American Services in European Perspective: Why Do Americans Not Care about Interstate Barriers in Construction?

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The European Union identifies the sector of construction services as a priority for its agenda to remove barriers to cross-border activity. Taking the EU's efforts as a starting point, this article explores the politics of interstate barriers in construction services in the United States. To what extent do US construction firms encounter internal-border barriers like those targeted by the EU? If they do, how much business mobilization and governmental response do they elicit, and what does that suggest about American federalism more generally? We find many similar barriers inside the United States but practically no mobilization or policy attention around them. Drawing on over fifty interviews with firms, associations, and public officials, we argue that this contrast to the EU highlights two features of American federalism. Institutionally, though promoting a national market motivated the federation's creation, that goal is nobody's active job today. Ideationally, the distinctively American skepticism of central government limits a market-building project.

Key words: United States; construction; political economy; single markets; comparative federalism; European Union.

In multilevel polities with central-government mandates for internal-market openness, how much should we expect those mandates to extend into the services sectors that comprise the bulk of advanced economies? Such an agenda seems

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especially plausible for the most tradeable services, like finance, telecommunications, or transport. In these sectors, competitive businesses are likely to seek opportunities across jurisdictions, and such competition may benefit the whole economy. In mostly non-tradable service sectors, like construction, the benefits of pursuing a "single market" are less obvious. Construction services are delivered on site, subject to local permitting and inspection regimes, involve hard-to-transport materials, and rely on relationships with local subcontractors. Even in the United States, where a famously fluid national economy encourages big-business scalability, construction is the least concentrated major economic sector (Potter 2022). It involves huge economic activity—well over $1 trillion annually, 4–5 percent of GDP—but hosts only a few firms with over $10 billion in revenue (Wheeler 2024).

In the less fluid European economy, however, the European Commission (henceforth, Commission) sees openness in services as a crucial goal and construction services as a priority. The recent Letta Report on the Single Market diagnoses Europe's core weakness as fragmentation that prevents the growth of world-beating firms, and notes, "...particularly, the intra-EU provision of services continues to encounter significant barriers that need to be addressed and removed to unlock the full potential of the Single Market" (Letta 2024, p. 4). The share of cross-border trade in EU services (6 percent in 2019) is much lower than for goods (22 percent), and especially low in construction (1 percent; ESCO 2019, p. 3). EU construction has seen low or declining productivity growth and pervasive labor shortages, despite attracting more cross-border worker mobility than any other sector. "Based on its high economic importance and low single market integration," the Commission "...has identified construction as a priority services sector for internal market policy action" (ESCO 2019, p. 3).

This article focuses on describing and explaining mobilization and governance in American construction, but formulates its questions relative to the EU's efforts in the sector. To what extent do US construction firms encounter internal-border barriers like those targeted by the EU? If they do, how much business mobilization and EU-style governmental response do we see around them, why, and what does that suggest about the politics of the American internal market more generally? Though the research behind this article is fully comparative, a "United States in European perspective" frame helps us display the complexity of this vast sector and the richness of US interview data within article-length constraints. We find that American construction firms do encounter interstate barriers. While less severe than some between EU member-states, they are costly enough that our other findings seem surprising—namely, near-zero mobilization or policy discussion around them. Firms and their associations describe interstate barriers either as private issues (something business just has to manage), as rooted in legitimate state powers, or as institutionally impossible to address. Federal agencies and rules do

little to promote or even discuss firms' or workers' cross-border movement. Relative to Europeans, Americans display little interest in facilitating internal openness, despite conditions that powerful traditions in social science theorize as highly conducive for such an agenda: a socially integrated, mobile, big-business-dominated economy with robust central institutions and pro-market political culture.

We begin by discussing these theoretical expectations. We highlight the modest incentives for internal-market openness that exist in this sector and discuss the conditions that seem to favor steps toward internal openness more in the United States than in Europe. Then, we present a brief overview of EU steps in services and construction as a foil against which to contrast analogous US governance, its policy debates, and what actors say about them in over fifty interviews with building-firm managers, associations, and public officials. Our concluding discussion explains their main patterns, arguing that setting these sectoral politics against a European foil highlights two features of American federalism. One is institutional: though promoting a national market was a leading reason to create the federation, that goal is nobody's active job today. The other is the distinctively American ideational skepticism of central authority and federal action, which appears to limit a market-building project quite strongly (Springer 2021).

Theorizing American political attention to internal markets in construction

What features of services, construction, and the American political context generate expectations about this terrain? Economists know that services trade is generally more challenging than for goods because it "frequently requires the proximity of supplier and consumer" (Hoekmann 2006). Technology creates distance-friendly exceptions like finance and telecommunications, but otherwise services trade typically means hiring or moving people across borders. Dependence on human delivery makes linguistic and cultural differences more costly than in goods trade, and reduces economies of scale. Services also tend to be weakly standardized. Together these features mean that cross-border openness in services typically confronts variable jurisdictional rules for qualifications, authorizations, and many different consumer-protection or social policies.

Construction services have these features in spades. With minor exceptions for pre-fabricated elements, these services are delivered on site. They involve all tiers of personnel, from skilled architects and engineers to tradespeople like plumbers to laborers. Most products are highly differentiated—tailored to site or client—and locally specific knowledge and relationships are important due to dependence on local materials, subcontractors, and safety or environmental inspectors. Economies

of scale are weak: though only larger firms can tackle big projects, it is rarely more efficient to do two at once (Potter 2022).

Not only do these features offer functional justifications for decentralized governance in construction services, they relate to political mechanisms that seem likely to uphold it. The vast majority of firms involved in building, whether in the United States or Europe, are small and local. Again, construction is the least concentrated major sector in the American economy. Its most concentrated segment is single family home-building, where the ten largest American builders construct just under a third of new homes (Wade 2024). Though larger or specialized firms in other parts of the construction sector also do significant business across US states, the sector's unambiguous preponderance of local actors seems likely to favor decentralized arrangements. The many locally oriented firms are presumably inclined to prefer limits on (or at least no active facilitation of) the ease of market access for competitors based elsewhere.

Alongside these conditions that make construction a sectoral "hard case" for any project of cross-jurisdictional liberalization, American institutional features discourage federal-government steps to require interstate openness. The US Constitution invented a "dual federalism" that assigned federal and state governments separate spheres of authority. Its Commerce Clause gave Congress responsibility for interstate commerce, authorizing federal legislation relating to cross-border trade, but otherwise left states "police powers" to regulate within their borders. The early Supreme Court inferred a "Dormant Commerce Clause" (DCC) doctrine that even in the absence of federal legislation, states could not *purposefully* discriminate against out-of-state firms. Still generally allowed, however, were rules with discriminatory *effects*, like requiring licensing of professionals already licensed in other states (what the EU calls a "double burden" barrier). Later, as regulation exploded at all levels in the early-to-mid twentieth century, increasingly overlapping federal and state action produced more "cooperative federalism" (Zimmerman 2001; Weiser 2003). The New Deal court authorized a huge expansion of federal programs by finding that practically any economic activity could affect interstate commerce (most famously in *Wickard v. Filburn*, 317 US 111 1942), while states developed their own regulatory regimes. Still, the system's dual-federalism bases continued to favor side-by-side action. New Deal jurisprudence discovered a "presumption against preemption," noting that Congress only constrains state action as specifically legislated (*Rice v. Sante Fe Elevator Corp.* 331 US 218 1947; *Wyeth v. Levine* 555 US 555 2009). In the 1980s and 1990s, a more "originalist" Court consolidated a ban on "commandeering": the federation may not require states or their officers to address particular problems or enforce its programs (Halberstam 2001). Some federal legislation does preempt broadly, but often Congress uses its vast budget to incentivize state policies rather than requiring them. Overall, were federal actors to want to promote interstate

construction services in the EU-style ways that we summarize below, they would face considerable institutional obstacles (Glassman 1987).

We cannot build expectations solely on these bases, however, because social-science theory and some facts about American construction suggest strong potential for pressure to change these institutions. Scholarship on comparative federalism agrees that institutional constraints, while important, are insufficient to explain polities' trajectories. Federal arenas tend to be "constantly in motion" (Benz and Broschek 2013, p. 7). They undergo processes of centralization or decentralization—sometimes both in different areas—to adapt their institutions to evolving challenges (Dardanelli et al. 2019). Even if American federalism does not lend itself easily to a central "single market" project, we must consider why societal actors might or might not press for institutional change.

As we saw in the issue's introduction, prominent strands of liberal-economic, institutionalist, and ideational theory identify conducive conditions for single-market action in the United States One classic tradition in state-building, federalism, and theories of European integration attributes institutional change to economic conditions (Kelemen and McNamara 2021; on American federalism, Beer 1973; on the EU, Haas 1958; Moravcsik 1998; Sandholtz and Stone-Sweet 1998). Given societal actors' positioning in markets, they stand to gain or lose from cross-jurisdictional openness and mobilize accordingly. Governing institutions respond efficiently to net societal demands. The more numerous and powerful the actors who engage in cross-border activity, the more their interests outweigh locally oriented interests—pushing central institutions to develop central rules and policies to promote openness. Such pressures should be relatively modest in construction, but more generally the United States has seemingly ideal conditions for them: a socially integrated, unusually mobile, big-business-dominated polity with many decentralized rules.

It is important to see that this theoretical expectation is effectively the opposite of the European Commission's discourse about why Europe should prioritize openness in construction services. The Commission emphasizes overall benefits for Europe's economy: even if construction services are largely non-tradeable, some cross-border competition is possible in this huge sector—internationalized firms do compete for large or specialized projects—and if cross-border trade is only 1 percent of these activities, that shows that Europe needs to reduce barriers. If we formulate that policy pitch as a theoretical expectation, it is functionalist: societies do what they need to fulfill the function of economic growth. By extension, the American economy has less functional need for similar efforts. No US data exists on interstate services trade, but during the interview recruiting we describe below, every large firm we contacted (over $250 million in revenue) had offices—branches, not subsidiaries—in multiple states. Unlike in Europe, where practically all construction work across borders operates through subsidiaries, it was very easy

to find medium-sized firms ($50 million to $250 million) with branches or projects across state lines. In policy terms, the Commission would conclude—not unreasonably—that reduction of construction-sector border barriers is less functionally necessary to generate a large competitive market in the United States than in Europe. But in terms of social science, according to the rationalist tradition of liberal-economic theory (and to us), that functionalist expectation is incoherent as a prediction or explanation about political mobilization against border barriers. To say that Europe "needs" institutional change because most of its societal actors do *not* engage in cross-border activity is also to say that we should *not* expect such change: the preponderance of societal interests favors defending positions in subunit markets. To the extent that interstate barriers persist in the United States, the constellation of economic interests should be more supportive for societal mobilization and institutional change to erase them.

Other theories reinforce these expectations. Americans hold more pro-market attitudes than Europeans (Dobbin 1994; Alesina and Glaeser 2004; Block and Somers 2014; Zitelmann 2023), seemingly making such mobilization more likely. Scholars of comparative federalism would generally expect better chances for centralizing institutional change in the United States than in Europe due to greater overall capacities and resources of central institutions (Skowronek 1982; Ziblatt 2006), and stronger shared identity and culture (Erk 2008; Erk and Koning 2010).

Finally, on-the-ground features of US construction today seem likely to encourage businesspeople and officials to favor removal of interstate barriers for firms and/or workers. Most Americans perceive a housing shortage and housing prices as a serious problem (NeighborWorks 2023). The sector has dramatic labor shortages, with 94 percent of construction firms reporting difficulties in hiring qualified candidates in 2024 (Associated General Contractors 2024). Most strikingly, US construction has seen a massive decline in labor and total factor productivity *for fifty years*—which economists struggle to explain (Goolsbee and Syverson 2023). These seem like fertile conditions for something that might look like the EU's agenda.

Our point is just that many conditions favor single-market-style liberalization in construction services *more* in the United States than in Europe, not that we should clearly expect liberalizing forces to mobilize and prevail in American construction. Once again, this sector features decidedly mixed incentives for liberalizing change. As we highlight in the discussion after presenting our data, it is hard to say which of the comparative outcomes we find—a fairly strong agenda for change under Europe's relatively unfavorable conditions, versus zero pressure for change in the United States—is the more surprising case.

Data and methods

Our sectoral research began with scholarly literature, public reports, documents from associations and think tanks, and thirty-one preliminary interviews with firms, associations, and sectoral experts in Europe and the United States. This informed design of a semistructured interview protocol. Given finite resources, we targeted general contractors in four states that vary across size, region, and wealth—California, Pennsylvania, Florida, Oregon—plus associations and public officials at state and federal levels. We sought comparable firms doing "vertical construction"—buildings, not "horizontal" roads and bridges—that ranged from very large (over $1 billion revenue) to small (less than $10 million). The smallest firms were recruited only in border regions where interstate activity is imaginable, and included some that have only considered (but not undertaken) cross-border work (Table 1).

Our parallel European interviews prioritized four countries in the EU Single Market that vary in wealth and other conditions: France, Germany, Poland, and a non-EU member of the European Economic Area, Norway. Though not reported here, they helped fact-check the following documents-based sketch of the EU agenda in construction services. It describes the main EU efforts and the barriers they target, allowing us to frame questions about US parallels.

Sketching EU action in construction services

Consider first the EU's overall agenda in services. Its Court of Justice has a long history of expansive interpretations of the "freedom to provide services" enshrined in its treaties (Hatzopoulos 2012). Especially since the 1990s, its executive Commission has worked to enact these principles into statutes. Results include a general regime for qualifications recognition (Professional Qualifications Directive 2005; 2005/36/EC), a general regime to facilitate cross-border services provision (Services Directive 2006; 2006/123/EC), rules allowing firms to hire workers in one member-state and post them in another for limited periods (Posted Workers Directive 1996, revised 2018; Directive (EU) 2018/957), and a system requiring nondiscrimination in procurement (several Procurement Directives, revised 2014). Also notable, though outside our focus on services, is the sector-specific goods regime under the Construction Products Directive (89/106/EEC) and Construction Products Regulation (Regulation (EU) No 305/2011; Commission Delegated Regulation (EU) 2024/2769). They create harmonized and binding performance requirements for all construction products (Medzmariashvili 2019). Member-states still define their own building-safety requirements, but must accept all CPR-authorized products on their markets (Abend 2018).

Table 1. Interview breakdown.

Interviewee category	Number	Profile description
Small general contractors	7	<$50 million turnover in CA, FL, PA, OR
Medium general contractors	12	<$250 million turnover in same
Large general contractors	10	>$250 million turnover in same
Construction association officials	8	Including national and state-level
State-level public officials	11	Working in sector (licensing etc.)
Federal-level public officials	8	FTC, OIRA, Commerce, Council of Economic Advisors
Total number of interviews	56	

Within the services agenda, construction has gradually risen in priority. After national "performance checks" of the Services Directive in 2011, the Commission chose construction for special attention. In 2014 it created a European Construction Sector Observatory to track the sector. In 2020, spurred by border closures in the COVID-19 pandemic, it created a "Single Market Enforcement Force" (SMET) that made construction services its first priority. Throughout this period, the EU has funded many studies of barriers in construction. They paint a challenging picture and call for sustained action in several areas:

- *Authorizations, codes and permitting.* A 2018 study found that construction firms continue to wrestle with varying national paperwork, whether to operate overall or for specific work. Authorizations may have different scope or only be available in paper and/or in native language. Environmental review processes vary widely. A system of private but EU-encouraged Eurocodes sets performance standards for major structural elements, but more specific building features (egress, electricity, plumbing, etc.) must be tailored to jurisdiction, often with idiosyncratic inspection processes (ECORYS 2018; ESCO 2019).
- *Qualifications.* Qualified EU service providers have rights to operate in another member-state without further requirements (what the EU calls "dual burdens"), except where specifically justified, but in practice this recognition can be difficult. To streamline the process, member-states have been required since 2023 to administer "Single Digital Gateways" that process recognition entirely online, but issues remain, especially around differences in which professions may do what work. A SMET project recently reported success in nudging member-states to reduce hundreds of "prior checks" procedures, including many in construction (EU Court of Auditors 2024).
- *Human resources/social policy variations.* EU countries vary enormously in their rules for hiring and firing, pay and benefits, and working conditions. The

Services and Posted Workers regimes authorize providers (firms) or workers to operate across Europe partly under home-country rules, avoiding some host-country requirements, but implementation challenges remain (Mirowska-Łoskot 2024). The European Labour Authority tries to address labor shortages in construction with events and projects to facilitate posting.[1]

- *Procurement*. All public works contracts in the EU over €5.5 million must be tendered through the EU's e-procurement system, which monitors national favoritism. Studies show enduringly national patterns, however, with a slight increase over time (to 5.5 percent) of larger contracts awarded to out-of-state firms (Sirtori et al. 2017; European Commission et al. 2021).
- *Insurance*. Studies of construction insurance in the early 2010s found "an extreme diversity of liability and insurance regimes across the twenty-seven EU Member States," which can be sufficient to deter cross-border construction work (ELIOS 2010; also European Commission 2014). Little has changed in this area since. The SMET briefly considered it in 2023 but then decided it was too complex for their relatively informal process.[2]

In sum, the EU puts considerable political effort into facilitating cross-border openness in construction. Visible results are modest so far, except in the posting of hundreds of thousands of workers. The Commission argues for further reform by highlighting this lack of results and the sector's labor shortages and low productivity.[3]

American internal-market governance in construction and pressures for change

As noted earlier, US law on interstate openness is rooted in the Commerce Clause and related DCC jurisprudence. Congressional commerce authority currently rests on the broad New Deal interpretation that authorizes wide-ranging federal regulation, but where Congress has not legislated, courts mainly invoke the DCC against "purposeful discrimination." Other legal features bolster state autonomy. States have broad authority to require their own professional licensing, without consideration of "dual burdens" (Sanderson 2014, 466). In movement of persons, mid-twentieth-century rulings consolidated a "right to travel" in which citizens freely choose their residency and immediately gain most related privileges, but must also immediately meet all in-state rules—unlike EU-style concepts of "posted workers" or "temporary services" that limit the application of a state's rules on its territory (Strumia 2005; Bruzelius and Seeleib-Kaiser 2020). The "market participant exception" to the Commerce Clause lets states favor their residents when participating in markets by spending (not regulating) in procurement or with subsidies (Williams and Denning 2009; Francis 2017). The "state action doctrine"

shields anti-competitive actions by public agencies from antitrust scrutiny, with some parallels to the EU's shielding of "services of public interest" in its Services regime.

In construction, as in many sectors, federal legislation sets many rules. But if congressional authority could presumably extend to EU-style options like a federal requirement for mutual recognition of licensing (for example), practically all federal action prioritizes prudential goals, with little direct emphasis on facilitating interstate commerce. The Occupational Safety and Health Act and its agency (OSHA) sets rules for workplace safety. OSHA administers this regime directly in twenty-eight states, but twenty-two states do so themselves under OSHA monitoring, introducing some variations. The Environmental Protection Act and its agency (EPA) set major requirements as well, though states can and do add additional requirements and environmental-review procedures. The Federal Fair Labor Standards Act requires minimum wages and overtime pay, while allowing further state requirements. Little legislation addresses construction products, with requirements defined mainly by private standards that are adopted into a patchwork of building codes by states or municipalities (Chen 2021). In electrical goods, however, the Department of Energy makes substantial funding for state projects conditional on uniform standards for energy efficiency.

Beyond generally displaying "a greater degree of deference to state actors and to state regulation" than the EU single-market regime (Barnard 2009), these federal rules leave some regulatory areas entirely to the states. In licensing, individuals and firms must simply meet the state requirements where they do business. Though these are typically far more similar than, say, German and Spanish qualifications, professionals must still usually fulfill each state's requirements separately. For example, an experienced plumber from Georgia must pass a seven-hour exam to practice in Florida. In procurement, almost all states have in-state preferences in competitive bidding (Hoffmann 2011). Even a conservative, low-regulation, small-population state like Idaho requires that 95 percent of employed workers on public contracts be "bona fide Idaho residents."[4]

Our search for construction-relevant policy discussions or change toward interstate openness discovered only one example, in licensing. Conservatives have long criticized the rising number of licensed professions, but until the late 2010s these voices tended to ignore or oppose facilitating interstate recognition of licenses as a band-aid that risked legitimating licensing overall. A shift began with a Pentagon initiative in 2011 to address hassles encountered by spouses of military employees who move from base to base (Government Accounting Office [GAO] 2012). It inspired a 2018 Utah law to recognize out-of-state licenses for military spouses. This was imitated in several states and included in federal defense legislation in 2021 requiring states to facilitate license recognition—for military spouses. It also sparked general policy discussions, inspiring Arizona legislators to

craft a "universal licensing recognition" law that has been copied in some states (Bae and Timmons 2023). It recognizes out-of-state licenses for Arizona *residents*—facilitating establishment for service providers, but without authorizing cross-border service provision. A study committee also exists on military-spouse licensing issues at the Uniform Law Commission—an interstate body without formal powers that has promoted non-partisan model legislation since 1892—but otherwise its current and recent projects do not touch construction.[5] The Federal Trade Commission (FTC) has recently exhorted states to liberalize licensing, but without attention to construction, as we detail later.

As demonstrated in other contributions to this special issue, more general recent changes in US internal-market governance run the other way, expanding state autonomy in ways that could matter for construction. A conservative Supreme Court that is broadly supportive of states' rights produced two major rulings in 2023 along these lines. In *Mallory*, it held that an asbestos-sickened worker could sue his employer in Pennsylvania courts simply because the firm was registered there, without other links to the case. This overruled the Pennsylvania Supreme Court, which had rejected its own jurisdiction over the suit due to the unacceptable implication that "every national corporation [would be] subject to the general jurisdiction of every state" (*Mallory v. Norfolk Southern*, 3 EAP (2021), 266 A.3d at 570). In *Pork Producers*, the Court upheld California's animal-welfare rules on pork that is almost entirely produced in other states. Dissenting Justice Brett Kavanaugh argued that this interpretation "is not the Constitution the Framers adopted in Philadelphia in 1787," since it appears to authorize states to control access to their markets for any moral purpose without regard for effects on interstate commerce (*National Pork Producers Council v. Ross*, 598 US 2023).

American governance of construction services is, in short, quite decentralized and currently displays few signs of promotion of internal openness. Next, we show how businesspeople, associations, and officials in this sector experience and talk about their governance.

Evidence from interviews

Our interviews with firms began with open-ended questions about difficulties they perceive with out-of-state work relative to in-state projects. Then we asked about a list of possible barriers. Next came questions about the desirability of policy or institutional change to reduce any such costs, and if they had ever discussed or mobilized for such changes. Our questionnaires (in Supplementary Materials) included what we called the "magic" question, asking respondents to ignore feasibility and describe what they would change in their sector in terms of unified federal rules, mutual recognition, or state-level discretion. (We explained mutual recognition, which is unknown to Americans). We posed roughly the same

questions to associations and officials, with some tailoring for the latter relating to their particular responsibilities.

We organize the results into firms' perceptions of barriers, and then firms', associations', and officials' views of how barriers relate to desirable change in policies or institutions. Numeric citations refer to our anonymized interview registry (see interviewee type by number in Supplementary Materials).

Firms' perceptions of barriers

The main categories in which American firms report regulatory costs in interstate construction services largely correspond to the categories identified in the EU above. Our overall finding is that they encounter barriers that are more similar to those in Europe than we expected, even given the suspicions of a weak US single-market regime that inspired this project.

- *Authorizations, codes, and permitting.* Business registration is generally easy and cheap in US states, with some exceptions: Virginia and West Virginia require a multiple-day test to register construction firms (separate from individual licensing; 24, 26). Building codes are more complicated. All jurisdictions use private code systems from the International Code Council, the International Association of Plumbing and Mechanical Officials (the Uniform Plumbing Code), or the National Fire Protection Association (the National Electrical Code), but these may be adopted with amendments at state or local level. Among our respondents, the most common kind of characterization was that "each jurisdiction has slightly different processes and slightly different codes" (23), or "Sure, building codes vary" (22). This requires attentiveness to local rules and inspectors, with modest consequences for how a project is built. Respondents emphasized more significant differences in state environmental reviews—one large firm called them "wildly different" (2; also 24)—further requiring knowledge about each locality. Permitting was widely presented as a substantial source of potentially costly differences. State and local jurisdictions are idiosyncratic in how they apply their slightly different codes, to the point that firms sometimes say no to otherwise-viable projects due to certain jurisdictions' permitting hassles (2, 3). From design to completion, then, builders entering a state must put effort into learning and adapting to its authorizations—as in Europe, though surely with narrower overall variation in requirements.
- *Qualifications.* Our respondents almost universally listed licensing as the most obvious regulatory cost in interstate activity. Like in Europe, some states require no licenses or general ones for certain work, others specific certifications. These "dual burdens" are often onerous enough to affect where firms work. A medium-sized firm complained of costly differences between Oregon and Washington, and observed, "And that's probably why we've limited ourselves to just two

states. . .Arizona's booming. . .[But] it's a pain in the butt to get a license in Arizona" (6). A small firm in Pensacola, Florida, ten miles from the Alabama border (and the larger market of Mobile, Alabama) said that licensing ruled out Alabama projects (30). A small firm in Lake Tahoe, California objected that to work in the nearby Nevada cities, a license required "three years in a row of your accounting records prepared by [accountants], not in-house. . .that's about $10,000 a pop. . .. Then you take this test. . .[that is]. . .much more rigorous than [California's]. And then once you pass the test, you can only qualify for [projects of limited size]" (33). Colorado requires licenses for the state and each county, all with varying documentation. A nationwide firm told us, "There have been times where we have not pursued a project because, okay, it's going to take us X number of months to get a license and we're not going to have one by the time the [proposal deadline] comes" (2; also 7, 34).

- *Human resources/social policies.* Firms take for granted that pay, benefits, and working-condition regimes vary across states. These variations are certainly less severe than in Europe, but respondents sometimes cite them as the reason they do not work in another state. For example, the Pacific states of Washington, Oregon, and California all run their own versions of OSHA, which firms often hire outside consultants to navigate (5). All three are high-regulation states with similar politics, but even larger firms in Portland, OR or Seattle, WA hesitate to go south to California due to its healthcare and working-condition rules. An Oregon firm that does specialized work for big clients in many states said, "Our larger corporate clients, they love us and they'll use us everywhere, but they have specific contractors for California because of how stringent it is and understanding the ins and outs there" (3; also 7). Another human-resources challenge concerns mobility restrictions by unions. Trades unions typically enforce "portability" rules stipulating that firms from outside a union local may bring only one supervisor and four workers to a job, unless the union approves a firm's claim that local workers cannot meet project needs (4). One Oregon firm building a major complex just across the border in Washington complained, ". . .we would so much rather prefer bringing people over even if [wages are higher in Portland], the productivity we can get out of them is going to be much more right. . .." (5). This is not an issue in "right to work" states where unions are much weaker, mainly in the South.
- *Procurement.* Though practically all US states lightly favor their own firms in contract bidding, our respondents do not report price discrimination as a major problem (except between counties in Florida).[6] It can have some effects—leading one large Oregon firm to remark, "we love those requirements in Oregon and hate them everywhere else" (2)—but most construction contracts have moved away from "hard bid" processes (where percentage-preferences matter) toward "alternative delivery" (where selection emphasizes capabilities and how the

contract will be fulfilled; 5). Significant limits on cross-border competition do arise, however, from requirements for local labor, required use of in-state subcontractors, or Pennsylvania's unusual requirement that subcontracting roles be tendered independently, such that the contractor cannot choose whom they work with (21, 35).[7]

- *Insurance.* Insurance for US construction firms does not showcase interstate issues quite as severe as some in Europe—like French requirements for decade-term insurance that is difficult to obtain if not established in France (Commission 2014)—but does display costly variation. Firms can generally buy a policy in one state that covers projects elsewhere, like a drivers' license that works nationwide (2, 5). These policies even tend to use the same form everywhere ("CG 00 01"). Insurance is governed by state law, however, and there is variation—some in state legislation, more in state-court jurisprudence—in how contracts are enforceable relative to subcontractors and liens,[8] and in interpreting key terms (an "occurrence," an "accident"). Firms expend considerable resources to understand these consequential variations in contracts, which "means employing and reaching out and getting to know lawyers in each of those different states" (3, 21, 28, 51). Projects involving firms with insurance from different states may be adjudicated in many different state courts. According to an insurance executive, "Carriers spend billions of dollars in legal fees suing each other over these issues every year" and pass the costs on to construction firms (84; also 51).

Thus while American construction firms work much more across their states than EU firms do across theirs, they also encounter non-neglible regulatory costs in so doing. When some such barriers look more severe in Europe, this is sometimes due to interactions with socio-cultural diversity rather than more exclusionary rules per se. For example, Sweden resembles many US states in requiring idiosyncratic certifications for certain kinds of welding, but Sweden's barrier is sharper because its required training is only available in Swedish (53, 80). Though the aggregate cost of such barriers may be higher in Europe, our respondents say that the US level is sufficient to regularly deter firms—especially but not only smaller ones—from cross-border opportunities. As an executive at a medium-sized firm that works in five states summarized, to go into another state, "You dang near need to set up a whole separate company" (3).

Regulatory barriers, public problems, and public solutions

Whether firms experience interstate barriers is one question; whether anyone wants to do anything about it is another. American firms expressed widely variable views about whether interstate regulatory barriers are a problem that government might somehow address. Almost all seemed to be considering the topic for the first time,

often musing their way through contradictory views. Leaders at construction associations were consistent on their own role—they give no attention to such issues—and remarkably explicit that they too had not considered these topics before. Policy-makers at federal and state level basically told us that addressing interstate barriers in construction is not in their job description.

Firms

Leaders at four of our twenty-nine US firms said that interstate barriers are not a problem. It is a firm's responsibility to understand and respect jurisdictional rules, and that is fine: "We are experts in following the rules—we don't really care what they are" (50); "I don't complain about the rules and regulations, I just try to stay up to speed with them" (31); "There are huge issues in the world today. Our rules and regulations are not amongst them" (6); "Government rules don't matter.... Every state has their own rules, every municipality has their own rules. Everyone we go is different. We just figure it out...." (34). This characterization of private responsibility did not mean that respondents assigned no cost to barriers. Interviewees 6 and 34, medium-sized firms in Oregon and Pennsylvania, both said that licensing costs had deterred them from pursuing business in certain other states.

A few actively defended decentralized regulation as legitimate by emphasizing that licensing, codes, and other decision-making should reflect local conditions or priorities: "You need to be educated on where you're working" (31; also 23, 1, 7). Another four arrived at the same place by emphasizing skepticism about federal action. For a large Oregon firm, the issue was that "I cannot see the federal government creating enough information for fifty different states to be not just clouding the world ...I could not foresee it being efficient in any way to have that administrated at the federal level" (5). Several made similar points immediately after complaining about existing barriers. The Lake Tahoe manager who complained about costly Nevada licensing, after explicitly discussing an option of federally required mutual recognition, said, "I can't really think of anything federal that sticks out at me [to help] what I do. I could just be overlooking it and I apologize, but I can't think of anything [that should be done] federally" (33). A manager from a medium-sized Florida firm, after arguing at length that Florida should make it easier to work across Florida counties, said that as far as federal efforts for harmonization, "I think it has to be like a state region area saying, hey, yeah, we'll accept it. Louisiana, Florida, Alabama, Georgia, if you have a license in any of those states, you're accepted in these individual states. I think if it's federally driven, I don't think that moves the needle. Just because of the state autonomy to say we're going to do it or not. I mean, that's just how we're built" (15). A Colorado-based lawyer and "constitutional geek" at a nationwide firm suggested

that a federal solution might be warranted for one issue of divergent state law (late payments, see note 13), but otherwise expressed a complex position:

> I've always been the mindset of, look, our framers said less regulation by the feds, the better. We're going to let states do this. And I get it there's issues that have arisen since that time that our framers could have never speculated against [*sic*]. They're probably better regulated by the feds. But I've always even, in all my constitutional law classes, I just gravitated towards that "less feds more state." And that's just my mindset. But if you're asking, would it be nice to have it? Yeah, it'd be nice to have some clarity on the issue whatever the clarity is. . . (51).

The largest group—about half of our firms—expressed mixed positions that were more positive about federal action, but suggested that federal solutions were impossible due to the institutional power or legitimacy of resistance. For a large Oregon firm,

> . . .to have any hope with that, it would have to be a federal thing, and I just don't see that happening, quite frankly. With all these states giving up—you know, okay, I've got, whatever, 100 people in my building department, and the director that's there has got political power, and all these things, and they're not going to want to give up all these little kingdoms. And so, yeah, I guess we haven't put any actual energy into doing it because I think it would be a fool's errand (2).

A medium-sized Pennsylvania firm echoed that jurisdictions "all operate like these little fiefdoms, that they just like to control their little area" (24). Similar thoughts from a medium-sized Oregon firm are worth quoting at length. This executive expressed support for a combination of federal harmonization and mutual recognition, tying this view to productivity challenges, but then explained why this doesn't happen even in widely critiqued areas like licensing:

> We keep going back to this productivity thing. . .. There are some big companies, but the biggest construction companies are, what, twelve, thirteen billion [dollars] in the United States. That's not that big, when you look at the size of our industry. . ..because of some of the other issues we've talked about around portability with building codes and licensing, a couple other things, it's obviously really hard to build a large construction company and capture efficiencies like you can in other industries. . .. On the resistance side, Colorado, if you were to propose something like [licensing mutual recognition] to them, their argument is very easy to understand. And it's a very proud statement. It's like, "No, we don't want you building in our state if you don't have the right. If you're not the right person to do the job, if you can't qualify, then you shouldn't

> be working in our state." So it's a really big soapbox to stand on. I think that's why it just gets lost in conversation (3).

Respondents at three firms supported federal action, arguing variously that fragmented licensing was "stupid and should be fixed" (22), or that it would be good to have "a universal building code. There's no reason why it wouldn't be" (24; similarly 29).

Overall, almost all construction firms agree that interstate barriers are simply not active policy issues in their sector. They agree less on the abstract desirability of government (and especially federal) action on these issues, but those with more positive views say change is impossible, creating a broad consensus around nonmobilization. Firms treat the efforts they make to operate across states as the normal cost of doing business—as "the rules of engagement," as one respondent said repeatedly (7)—and have generally not thought much about how things could be different.

Associations

We posed similar questions to multiple officials at the largest national federation of general contractors, Associated General Contractors (2024) of America (AGC), four state AGC chapters, and officials for the two main residential-builder associations, Leading Builders of America and the National Association of Home Builders. AGC national and chapter websites and policy documents make no mention of interstate openness, though one service it sells is a State Law Matrix database. A linked article highlights "considerations for performing work in a new state," emphasizes the need to research authorization, licensure, lien laws, and enforceability of contracts, and concludes, "This article is not meant to scare anyone off from working in a new state, but rather to arm you with some of the basics so that you can plan for success."[9]

Our questions were clearly novel to AGC officials. After introducing our study and asking whether AGC members express concerns about any interstate issues, one mused:

> When it comes to construction it's funny, before today I actually thought of it as more of, hey, this is what we have to do when we work [in a state]. It never occurred to me: why don't we have a central system to decide? A good example would be licensing laws for general contractors (87).

Later, when asked if federal action on any issues might appeal to AGC members, this person suggested licensing, and added, "But I've never heard anybody push for that. . .. It's just the way we do it in the United States. We have the traditional police powers that are just historically at certain levels and we don't think. . .[about whether] in the twenty-first century that's a good thing or not." Another AGC

official (in a separate interview) expressed personal sympathy for such possibilities but speculated that large-firm interests ran against them:

> I think contractors are pretty entrepreneurial, although obviously, we have now a lot of billion-dollar companies that have a lot of general corporate structure. And they're risk takers, so they generally think they know the best way to do a project, and they're not necessarily interested in having a playing field leveled so that other people can erode away that competitive advantage they think they have (88).

National associations and state chapters also perceive interstate issues as outside their responsibilities. National AGC officials emphasized that they leave issues of state law to the chapters. For example, one noted that AGC-national opposes both "Buy America" federal procurement preferences and domestic in-state preferences, but they take no action on the latter: "We're a federation, so it's decentralized in some ways when it comes to some of these state law issues...I think we might tread on their toes for an issue like that" (87). State chapter officials, meanwhile, told us that they focused on their state legislatures and agencies, and that if anyone considered such issues, it was national AGC. As one eastern-US chapter executive said, "I imagine that they've had to weigh in amongst states," but at least in the Northeast, "...it's pretty well walled off between [chapters]....[except for] more soft cooperation...information sharing and best practices" (21).

Public officials

We sought federal and state officials who could be considered analogous to those involved in construction services liberalization in the EU. At the federal level, we conducted eight interviews with current or recently past officials at the FTC, the Office for Information and Regulatory Affairs (OIRA), the Commerce Department, and the White House Council for Economic Advisors. These respondents confirmed our impression that there are not other obvious federal offices to approach.

Occasional federal-level discussions do take place that could in principle be relevant to openness in construction services, but have not been concretely linked to the sector. OIRA reviews all new federal regulations, with a cost-benefit process mandated to consider how new rules are "less burdensome" than existing state or federal rules (Sunstein 2013). Their discussions only rarely touch on benefits from reducing interstate regulatory fragmentation, however, and the officials we interviewed knew of none relating to construction (F1).

Conversations at the FTC come closer to this terrain, without reaching it. Its mandate focuses on anti-competitive action by private actors. The issues that come up in construction are public—rooted in state police powers. Still, the FTC has sometimes played an advocacy role about state-level barriers. The early Reagan

administration considered creating an FTC office to highlight state-level barriers, but this proposal was dropped because it fit poorly with that administration's main emphasis on reducing federal authority (F7; Craig and Sailors 1987). In the early 2000s, under President George W. Bush, the FTC took up studies of state barriers in online wine sales, contact lenses, and car dealerships. This helped elicit the Supreme Court's ruling against discriminatory state wine-selling laws in *Granholm* (2005), but not much else (F2, F5, F6, F7). Under the first Trump administration the FTC created an Economic Liberty Task Force that advocated for liberalization of state licensing, but only directly discussed health care professions.[10] Despite construction's productivity issues and the housing crisis, it did not come up. Nor have any related discussions occurred at Commerce or the Council of Economic Advisors (F3, F4, F7).

State-level officials similarly reported practically no discussion of interstate issues. Since firms identified licensing as their top complaint, we focused mainly on licensing agencies for contractors or construction trades. In eleven interviews across four states, these officials consistently said they focus on intra-state concerns and their state legislatures. As one licensing director put it, "We like to say we have a ninety-member board of directors over in the capital building" (11; also 10, 90, 97, 98). Though a National Association of State Contractors Licensing Agencies includes promotion of "license uniformity" in its mission statement, respondents characterized NASCLA meetings as best-practices discussions between states whose sheer diversity made uniformity (or even wide reciprocity) impossible. One agency head said, "I'm thinking about. . .how that could work, given. . .the totally different structures that exist in other states. [At NASCLA] I'm the lone representative in terms of the contractor licensing entities in [my state]. My friends from [two other states], there are four and five different people there because they have the thing carved up so much differently" (9). Another director with eighteen years experience at their agency said they did not know of discussions about facilitating licensing reciprocity: "I have not heard any of it. If it's happening, I don't know about it" (46).

All eleven respondents expressed sympathy for easier licensing recognition alongside the conviction that it will not happen. Asked about generalized reciprocity (or mutual recognition) the experienced director said, "I can see it being a value. I cannot see the states going along with it. . . In theory, it's a great idea. In reality, good luck my friend" (46). Respondents attributed resistance to a universal defense of local fiefs, the power of organized labor, or American federalism. One plumbing-board director said, "I would love to see. . .a national plumbing board that we have individuals from the industry sit on and say, how can we have a broader predictability of code from state to state, a broader predictability of licensing. . .. But again, you throw in that human factor and everybody wants their own sandbox, unfortunately" (12; also 9, 90). When told of EU rules, a

contractor-licensing official said, "I think we just have a far more independent mindset in the United States. You know, 'Screw you, you're not going to tell me what to do in my state.' I think it would be a huge lift to get labor to come along with that, where they're giving up their control over who gets to do the work in their state..." (11; also 12). The eighteen-year veteran mentioned above added, "That's part of how America was built. That's been our dichotomy ever since...the states want their things that they have control over, and the feds want their things that they have control over" (46).

As with federal- and state-level associations, then, federal and state officials appear to see interstate barriers in construction as falling between their respective responsibilities.

Discussion and conclusion

Our interviews show that American construction firms encounter regulatory barriers in interstate work, including many like those prioritized as problems by the EU. These regulatory costs are sometimes sufficient to deter interstate activity. Nonetheless, many firms do substantial business across states—clearly far more than across EU member-states, though no data exists on intra-US services trade. In terms of political-economic theory, this combination of relatively high cross-border flows and costly visible barriers seems quite favorable for societal actors to mobilize around a single-market-style agenda. That mobilization, however, is nowhere to be found. Nor do federal or state policy-makers appear interested in facilitating interstate activity in this huge sector, despite falling productivity, glaring labor shortages, and a politically salient crisis of housing supply. We do not make any claim about how much interstate regulatory barriers contribute to these sectoral woes—they surely have many sources—but this context seems supportive for interested actors to make that argument.

Why do they not do so? It is tempting, but illogical, to rely on a functionalist logic that is the American extension of the European Commission's justifications for its efforts in this sector. Europe *needs* to prioritize this sector because it has such meagre cross-border activity; US construction enjoys more activity due to greater social homogeneity and mobility, plus a general context of greater interstate economic integration, so construction firms and related public officials do not *need* to eradicate remaining barriers in their sector. While the Commission's pitch makes sense in light of its mission—its job is to highlight and eradicate barriers to European integration—it makes no sense as social-scientific explanation. Higher interstate activity in American construction than in Europe suggests that more actors should have stronger interests and more political power to erase whatever barriers continue to irritate their pursuit of profit.

Our interviews offer support for two mechanisms that limit this sort of American political mobilization relative to Europe. The first is founded on the institutionalist expectation that "policies make politics" (Schattschneider 1936; Pierson 1993; Mettler 2005; Anzia and Moe 2016), and that delegation of specific mandates and powers to agencies in complex political arenas can have path-dependent consequences (Moe 1995; Huber and Shipan 2000; Gailmard and Patty 2007; Potter 2019; in the EU context, Pollack 1997; Tallberg 2000; Groenleer 2009). Our US interviews display both the presence of institutions that create interstate barriers and the absence of institutions that recognize and address them. Construction firms and public officials tell us that state-level regulations are quite variable and adopted in inward-focused state policy processes. Neither state-level construction associations nor state officials perceive responsibility for cross-border issues. Many of our interviewees say they have difficulty imagining how alignment or mutual recognition across the states could be negotiated. Though this makes sense—such deals would be complicated—it seems insufficient as an explanation, given that the EU has negotiated many such arrangements despite starting from even greater separation and regulatory variation across its more diverse member-states. The other component of this mechanism is that in the United States, unlike in Europe, no federal-level body with substantial public authority is mandated to tackle such barriers (or even discuss them). Such authority is legally imaginable in the United States—Congress could create an EU-style agency that would study interstate commerce, coordinate among the states, and propose federal legislation—but the closest US politics has come to this scenario is the proposal for a states-focused FTC office in the early 1980s. In the absence of such institutional actors, interstate barriers fall between the cracks of federal and state responsibilities. They are nobody's job.

The second mechanism that is visible in our interviews and steers Americans away from mobilizing against interstate barriers is ideational. The American political system was founded on profoundly decentralized principles (Skowronek 1982; Dobbin 1994), and the robust legitimacy of wide state police powers endured in the twentieth century despite (and in reaction to) expanding federal powers (Gerstle 2010). That expansion of federal authority in and after the New Deal provoked the formation of a broad conservative coalition, finally, consolidated by Ronald Reagan, that was united in opposition to federal authority on economic and social issues (Nash 1976; Springer 2021). Construction is one of the most conservative sectors in American society (Washington Post 2015), and these beliefs are explicit in many of our interviews. Some respondents assert such views directly ("the less regulation by the feds, the better") and many more refer to them as a taken-for-granted context ("that's just the way we do it"; "that's just how we're built"; "you're not going to tell me how to do it in my state"). More generally, it was often explicit in our interviews that our respondents had given little thought to

questions about the ease or difficulty of interstate business. If institutional constraints were the whole explanation for the lack of pro-openness mobilization, we would expect to see more firms and associations complaining about interstate barriers and at least attempting to alter the institutional landscape.[11] Instead we see a mix of institutional and ideational dynamics: actors acknowledge barriers when prompted, but either fatalistically argue that there is no point pushing against "how we're built," or endorse the barriers as legitimate.

A final point is important about our European foil for this US-focused article. Though the European agenda for internal-market openness in a largely non-tradeable services sector helps motivate a theoretical puzzle about the absence of similar American mobilization, we do not mean to suggest that the puzzle only involves the American side. With apologies to our friends in Brussels for the metaphor, the same theoretical expectations that imply nonbarking dogs in the American internal market imply that Europe's internal-market dogs bark rather more than most social science would predict. Due to article-length constraints and the complexity of regulation in this vast sector, we judged it most effective to provide relatively in-depth evidence about one case. Other contributions to this special issue provide support for related theoretical claims on the European side: that the EU Single Market pushes into nonobvious sectors because it is somebody's job to do so, and thanks to an ideational context that is relatively supportive of central governance over the economy. In comparative perspective, both these cases vary considerably from general theoretical expectations due to their distinctive institutional and ideational features.

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Supplementary material

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Notes

1. See https://www.ela.europa.eu/en/events.
2. Interviews, multiple SMET members, 2022–2023.
3. See https://single-market-economy.ec.europa.eu/single-market/services/construction-services_en.
4. Idaho Statutes, section 44-1001 (see https://legislature.idaho.gov/statutesrules/idstat/).
5. See https://www.uniformlaws.org/projects/overview.
6. In a hotly-contested move, Florida passed legislation in 2023 to ban county-level preferences in materials procurement. It is currently debating banning preferences for local hiring. https://floridapolitics.com/archives/660626-preemption-of-local-government-hiring-preferences-on-public-works-projects-advances-in-senate/.
7. This is similar to, but broader than, Germany's requirements for separate tenders for architectural services (CON 43).
8. If a contractor is not paid by the client, some states still require payment of subcontractors, and some do not. This is a key issue addressed by the EU's 2011 Late Payment Directive and the currently-proposed Late Payment Regulation.
9. https://www.consensusdocs.org/considerations-for-performing-work-in-a-new-state/.
10. See https://www.ftc.gov/policy/advocacy-research/advocacy/economic-liberty.
11. This point is similar to Dobbin's ideational critique of Skowronek's institutional argument about American political development (Skowronek 1982). The more the main conditions shaping action are institutional path dependence, the more we should see actors complaining about and probing against institutional constraints. The more the main conditions involve ideas about governance, the more we should see calls for change quickly set aside as illegitimate, or never considered (Dobbin 1994, p. 228).

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