the Russians, decentralization of economic power was supposed to be natural and imperative given their socialistic goals. In the Russian zone, however, decentralization did not take place as entire industries and fields of trade had to be “recentralized” in the name of socialization (Stolper 1967: 194).

In the three Western zones, the goal of decentralization was pursued in relatively undisguised forms. After the Allied policy line had been set up in Section B-12 of the Declaration of the Potsdam Agreement, decartelization laws were issued by each of the three western powers. Decree No. 96 for the French zone was issued on October 6, 1947 and Law No. 56 for the U.S. zone and Ordinance No. 78 for the British zone, both on December 2, 1947 (Voigt 1962: 187). The United States, which had an old tradition of antitrust movements, showed a missionary zeal in remolding the occupied territory after its own economy and polity. Industrial leaders such as Gustav Krupp von Bohlen und Halbach, Herman Röchling, Friedrich Flick, and the heads of I.G. Farbenindustrie were arrested and tried before an Allied court; they were accused of conspiracy with the Nazi regime in support of its war efforts. More importantly, their property was sequestered and placed under the management of trustees, though later the industrialists could recover their ownership. Deconcentration measures were applied largely to the chemical industry (IG Farben), to the iron and steel industry (Montan) and to banking. IG Farben was divided into three companies, and in the iron and steel industry, the twelve largest firms, were split up into 28 corporations. In banking, however, deconcentration of the "big three" (Deutsche Bank, Dresdner Bank, Commerzbank) failed completely (Stolper 1967: 194–95; Braun 1990: 151).

The Allies' decartelization decrees of 1947 stated that their main purpose lay in reducing Germany's industrial power. The victor nations saw the cartel system as not only having brought about Nazi Germany's economic strength but also having advanced its military might (Bock and Korsch 1956: 141–42). The preambles of Law No. 56 and Ordinance No. 78 made explicit their goals: "[I]n order to prevent that Germany should once again endanger the security of its neighbors and threaten international peace; in order to destroy Germany's economic capacity to wage war; in order to secure that the measures taken for the reconstruction of Germany would be in accordance with specific and democratic aims and provide the basis for the construction of a healthy and democratic German economy" (Bock and Korsch 1956: 147–48). Here one sees a clear indication of U.S. intention to build a new Germany with an American combination of free market economy and liberal democracy. For the Americans in Washington, national political regime, the economy, and foreign policy were together shaped along the demarcation line between liberalism and illiberalism. When a nation's economy is dominated by cartels and cartel-like institutions that depress competition, the argument went, its polity was likely to be nondemocratic, and consequently, its foreign policy tended to resort to the use of military force in attaining its goals. Germany under Nazi rule seemed to the Americans the best example of this combination, and they believed that the country should be reformed as a liberal democracy that would abide by the norms and principles of the liberal international economy.

Americans understood that cartels had worked as a bridge between the German society and its political regime. The Nazi regime arose in part with the support of a wide range of the middle classes (*Mittelständer*) whose socioeconomic conditions were threatened or felt threatened by both the rise of working-class demands and the increasing aggrandizement of large industries at the expense of small- and medium-sized ones (Lipset 1960; Parsons 1964). Cartels were perceived, under such circumstances, as a protective shield for middle-class interests, and for this reason could be exploited by the Nazi regime as an efficient tool for translating German capitalism into a foothold for its expansionist foreign policy. This kind of argument gained wide currency throughout the 1940s within the U.S. academia and policymaking circles alike..Americans' overall impression of the German system was clearly negative. At the same time the U.S. scheme of decartelization had a positive orientation because its stated objective was "an expanding German economy with a progressive raising of the standard of living as the basis of a viable political democracy" (Bock and Korsch 1956: 176–77). This reflected the American notion of economic prosperity as a foundation of stable democracy, which in turn might prove to be a strong bulwark against the threat of Soviet power.

There existed a consensus among the top Washington policymakers and the East Coast business establishment that fascist Europe, unless radically transformed, would remain a fundamental threat to a new world economic order to be led by the United States and that the German cartels were to be abolished for that purpose. But they greatly differed over the specifics of the postwar reshaping of Germany. Henry Morgenthau, Treasury Secretary, proposed to reduce Germany's industrial strength by introducing a ban on cartels of all kinds. The position taken by industrialists and bankers was more moderate (or one might say conservative). They wanted to keep German big business and its status within international cartels intact, while not opposing the reform of the German market organizations, i.e., cartels in the narrow sense of the term (Berghahn 1986: 84, 86).

After the Morgenthau Plan of 1944 had been shelved, the Washington-East Coast consensus was left with nothing but a vague idea of deconcentration and too broad a notion of decartelization. The Joint Chiefs of Staff (JCS) directive 1067 of May 1945 ordered the U.S. High Commission in Germany "to prohibit all cartels and other private business arrangements and cartel-like organizations" and "to effect a dispersion of the ownership and control of German industry." It included two different goals to be achieved but stated them as if the two were one and the same. Among the policymakers developed a dissensus over the specific nature of the deconcentration program, whereas decartelization was agreed upon. Those in the "trust buster" tradition of the 1930s held that all the large-scale enterprises be broken up into smaller ones. In contrast, advocates of the internationalized sector within the U.S. saw German big businesses as a functional equivalent of American-style oligopolistic enterprises which provided mass-produced goods to the expanding market (Berghahn 1986: 89–90).

The Americans were well aware that such a dissensus over deconcentration would cause serious problems with the cartel policy. Who would gain and who lose from decartelization unaccompanied by a corresponding degree of deconcentration was unmistakable. To avoid predictable resistance from the losing side, Americans delayed handing over the cartel policy process to the Germans Instead, the U.S. enforced the bans on cartels in a rather domineering way. By doing so the U.S. authorities hoped that the Germans would adapt to a new situation of free market economy in which the freedom of individuals is put above the freedom of contract (Berghahn 1986: 155). This was deemed important to the occupying force as a way to restore a "genuine bourgeois order" and thereby stabilize the defeated nation.

3. CARTELS IN EARLIER PERIODS

The strong presence of cartels in Germany found its legitimacy largely in their function as a protective shield against foreign competition during the Depression of the 1870s. Even in the boom period of the 1890s the trend toward cartelization did not stop. Moreover, the Reichsgericht (Supreme Court) decision of February 4, 1897 added further momentum to the trend by making cartel agreements legally binding. The Bismarckian law allowed cartels and syndicates to be *the* acceptable way to organize the market across the branches of German industry. After the First World War the country became the most cartelized nation in the world (Berghahn 1986: 20–21).

With this historical experience, the Germans had a quite different view on cartels than the one prevalent in the United States. Freedom of trade and of contract was considered to include the freedom to form cartels or other interfirm agreements and restrict free competition on the market. There was no cartel law before the legislation of the Ordinance Against Abuse of Economic Power (*Verordnung gegen Mißbrauch wirtschaftlicher Machtstellungen*) of November 2, 1923. Due to the lack of any formal legal devices, appeals against the abuse of cartels were filed with courts, whose decisions were made according to general rules of civil law. The general rules were included in the Act Against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*; *UWG*) that had been originally designed to protect trader against trader.[4]

Cartels were historically recognized as legitimate by both the courts and governments distrustful of unbridled competition. In some cases, independent companies were required to join cartels if they wanted to operate properly. This widespread practice became subject to criticism, and the need to regulate the abuses of cartels was felt. The 1923 cartel law was enacted in response to these circumstances, but failed to bring any significant changes to the market situation, or reduce the high level of concentration across various sectors of industry. As a result, there remained over 3,000 cartel arrangements in 1930 (Smith 1994: 434–35).

This historical fact, however, should not be overstated because cartelization was the order of the day in most European countries. Even in Britain, the government officially encouraged cooperation among independent enterprises. France and Belgium, along with Germany, played a leading role in various international cartels. Taken this into account, Germany actually set a precedent in making laws for regulating the practice of cartels and cartel-like market arrangements (Schröter 1996: 152). The country was a forerunner in both cartelization and anti-cartel efforts, at least in Europe.

The point here is that one should be careful when comparing Germany and the United States in terms of the degree of adherence to the rules and norms of liberal capitalism. How liberal an economic system is must be measured in historical, not necessarily relative, terms. An indicator of liberal economy in Europe is likely to be perceived as a collectivist disguise for rent seeking in the United States, and vice versa. Liberalism is a socially constructed scheme for organizing economic activities and transactions within, as well as across nations. The politics of West German cartel law reveals that the social contents of liberalism vary from country to country.

4. AMERICANS AND THEIR GERMAN ALLIES TAKING ACTION

The Allied decartelization laws of 1947 aimed at preventing the misuse of economic power and the collusion of a few enterprises which were detrimental to the consumer. Under the laws, cartels were denied the aid of courts, which was indispensable for the existence and operation of sales syndicates or quota arrangements. The Ordinances Nos. 56 and 78 led to the establishment of a separate bureaucracy responsible for the implementation of decartelization. The primary source of execution power was the Allied Cartel Authority (Hardach 1980: 148; Bock and Korsch 1956: 149). The U.S. and British governing authorities declared that those decrees were "intended to be a transitory ruling, to be replaced by a German cartelization law." Indeed, the Allied, later on March 19, 1948, asked the Economic Council to prepare a draft law that prohibited the forming of cartels in accordance with the Havana Charter of March 24, 1948 (Erhard 1958: 118).

The Allied Cartel Authority had substantial power in implementing the decartelization laws. It could take administrative or criminal measures against prohibited cartels. Any enterprises or persons seeking the status of exemption from the laws had to be judged by the Allied Cartel Authority. A rejection of the pleas for exemption was followed by the issuance of a cease and desist order. Such an order could affect property relations of the

[4] The term *abuses* was defined as "the formation of a factual monopoly or the usurious exploitation of the consumers." See Hoffman and Schaub 1983: 99; Smith 1994: 434.

persons or enterprises in question. Exemptions from the prohibition of cartels, however, were very rare (Bock and Korsch 1956: 150–51).

According to the decartelization laws of 1947, all enterprises with more than 10,000 employees in Germany were bracketed as excessive concentration of economic power. Those companies in principle could be divided into several independent companies, and their capital shares or assets could be sold out in a compulsive way (Bock and Korsch 1956: 151–52). It is important here to make a distinction between the deconcentration and decartelization program. The latter was basically prohibitory, while the former affirmative. In other words, the deconcentration program needed a subsequent plan by which affected industries could be incorporated into a new institutional framework. The major policy goals of the deconcentration program were "the horizontal reorganization of the basic steel producing industry into units capable of effective competition; the reorganization of the relations of the steel industry to the coal industry; and the separation from concern control of businesses whose technological relationship to the coal and steel industries did not justify the concentration of control resulting from their common ownership" (Bock and Korsch 1956: 179).

Americans were concerned with handing over reform initiatives only to those Germans who would agree to an ideal of free market capitalism. The German allies were organized into Ludwig Erhard's Economic Council that was supposed to make legislative proposals for "the two fundamental anti-trust problems: restrictive business practices and concentration" (Smith 1994: 435). The Law on Guidelines for Controls and Price Policy After Currency Reform (*Leitsätzegesetz*) came out for discussion in the legislature in 1948. Written by the Germans who were at pains to "domesticate" the U.S. blueprint for a new German capitalism, it declared that "Wherever economic monopolies develop they are to be abolished and until then placed under state control." The draft was designed to prohibit as many cartels as possible and to give a monopoly control agency the greatest power conceivable within the limits of law (Stolper 1967: 258).

It was in March 1952 that the Draft Law Against Restraints of Competition was submitted to parliament. It immediately provoked a heated debate among peak trade associations representing different industrial sectors. The BDI (*Bundesverband des deutschen Industrie*) voiced strong opposition to the principle of prohibition (*Verbotsprinzip*) on which the government bill was based and instead proposed to bring the principle of abuse (*Mißbrauchsprinzip*) to the center of the cartel policy. This fierce resistance made parliamentary discussions both in the Bundestag and the Bundesrat oriented to modifying the principle of prohibition. Although the original government bill gave the Cartel Authority power to permit three types of cartels: rationalization cartels, crisis cartels and export cartels, the Bundesrat allowed a fourth exception called the standardization cartels (*Konditionenkartelle*). In addition, import cartels of a defensive character were bracketed into a privileged category. Of the greatest significance to the interests of the U.S. capital-intensive sectors was the exemption status granted to international cartels in Germany (Bock and Korsch 1956: 189).

5. THE CARTEL POLICY PROCESS IN THE 1950S: A SUMMARY

The policy process after the first draft of the cartel law was submitted to the parliament bore close resemblance to a two-level game situation. The Allied cartel law remained effective as late as 1957 due to the lack of German legal devices against cartels. Under the circumstances U.S. pressures were heavily imposed on the German architects of the cartel policy process. Erhard's position was a case in point. To his domestic opponents, he always emphasized the strength and urgency of U.S. pressure for a strict ban on cartels. For the Americans, Erhard was a negotiator who kept saying, "I'd like to accept your proposal, but I could never get it accepted at home" (Putnam 1988: 440). The small size of domestic win-sets in this case, however, did not directly cause "involuntary defection" from the immediate postwar agreement on decartelization between the Germans and Americans. It would be fair to say that the final outcome of the decartelization policy process was another agreement, no matter how deformed. Domestic constraints induced the Americans and the German pro-cartel industrialists to make a compromise with each other.

When the first draft of the German cartel law was completed, Americans doubted whether it would function as an effective measure for decartelization because the bill seemed "to facilitate cartels rather than ban them." Even this moderate version of a cartel law failed to pass in the parliament. Disappointed by the process in which their original plans were distorted and discarded, the U.S. High Commission advanced a draft to the federal government which added to the German draft some radical clauses inspired by U.S. antitrust laws. Well aware that "he could no longer invoke American pressure in his fight against the demands of industry," Erhard in mid December of 1953 had an informal meeting with Fritz Berg, the president of the BDI. Their meeting produced a substantial compromise. The BDI indicated the possibility of giving up the *Mißbrauch* principle and accepting Erhard's plan to prohibit cartels, on the condition that exemptions and special cases should be inserted into a cartel law (Berghahn 1986: 171–73, 176–77).

This compromise, however, did not last long. On February 17, 1954 Erhard reintroduced the 1952 draft at the cabinet meeting, and it was approved. To Erhard's renewed attack, the BDI responded with a threat of total war against the federal government. A new breakthrough from this impasse made by a group of industrialists who were supportive of the general ban on cartels. An important point here is that those industrialists came from various sectors, not just from the internationalized ones whose interests lay in the elimination of cartelized competitors. Erhard's new allies were united by their antipathy to the uncompromising policy of the BDI. As a result, the BDI in September restarted negotiations with the BWM (*Bundeswirtschaftsministerium*) and BJM (*Bundesjustizministerium*). The outcome of the renegotiation turned out to be much the same as the earlier compromise. The principle of prohibition was accepted by the industry on the condition that exemption status may be granted (Berghahn 1986: 177, 180–81).

The final outcome of this long-drawn-out process was the law, promulgated on July 27, 1957, which was quite different from the original draft submitted in 1952. Numerous exceptions were admitted in the name of rationalization, export, import, and much more. The Economics Minister could give a permit to any cartels if they are considered in the interests of the economy and community at large. The law even allowed producers of articles with registered trademarks (*Markenartikel*) to set retail prices. It looked like "a Swiss cheese, prohibiting cartel agreements in principle but, due to industrial lobbying, granting so many exceptions that the prohibitive essence often slipped through the numerous holes" (Stolper 1967: 258; Hardach 1980: 149).

For the purpose of enforcing the 1957 law, the Federal Cartel Authority (*Bundeskartellamt*) was established in Berlin on January 1, 1958. The Cartel Authority legally belonged to the Economics Ministry but retained formal independence with regard to its decisions. The independent status of the Cartel Authority was conceived by Eberhard

Günther who was in office during the period of 1958 to 1976. During the first decade since its founding, the agency investigated some 4,500 cases of suspected violations, of which about 3,800 cases were dropped and only seven cases led to the imposition of fines. This seemingly mediocre performance, however, was accompanied by the fact that by the mid-1960s only about 130 cartels remained (Sturm 1996: 187–88; Hardach 1980: 150). Whether the decreased role for cartels is the result of the cartel law or of any other structural transformation is another story, however.

6. ERHARD'S NEOLIBERALISM AND SOCIAL MARKET ECONOMY

The early postwar German experience with cartel policy provides a good example of how the ideas concerning the international liberal economy were materialized into policies within different national contexts.[5] Right after the end of the war, Americans found a group of Germans who subscribed to the idea of liberal capitalism as opposed to collectivist economy that had been maintained by the Second and Third Reichs. German neoliberals led by the future chancellor and the then Bavarian economics minister, Ludwig Erhard, were seeking to eradicate the two equally chronic sources of the "German disease": working-class collectivism and cartelized enterprises. For them, "[t]he tendency to curtail trade and industrial freedom through cartel agreements [wa]s hardly less strong than the urge of the worker towards collectivism" (Erhard 1958: 117). Decartelization was also the necessary step toward global free trade from the perspective of Erhard (Moravcsik 1998: 100).[6]

As a wave of anti-cartel legislation began to sweep the German society, two major justifications for the presence of cartels were made. One argument was that "cartels were necessary for the protection of light industry." But Erhard claimed that there was no need for cartelization in light industry because the sector, unlike the heavy industry and capital goods production, was composed mostly of the manufacturing companies producing finished goods. A second argument was that "cartels would protect and further the well-being of the middle classes." This notion of *mittelständische*,capitalism endorsed by cartels, was countered by Erhard who believed that the presence of cartels undermined the purchasing power of middle-class consumers who were in large proportion employed in the non-cartelized sectors (Erhard 1963: 173; 1958: 137–38).

But more importantly, Erhard was never a pure-and-simple neoliberal who found a magic solution in "complete competition." He and his followers coined the term *Sozialmarktwirtschaft* to distinguish their model of new German capitalism from the then much-criticized American *laissez-faire*. The idea was an economically ambiguous, but politically facile, solution that was intended to satisfy both collectivist and liberal capitalist camps. Through a speech delivered in the Bundestag on March 24, 1955 Erhard said, "I see in the Social Market Economy system the economic basis for a democratic form of government, which regards human freedom as an inalienable right. The state has a duty to see to it that the basic right is not made inoperative by private collective agreements and

[5] For other major countries like Britain and France as well as the United States, see Cho 2002.

[6] While the internationalist sectors of West German industry expected a full participation in the European markets, Erhard was not in favor of Jean Monnet's proposal to create a "United States of Europe." The cause of European integration was pursued by the chancellor, Konrad Adenauer who was also in a rivalry with his economics minister within the CDU (Nicholls 1994: 335).

obligation” (Erhard 1963: 170). Although couched in terms close to the political discourse of the SPD rather than the CDU/CSU, Erhard’s words indicated a very different system than the one envisioned by the Social Democrats. The SPD’s stance on competition and the market mechanism was significantly “liberalized” by the efforts of Karl Schiller who in 1951 argued that the issue was not a question of freedom versus regulation (*Bewirtschaftung*), but of state regulation versus regulation by private pressure groups. Erhard and his fellow neoliberals chose the latter option, while for the SPD politicians state regulation was the only reasonable course of action (Nicholls 1994).

The question of state regulation versus regulation by private economic interests, however, was not a point of controversy for Erhard. The German proponent of a free market economy was concerned with securing a greater role for market force by whatever means were possible at the time; whether the means should be the state or some sort of private machinery did not quite matter to him. The imperative was that cartels be crossed out from the list of participants in the economy and that free competition fill in their place. For this reason, Erhard strongly dismissed any conceptions of the principle of abuse (*Mißbrauchsprinzip*) advocated by the cartelized industries. “Abuses lie not in the actions and behavior of the cartels but in their very existence. We simply cannot afford to confuse the unexceptionable principle of competition, which is so essential to a market economy, with the amoral conduct of certain individuals in competition and to deduce from this that cartels are necessary” (Erhard 1963: 173).

When the critics of the cartel policy pointed to the possibility that a general ban on cartels would lead to an extensive bureaucratic machine to implement it, Erhard retorted that such a concern itself well reflected the omnipresence of cartels. Even if the principle of abuses rather than that of prohibition were adopted, Erhard argued, the size of the administrative machinery would be much the same. Moreover, he could not imagine that his plan would amount to “bringing the state back in,” which seemed just the opposite of what a neoliberal policy aimed to produce. In Erhard’s concept of the social market, freedom of the entrepreneur did not include freedom to form cartels, while the role of the state was limited to making the market safe for the consumer (Erhard 1963: 174; 1958: 126).

7. SECTORAL CONFLICT COMES IN: HOW DECARTELIZATION AND DECONCENTRATION DIVERGED

Choosing a new framework for “governing the economy” necessarily engenders social conflict among key economic groups and such conflict can take two forms–factoral and sectoral. Factoral conflict refers to conflict between holders of different factors of production–capital, labor, and land. Modern usage of the term *class struggle*, which has been largely motivated by the doctrines of Marxism, has exaggerated the omnipresence of factoral conflict in social and economic (and even political) life. A closer look into history, however, divulges the equal (or even greater) importance of sectoral conflict in shaping the policy outcomes within a particular political economy.[7] The German experience with the decartelization program is a case in point. So far I have focused on describing the law-

[7] There is a growing literature employing sectoral or sector-specific factors model. For example, see Swenson 1991; Brawley 1997; Hiscox 2002.

making and law-enforcing aspects of the decartelization program, but it is equally important to look into what happened behind the haggling between politicians, bureaucrats, and ideologues. There were conflicting interests within the industries that were the targets of the decartelization program; some would gain from it, some lose. Each of conflicting interests organized itself into the political process as what Robert Putnam would call "isolationists" or "internationalists" (1988: 443).

Distributional conflict among different industrial sectors also explains much of how decartelization in postwar Germany could proceed without a corresponding degree of deconcentration in economic power. Decartelization and deconcentration were treated as if they were one and the same thing in the early discussions and policies of the Allies, especially the Americans. Despite its confusion about the two different policy goals, the U.S. logic revealed an implied assumption that cartels allow "archaic production forms (e.g., artisanal or small-firm specialist production) and the social beliefs and practices associated with them to survive." Cartels were also believed to have provided small- and medium-sized producers with a protective shield that allowed the latter to concentrate economic power while reducing the competitive pressures of the market (Herrigel 1996: 170). Thus decartelization should come first, then deconcentration might follow, not the other way around.

With their theoretical formula at hand, the Americans then needed political and social forces to put it forward as a national agenda in Germany. Political allies were found in the neoliberal Freiburg (or Ordo-liberal) economists and the centrist (most of them Christian Democrats) politicians with no record of Nazi affiliation. These groups shared the American view that cartels had both disrupted the free flow of market forces and caused imbalances of power and wealth in society. However, they were more aggressive in blaming the cartels. For them, social power incarnated in the cartels exploited the Nazi regime for the satisfaction of particular interests; capitalists were not Hitler's automaton (Herrigel 1996: 171). This understanding of the Nazi political economy reflected the fact that those scholars and politicians were as hostile to the mass democracy of the Weimar period based on the urban middle classes and the working classes as they were to the mass mobilization regime of the NSDAP.

More important for the analysis here is that the Americans found their *industrial* allies that "could benefit from a move into mass production: primarily large firms such as Siemens, AEG, Volkswagen, Mannesmann, Daimler-Benz, and the large Chemical producers." With high hopes for an open European market, the large firms favored the elimination of interfirm agreements that prevented them from expanding their market shares (Herrigel 1996: 172). This aspect of the German situation deserves special attention because sectoral cleavage had the effect of moderating the tension between the German and the U.S. negotiators. Sectoral conflicts are also crucial to understanding the German peculiarity regarding the problem of cartels and rent seeking. The German case clearly shows that cartels are not necessarily formed among large firms as in the United States. As a latecomer to the world of industrial capitalism, Germany developed a capitalism composed of more small- and medium-sized firms in the context of a narrower marketplace.

Erhard represented this German peculiarity by "[taking] a position that mediated between the political views of the United States and the Ordo-liberal school, on the one hand, and material interests of large-scale industry, on the other." The solution was to combine decartelization and concentration. For Erhard, the former would lay the foundation for the free market economy, while the latter would pave the way to improved industrial productivity and efficiency. This solution turned out to be a very effective way to quash opposition to the cartel policy. By dividing the industry into two camps, the German government could share the burden of shaping the cartel policy, which was unpopular to the majority of industries, with the more internationalized sectors of the two. Decartelization was a highly sensitive issue because many Germans perceived it as a U.S. impingement on their sovereignty, with regard to *national* policymaking autonomy in the areas such as competition. Erhard's plans represented a "regulation which was foreign to the essence" of the German industrial tradition, particularly among the conservatives of the Ruhr industry (Berghahn 1986: 174).

Despite the sectoral nature of the conflict the controversy over cartels took place between American-Erhardian neoliberals and small- and medium-scale producers. Labeling themselves "neoliberal" allowed the Americans and their German allies to distinguish themselves from the advocates of "particular interests." Conflicts over the economic pie were camouflaged as an ideological confrontation between neoliberals and the rent seekers who were suspected of collaboration with the Nazis. Both the Germans and Americans ignored the historical fact that those economic giants with the potential of internationalization were also the beneficiaries of the Nazi political economy. Consciously or not, they were reaping the "fruits of fascism."[8]

By contrast, from the perspective of the opposite side, National Socialism represented nothing other than the omnipresent and omnipotent state over every corner of society. The Third Reich was, for them, a "Hobbesian totalitarianism" in which entrepreneurs had to yield to the dictates of fascism to make the world safe for their private property.[9] With such a not-too-distant memory in mind, it seemed to the small- and medium-scale industrialists "essential … to preserve the capacity of society to govern itself (*Selbstverwaltung*) ... for the construction of a democratic public." A general ban on cartels, they argued, would lead to the concentration of economic power in the hands of the few, which would turn out to be a functional equivalent of the Hitler state. The small- and medium-sized industry organized themselves into trade associations in their fight against giant mass-production enterprises. The Federation of German Industry (BDI) and the National Diet of Chambers of Commerce (DIHT) joined forces with smaller sectoral associations and the local and regional governments to challenge the cause of defending the decentralized industrial order.

However, the trade associations could not deny the need for reforming the German industrial structure that had been long dominated by cartels and cartel-like arrangements. Instead of saying no to any proposal for decartelization, they suggested a middle course between a general ban and the status quo. It was the reintroduction of the 1923 Cartel Law, which they argued would lead producers to engage in cooperative practices without excess by allowing the federal government to regulate the local systems. Although the U.S. policymakers found this counterproposal difficult to accept, they could not dismiss it because the trade associations were strong enough to block the passage of a general anti-cartel law. It was now the Americans and their German allies' turn to take a middle course. The outcome was an outright ban on cartels with major exceptions that allowed most forms of interfirm agreements to persist. In exchange for this modified anti-cartel law, however,

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[8] For the connection between the large industry and the Nazi regime, see Reich 1990.

[9] Interestingly enough, this logic was at the heart of the theories that explained the rise of Nazism as a result of *Bonapartist* compromise between the capitalist class and reactionary political forces. See Kitchen 1976: chap. 7.

the small- and medium-sized producers had to accept the massive concentration process.

Thus the legal outcome of the conflict over the cartel policy reflected a *sectoral compromise* between "the interests of two different forms of industrial strategy and organization: decentralized specialization and large-firm-centered mass production." The costs of retaining autonomy in the areas of essential interest for the firms in the decentralized sector, were not small. They now had to cultivate a new relationship with the federal government that had more leverage in the cartel policy process, unlike in the Weimar period (Herrigel 1996: 173–74).

Finally, with regard to the sharp distinction between decartelization and deconcentration (or trust busting in more American terms) in the late 1940s, the role of the looming East-West tensions cannot be ignored. Under the circumstances deconcentration in undiluted form appeared very dangerous because it was thought to work against a quick economic recovery (Berghahn 1986: 92). The rationality of liberal economic reforms had to be compromised by the systemic logic of bipolarity. Another external constraint would be Germany's sensitivity, if not vulnerability, to the world markets, which likely perpetuated the concentration of economic power. However, the explanatory role of systemic conditions like the Cold War and the international economic structure should not be overstated to the point of slighting domestic politics variables. While those variables "contextualized" the cartel policy process, we still need to look into domestic institutional arrangements in which sectors, politicians, and even the Americans had to interact with each other.

8. THE GERMAN EXPERIENCE IN THE UNIVERSE OF CAPITALIST POLITICAL ECONOMIES

The issue of decartelization in Germany during the early postwar years provoked a great controversy among different industrial interests. But from the perspective of comparative political economy, the German experience demonstrates that the decartelization problem was directly related to the question of choosing a pattern of national capitalism for major West European countries. In terms of European policy in general, the U.S. strategic aims were unmistakable. As seen in the Marshall Plan, the United States wanted to secure its own sphere of influence in the region by making those old countries "more like us." The model system was a stable democracy backed with sustained economic growth and prosperity. The ultimate goal in the beginning of the Cold War was to stop the expansion of Soviet power where it reached at the time of the end of the war.

The U.S. scheme of imposing free market capitalism on foreign soil, however, met with different national responses. In Germany, liberal capitalism of the kind that the Americans wanted fared better than in France or even in Britain. During the two decades after the end of the Second World War, no other European nation pursued a cartel policy as radical as in Germany. What most European countries did was nothing more than what had been achieved in the German 1923 cartel law, which was about regulating abuses. They continued to allow cooperation on the markets (Schröter 1996: 152). One frequently cited reason for the deeper Americanization of the German industrial structure is the division of Germany into East and West. Economic recovery backed by industrial giants was deemed the country's first priority. Century-old barriers to mass-production capitalism such as cartels were drastically lowered, if not abolished. The status of Germany as a defeated nation was also a constraining force. Americans saw the decartelization program as a key part of denazification, which the Germans were not in a position to deny for any reason. In the early proposals for decartelization the Americans identified cartels as an economic springboard for Hitler's expansionist policy during the war. In other words, the defeated Germany was the best place for the United States to establish a new system for liberal capitalism.

In looking back into the postwar German anti-cartel efforts, one is forced to ask the following question: "How far can legislative reforms alter deep-seated social and economic habits?" Raising this question itself reflects that anti-cartel laws, no matter how strictly and thoroughly formulated, are hardly successful in their implementation unless they are embedded in the targeted social and economic structure. U.S. policymakers were quite convinced that "the absence of a Sherman Act philosophy in most other countries is due to fear of the fresh wind of competition, to laziness and hostility to technical progress." This assumption may hold in some cases, but proved just wrong in others (Friedmann 1956: 556–58). Historically, cartels in Germany had played a role more than distorting the flow of market force by giving protection to associated firms against the pressure of competition. During its late industrialization, lacking enough capital that Britain had, Germany had to depend on a mix of state and banks in order to build a solid industrial base (Gerschenkron 1962). The late industrializer also could not benefit from the vast land that allowed the United States to develop a highly decentralized industrial order, which in turn boosted free competition. Undercapitalized and confined within the densely populated heart of Europe, Germany had to create a more "cooperative" capitalism by modifying the rules of the market.

Yet at the same time the German model of cooperative capitalism has always been a double-edged sword. On the one hand, it allowed Germany to follow Britain closely as a major industrial power along with the United States. On the other, however, the logic of cooperation among economic groups led to the strong presence of corporate interests within society and the polity. In other words, collectivism inherent in the German model contributed to closing the distance between the state and industry, which was inconceivable in the world of Anglo-American capitalism based on a strict distinction between public power and private interests. In the latter, cartels were nothing but a market strategy for some industrial entrepreneurs for the purpose of limiting competition and fixing prices. They had little, if any, to do with the industrial policy of any level of government, especially the federal government. Cartelized enterprises and their opponents alike tried to make themselves heard within governments and courts. Antitrust laws in the United States were the result of a tug of war between conflicting interests, not a disguised form of industrial policy. Erhard and his fellow neoliberals pursued the decartelization program with a view to a renewed status of Germany within a to-be-internationalized European market. That explains much of why the German decartelization program was not accompanied by a corresponding degree of deconcentration that had been carried out in the United States.

This discussion again informs us that there are many unique national responses to the penetration of the international liberal economy. Each country has its own institutional arrangements by which to modify and in the long run domesticate the rules and norms of the liberal market forces. The German cartel system examined in this essay is one of such domestic institutional contexts.[10] Liberal principles such as free competition on the market

[10] For an extended discussion of "variety of capitalism," see Hall and Soskice 2001; Kitschelt, Lange, Marks, and Stephens 1999. The argument above is also related to the regime of "embedded liberalism" (Ruggie 1982).

had to pass through the nationally distinct institutions and were eventually compromised.

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