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The Theoretical Framework

1.1 INTRODUCTION

The Law and Development movement, launched in the 1960s by the US Agency for International Development, the Ford Foundation, and other private American donors, placed law at the centre of the development process. Although this movement soon faltered, largely due to its emphasis on encouraging countries to transplant laws without requiring them to adapt these to their contexts, its failure underscored the importance of *compatibility* of the borrowed laws.[1] A review of the literature relating to the movement reveals that laws that were not compatible with the context of the adopting country sometimes did not 'take at all': in many cases these laws though 'promoted by the reformers, remained on the books but were ignored in action' while in other cases these laws 'were captured by local elites and put to uses different from those the reformers intended'.[2] The evidence for the importance of compatibility that emerged in relation to this movement was so overwhelming that by the time the movement had ended there was 'explicit recognition', even at the World Bank, 'of the failures of transplants and of top-down methods, which [. . .] led to a rejection of one-size-fits-all approach and [. . .] placed a renewed stress on the need for context specific project development based on consultation of all "stakeholders"'.[3]

Notwithstanding the recognition that compatibility was, and is, important for law reform to deliver the results for which it is undertaken, there has been little clarity, particularly in comparative law literature, as to how this compatibility may be generated or how it impacts the subsequent success of the borrowed law. This chapter argues that compatibility between the adopted law and the context is generated in the course of

[1] David M Trubek, 'The "Rule of Law" in Development Assistance: Past, Present, and Future" in David Trubek and Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (CUP 2006), 79.
[2] ibid.
[3] ibid 91.

adoption of the borrowed law and affects not only the extent to which the law is understood, utilised, and applied in the adopting country but also the pace at which it integrates into the adopting country's pre-existing legal system. To study the connection between the adoption and implementation of borrowed laws, particularly economic laws, this chapter proposes an analytical framework that integrates elements from comparative law literature, the political science literatures of policy diffusion and transfer, and new institutional economics (NIE) literature. Policy diffusion and transfer literatures indicate that countries have diverse motivations for adopting laws which also impact the mechanisms through which they adopt these laws; comparative law literature suggests that the context of the adopting country, through the actors that engage in the adoption process, plays a critical role in shaping the content of the adopted law and thereby lays the foundations of its subsequent performance in the adopting country; and new institutional economics literature elaborates the connection between the institutions through which laws are adopted on their subsequent implementation.[4]

This chapter is, therefore, organised as follows: Section 1.2 discusses comparative law, diffusion and transfer, and new institutional economics literatures as the three pillars of this analysis and highlights their respective contribution to the proposed framework; Section 1.3 outlines the attributes of successful transplants as derived from the different literatures and explores whether compatibility alone is sufficient to generate these attributes; Section 1.4 presents the integrated analytical framework and explains how it may be configured for analysing the competition experience of individual South Asian countries; Section 1.5 outlines the framework in action.

1.2 THE THEORETICAL PILLARS

Comparative law literature, the literature on policy diffusion and transfer, and new institutional economics offer insights into different aspects of the adoption of laws. This section examines each of these literatures to glean factors that may be used in designing a framework for analysing the links between the adoption and implementation of borrowed laws.

1.2.1 *Legal Transplant Literature: The Clue is in the Context*

Legal transplant literature as a branch of comparative law literature recognises that legal rules or systems of law move from one country or people to

[4] Drawing upon the work of Douglass North, the term 'institutions' as used throughout this work includes formal institutions (such as laws), informal ones (such as conventions and codes of behaviour), created ones (such as statutes), or evolving ones (such as common law). However, the term does not include political, economic, or legal 'organisations' or 'authorities' that come into existence and operate through an institutional framework. Douglass C. North, *Institutions, Institutional Change, and Economic Performance* (CUP 1990), 4–5.

another,[5] but warns against the borrowing of laws that are not compatible with the context of the adopting countries or spirit of the peoples for whom they are intended. The emphasis on context notwithstanding, there is little consensus amongst scholars as to what is included in context, why it matters, or how compatibility with context may be generated.

Montesquieu and Kahn-Freund, speaking nearly two centuries apart, view context as the institutions, political law, and social and political context of a country,[6] whilst Mattei suggests that context also includes the pre-existing legal system of the adopting country.[7] Amongst scholars, writing specifically about competition law transplants, Shahein is of the view that context comprises the 'specific political, economic and social environment' of countries,[8] Trebilcock and Iacobucci suggest that 'particularities of history, initial conditions, institutional traditions, and political economy considerations' of countries are also relevant,[9] and Gal argues that the context encompasses 'almost all issues which relate to the relationship between law and society'.[10]

Watson includes actors within the meaning of context arguing that 'legislators, jurists, or judges' allow 'social economic, and political factors to impinge on legal development' and suggests that 'this culture has to be understood and injected into the equation before one can begin to erect a theory of law and society'.[11] Sacco expands upon the role of actors arguing that the meaning of the transplant in the adopting country, not only in implementing but also in deliberating and enacting it, is likely to be influenced by all factors that may be capable of influencing the views of an interpreter, including the implicit patterns along which the adopting society is organised.[12] Legrand and Chen-Wishart endorse the role of actors as interpreters; however, they appear to focus on the interpretation that takes place at the implementation rather than the adoption stage.[13]

[5] Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2nd edn, University of Georgia Press 1993), 21.

[6] Charles de Secondat Montesquieu and others, *The Spirit of the Laws* (CUP 1989), 8, 610; Otto Kahn-Freund, 'On Uses and Misuses of Comparative Law*' (1974) 37 The Modern Law Review 1, 12, 13.

[7] Ugo Mattei, 'Efficiency in Legal Transplants: An Essay in Comparative Law and Economics' (1994) 14 IRL International Review of Law & Economics 3, 17.

[8] Heba Shahein, 'Designing Competition Laws in New Jurisdictions: Three Models to Follow' in Richard Whish and Christopher Townley (eds), *New Competition Jurisdictions: Shaping Policies and Building Institutions* (Edward Elgar 2012), 51, 55.

[9] Michael J. Trebilcock and Edward M. Iacobucci, 'Designing Competition Law Institutions' (2002) 25 World Competition 361, 471.

[10] Michal Gal, 'The "Cut and Paste" of Article 82 of the EC Treaty in Israel: Conditions for a Successful Transplant' (2007) 9 European Journal of Law Reform 467, 473.

[11] Alan Watson, *The Evolution of Law* (Johns Hopkins University Press 1985) 118.

[12] Rodolfo Sacco, 'Legal Formants: A Dynamic Approach to Comparative Law (Installment II of II)' (1991) 39 The American Journal of Comparative Law 343, 384–85.

[13] Pierre Legrand, 'The Impossibility of Legal Transplants' (1997) 4 Maastricht Journal of European and Comparative Law 111, 114; Mindy Chen-Wishart, 'Legal Transplant and

For Montesquieu, context is significant because in his view laws, whether they form the government or support it, are related to the nature and principle of the government of the country in which they are made.[14] Similarly for Kahn-Freund, legal rules 'which organize constitutional, legislative, administrative or judicial institutions and procedures … are … "organic"' and 'any attempt to use a pattern of law outside the environment of its origin continues to entail the risk of rejection'.[15] Legrand considers context significant because it informs the meaning of the law. He argues that whilst it may be possible to transplant the *words* of a law, it is not possible to transfer its *original meaning* because the 'epistemological assumptions [of interpreters of the law]' in the adopting country 'are … historically and culturally conditioned' to the adopting country rather than to the originating country, and, therefore, it is likely that as they interpret the words of the adopted legislation they will not provide them with the meanings ascribed to them in the originating country.[16] Teubner, whilst agreeing with Legrand to the extent that the meaning of laws is rooted in their originating contexts, argues that this means that transplants may be 'legal irritants' in the host country and force the law to develop in unexpected directions.[17]

Watson is an outlier in this discussion to the extent that he argues that 'a foreign rule can be successfully integrated into a very different system … which is constructed on very different principles from that of the donor'[18] because 'usually legal rules are not peculiarly devised for the particular society in which they now operate'.[19] However, a closer reading of his work suggests that he recognises that the law of one country may diverge from that of another due to the impact of 'the Spirit of a People' in that country.[20] Ewald explains this apparent dichotomy in Watson's writings by distinguishing between 'Strong Watson', who takes the rigid position that there is no 'interesting relationship to be discovered between law and society', and 'Weak Watson', who argues that compatibility between the legal transplant and the context of the borrowing country must be examined with 'cautious awareness of [its]… complexity'.[21] Grossfeld also attempts to square Watson's thesis with that of Montesquieu and Kahn-Freund by arguing that whilst

Undue Influence: Lost in Translation or a Working Misunderstanding?' (2013) 62 The International and Comparative Law Quarterly 1.

[14] Montesquieu (n.6).

[15] Kahn-Freund (n.5), 12–13, 27. Kahn-Freund's discussion leaves open the possibility that laws that are not organically related to the context, such as economic laws are believed to be, may be more easily transplanted.

[16] Legrand (n.13).

[17] Gunther Teubner, 'Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences' (1998) 61(1) The Modern Law Review 11, 12.

[18] Watson (n.5), 55, 56.

[19] ibid 95, 96.

[20] Watson (n.11), 42.

[21] William Ewald, 'Comparative Jurisprudence (II): The Logic of Legal Transplants' (1995) 43 The American Journal of Comparative Law 489, 491, 509.

the 'recurrence of legal forms' endorses 'Watson's observation that the native element in the law of any country is relatively slight', it is necessary to draw a distinction between legal rules, which may be transplanted relatively easily, and institutions that are more attuned to the context of their country of origin and therefore cautions that importing institutions 'without such evaluation [of compatibility with the context of the adopting country] is "*un grand hazard*"'.[22]

Context is important for competition scholars for its role in operationalising competition transplants. Trebilcock and Iacobucci emphasise that context is important for designing appropriate competition authorities because 'no single institutional model of a competition agency will be optimal for all countries . . . given particularities of history, initial conditions, institutional traditions, and political economy considerations'.[23] Discussing the Israeli competition law experience, Gal argues that 'the receiving state's knowledge, commonality with the state of origin' are essential pre-conditions for it to be receptive to the legal transplant,[24] and Shahein, speaking of competition transplants generally, argues that competition laws, like most other laws, are embedded in a specific political, economic, and social environment and must be appropriately 'contextualised' to operate in the adopting country.[25]

Interestingly, however, although legal transplant scholars accept the importance of compatibility with context, they do not fully examine how this necessary compatibility may be generated. Legrand, for instance, recognises that historical and cultural factors affect how a borrowed law is interpreted in the host country. However, he focuses on the divergence in the meanings given to the law in the originating and host country rather than on strategies for generating compatibility at the adoption stage, and thereby bridging this gap.[26] Teubner too emphasises the importance of a positive relationship between the transplant and the legal system of the host country but does not offer any suggestions for creating conditions for harmonising this interaction.[27] Similarly, Chen-Wishart stops short of considering whether the subsequent development of a borrowed law may be correlated with the extent of compatibility created in the course of adoption, even though she makes the important point that more interesting than the issue of whether or not legal transplants are possible is the question of 'how the transplant develops in the recipient legal system'.[28]

Amongst comparative law scholars, Sacco, Mattei, and Berkowitz et al. are unusual in their attention to the adoption stage. Sacco, for instance, recognises

[22] Bernhard Grossfeld, *The Strength and Weakness of Comparative Law* (Clarendon; OUP 1990), 43, 46. Interestingly, however, Grossfeld does not define institutions.
[23] Trebilcock and Iacobucci (n.9), 471.
[24] Gal (n.10), 473.
[25] Shahein (n.8), 55.
[26] Legrand (n.13).
[27] Teubner (n.17).
[28] Chen-Wishart (n.13), 3.

the possibility of actors at the adoption stage considering and generating compatibility in selecting and interpreting a transplant.[29] Mattei adds to the understanding of the adoption stage by highlighting the 'efficiency' of a legal doctrine as a possible reason for a country adopting it; however, he does not explore the relationship, if any, between efficiency and compatibility with the machinery of justice, which he claims is necesary for the transplant to succeed.[30] Berkowitz et al. emphasise the process through which laws are introduced, arguing that transplants imposed either directly or through colonisation are less likely to be compatible with the host country; however, they do not recommend an alternate processes of adoption.[31]

Legal transplant literature also provides some insight into what may be considered a successful legal transplant. Whilst Kahn-Freund alludes to success in negative terms as the adopted law 'not being rejected',[32] Watson refers to it more directly as the legal transplant continuing to grow in and becoming a part of the borrowing country, and clarifies that simply ascribing a different meaning to the transplant should not be confused with its rejection in the adopting country.[33] Mattei sees success as the compatibility of the transplant with the 'machinery of justice' in the adopting country, without which he believes the 'impact' of the transplant may be lost.[34] Teubner is of the view that the success of a legal transplant lies in its ability to interact productively with other elements in the legal organism in which it is transplanted,[35] whilst Berkowitz et al. argue that the performance of a transplant may be judged by the extent to which actors in the adopting country are able to understand, apply, and utilise it.[36]

Competition law scholars add to this discussion by approaching the success of transplanted competition laws as a process rather than an end goal which, once achieved, may be forgotten. So, for instance, Trebilcock and Iacobucci consider performance of competition authorities to be an indicator of the success of the transplanted law under which these authorities are established, and suggest that the quality of performance is directly linked with the compatibility and suitability of the transplant for the adopting country;[37] for Shahein, the success of a legal transplant depends on the extent to which the adopting country is able to appropriately

[29] Sacco (n.12).
[30] Mattei (n.7).
[31] D Berkowitz, K Pistor and JF Richard, 'Economic Development, Legality, and the Transplant Effect' (2003) 47(1) European Economic Review, 165, 174.
[32] Kahn-Freund (n.5).
[33] Watson (n.5).
[34] Mattei (n.7).
[35] Teubner (n.17).
[36] Berkowitz et al (n.31).
[37] Trebilcock and Iacobucci (n.23), 466.

'contextualise' the transplant for its purposes;[38] whilst Gal, in her analysis of the Israeli competition legislation, recognises that the benchmarks of success may vary from the adoption to the implementation stages due to the country's different goals at each stage. She observes that while in the course of transplantation, actors engaging with the Israeli competition law were motivated by the desire to meet the country's international political objectives, in implementing the law their focus had shifted to having their decisions understood and accepted within the country.[39]

1.2.2 *Policy Diffusion and Transfer: Bringing a Method to the Spread*

Comparative law and diffusion and transfer scholars have long called for synergies between the two.[40] Policy diffusion and transfer are defined as processes through which knowledge about policies, administrative arrangements, institutions, and ideas in one political system are used in the development of policies, administrative arrangements, institutions, and ideas in another political system. Diffusion and transfer are deemed to be 'a consequence of interdependence',[41] and are increasingly recognised for providing an important explanation for the spread of a policy or a practice.[42] However, diffusion and transfer must not be considered synonymous with convergence. Although diffusion and transfer sometimes results

[38] Shahein (n.25).
[39] Gal (n.24), 482.
[40] For instance, among political science scholars, Giraldi (n.40) 279 is of the view that diffusion (and, by extension, transfer) 'can lead to the spread of all kinds of things' ranging from specific instruments, standards, and institutions (both public and private), to broad policy models, ideational framework, and institutional settings, and Weyland (n.42) 18 adds templates (principles or general guidelines for designing programmes or institutions) and concrete policies (models or specific options from the menu offered by a policy model) in this list. Among lawyers, see Esin Örücü, 'Law as Transposition' (2002) International and Comparative Law Quarterly 51(2), 205; William Twining, 'Social Science and Diffusion of Law' (2005) Journal of Law and Society, 32, 203, 205; Ioannis Lianos, 'Global Governance of Antitrust and the Need for a BRICS Joint Research Platform in Competition Law and Policy' in Tembinkosi Bonakele, Eleanor Fox, Liberty Mncube (eds) Competition Policy for the New Era (Oxford University Press 2017).
[41] Fabrizio Giraldi 'Transnational Diffusion: Norms, Ideas and Policies' in Walter Carlsnaes, Thomas Risse-Kappen, and Beth A Simmons (eds) *Handbook of International Relations* (SAGE 2012), 454, 459; Charles R Shipan and Craig Volden, 'Policy Diffusion: Seven Lessons for Scholars and Practitioners' (Nov/Dec 2012) 72(6) Public Administration Review 788–96, 788.
[42] Dietmar Braun, Fabrizio Gilardi, Katharina Füglister, and Stéphane Luyet, 'Ex Pluribus Unum: Integrating the Different Strands of Policy Diffusion Theory' (2007) Politische Vierteljahresschrift S38, 40, 41. For similar views in respect of policy transfer, see David P Dolowitz and David Marsh, 'Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making' (2000) 13 GOVE Governance 5, 6.

in convergence, it is not necessary that it should, and even when convergence does occur, it is relative rather than absolute.[43]

The commonalities between diffusion and transfer notwithstanding, there are important differences between them. Diffusion, also referred to as 'pattern finding',[44] refers to the often wave-like spread of ideas and policies across geographically clustered countries that are distinguished by variegated socio-economic, political, and cultural characteristics.[45] On the other hand, transfer, also described as 'process tracing'[46] refers to the intentional import of policies or programs by a country for implementation in its own context.[47] Therefore, while diffusion is a disembodied process which takes place independently of actors or agents,[48] the element of intentionality in transfer integrates the motivations, epistemological leanings, and institutional constraints[49] of agents at work in the transfer process.[50] Finally, while diffusion is studied through quantitative, statistical methods of analysis, transfer may be analysed qualitatively, taking into account the 'preconditions for transfer in the recipient state', the 'kind of actors pushing . . . the transfer process' and so on.

Diffusion and transfer literatures bolster the idea of context so important to legal transplant literature by suggesting that the outcome of diffusion and transfer may vary according to the *setting* in which it takes place, which includes the initial conditions of the diffusion or transfer as well as intervening factors that may affect its operation and force.[51] More particularly, policy transfer literature argues that all institutional constraints of rules, norms, expectations, and traditions that limit free play of individual will and calculation, also structure the actions and values of agents transferring policies through these institutions, and thereby not only impact the outcomes of transfer, but are also themselves transformed in the process.[52] The literature also indicates that as a policy develops and moves through the cycle of transfer, new actors and institutions become involved, that may shape the outcome

[43] David Marsh and JC Sharman, 'Policy Diffusion and Policy Transfer' (2009) 30 Policy Studies 269, 271, 278–79; Giraldi in Carlsnaes, Risse-Kappen, and Simmons (n.40), 456, 484; Kurt Gerhard Weyland *Bounded Rationality and Policy Diffusion: Social Sector Reform in Latin America* (Princeton University Press 2006), chapter 1.
[44] Marsh and Sharman, ibid 276.
[45] Weyland (n.42), 19.
[46] Marsh and Sharman (n.42), 276.
[47] Adam J Newmark, 'An Integrated Approach to Policy Transfer and Diffusion' (2002) 19 Policy Studies Review 151, 170, 17.
[48] Martino Maggetti and Fabrizio Gilardi, 'Problems (and Solutions) in the Measurement of Policy Diffusion Mechanisms (2016) 36 Journal of Public Policy 87, 4.
[49] David Dolowitz and David Marsh, 'Who Learns What from Whom: A Review of the Policy Transfer Literature' (1996) 44 Political Studies 343, 354.
[50] Mark Evans, 'Policy Transfer in Critical Perspective' (2009) 30 Policy Studies 243, 244.
[51] Marsh and Sharman (n.42) 279.
[52] Dolowitz and Marsh, 'Who Learns What from Whom' (n.48), 354–56; Marsh and Sharman (n.42) 275.

according to their unique knowledge, interests, and preferences regarding transfer strategies.[53] Integrating elements from diffusion and transfer literatures to a study of transplanted laws enables an examination of the motivations for the spread of legal rules from one country to another and of the institutions that shape this spread, and thereby offers a deeper insight into the structure and development of legal systems.[54]

Mechanisms for the diffusion and transfer of policies are categorised as 'voluntary or coercive' or 'horizontal or vertical'. A country may either voluntarily adopt policies due to dissatisfaction with an existing policy, policy failure, elections, the need to reduce uncertainty, or to legitimize previous decisions[55] or it may be coerced into adopting a policy due to express or implied pressure from foreign governments or multi-lateral agencies.[56] Coercive transfer is more likely to take place in developing countries reliant on multi-lateral agencies for financial and other assistance.[57] Voluntary and coercive diffusion and transfer overlap with the categories of horizontal and vertical diffusion and transfer: diffusion or transfer is considered horizontal when states learn about different policies from other states, compete with each other, or adopt a policy that neighbouring states may have adopted, while diffusion and transfer is considered vertical when states receive incentives for adopting the policy innovation from politically or economically more powerful bodies.[58]

The literature describes several different mechanisms through which diffusion and transfer takes place, however, the terminology used to identify these mechanisms is often inconsistent. For instance, there is considerable overlap between *coercion* and *contractualisation*. *Coercion* refers to diffusion or transfer of policies through international organizations or countries; it is deemed to be direct when a policy is transferred from one government to another or through supra-national institutions[59] and indirect when it is brought about by externalities such as

[53] David P Dolowitz, and David Marsh, 'The Future of Policy Transfer Research' (2012) 10 Political Studies Review, 339, 341. Gal (n.10) 482 also argues that the priorities of actors engaged in transplanting laws may vary from the adoption to the implementation stage.

[54] Mathias Reimann, 'The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century' (2002) 504 American Journal of Comparative Law 671, 685.

[55] Dolowitz and Marsh, 'Who Learns What from Whom' (n.48) 346–47.

[56] ibid; also Newmark (n.46). Certain scholars argue that diffusion can only be voluntary while transfer may be both voluntary or coercive. See Torben Heinze, 'Mechanism-Based Thinking on Policy Diffusion: A Review of Current Approaches in Political Science' (Freie Univ Berlin, FB Politik- und Sozialwiss, Kolleg Forschergruppe 'The Transformative Power of Europe' 2011) 3, 19–20; Maggetti and Gilardi (n.47), 4.

[57] Marsh and Sharman (n.42) 272.

[58] Dorothy Daley, James Garand, 'Horizontal Diffusion, Vertical Diffusion, and Internal Pressure in State Environmental Policymaking, 1989–1998' (2005) 33 American Politics Research 615, 620.

[59] Direct coercion includes regulatory policies advanced by IFIs, or rules introduced by states exerting military or economic power. It includes IFI's 'recommending' the adoption of a policy as a conditionality of financial assistance, and 'convincing' governments by 'knowledge provision, advice and insinuation' that the suggested changes are desirable for the country. See

advancements in technology and economic pressures.[60] *Contractualisation* on the other hand refers to the diffusion and transfer of policies in response to a bargain between states in relation to a legal rule; when their negotiations include trade-offs linking two or more issue areas; and when the results are formalised by an international treaty (or any other form of bilateral agreement).[61]

Similarly, the term *emulation* whether absolute or partial, is used interchangeably with *learning*,[62] *mimicry*, *socialization*, *copying*,[63] *lesson-drawing*, *cost-saving*, and *problem-solving*,[64] while also being independently defined as the mechanism 'whereby knowledge of policy innovations is borrowed from other entities'[65] for its normative and social characteristics rather than its objective content or consequences.[66] *Emulation* is therefore distinct from *socialisation* and *learning* which refer to the range of mechanisms whereby adopting countries learn from the laws and experience of others in order to develop laws suitable for their domestic contexts. *Learning* for this purpose, includes 'rational or comprehensive' learning in which policymakers aggregate statistical information about the experience of the original country,[67] and 'bounded' learning where policymakers rely on cognitive shortcuts in arriving at their conclusions regarding the attractiveness or appropriateness of a policy even if doing so may introduce errors in the process.[68] To complicate matters further, *learning* is sometimes referred to as *lesson drawing* as well as *copying*, *emulation*,[69] *hybridization*, and *synthesis*[70] all of which represent different degrees

Newmark (n.46) 155; Marsh and Sharman (n.42) 272; Jean-Frédéric Morin and Richard E Gold, 'An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries' [2015] International Studies Quarterly 782; Giraldi in Carlsnaes, Risse-Kappen, and Simmons (n.40) 464, 465; Weyland (n.42) 39.

60 Dolowitz and Marsh, 'Who Learns What from Whom' (n.48) 348, 349.

61 Morin and Gold (n.60) 782.

62 Richard Rose, 'What Is Lesson-Drawing?' (1991) II Journal of Public Policy 3.

63 Marsh and Sharman (n.42) 272.

64 Morin and Gold (n.60) 782; Colin J Bennett, 'What Is Policy Convergence and What Causes It?' (1991) 1991 British Journal of Political Science 215, 220–21.

65 Newmark (n.46).

66 Giraldi in Carlsnaes, Risse-Kappen, and Simmons (n.40) 475–78.

67 According to Weyland (n.42) in Chapter 1, rational or comprehensive learning may also be characterised as 'Bayesian updating' which suggests that policymakers have prior beliefs which shift in the light of information from and experience of other countries. Also see Giraldi in Carlsnaes, Risse-Kappen, and Simmons (n.40) 471.

68 In 'bounded learning', the policymakers are unable to systematically compute extensive information and end up (a) placing excessive importance on information, that for logically accidental reasons, has special immediacy and grabs their attention ('availability'); (b) attaching undue weight to the short-term success or failure of a policy which they mistake for proof of the inherent quality of the underlying programme or model ('representativeness'), and (c) relying more on an initial value which strongly affects their subsequent judgements ('anchoring'). Weyland (n.42) ch 1.

69 Marsh and Sharman (n.42) 271, 272.

70 These are explained as processes through which elements of programmes in two or more countries are combined to develop a policy best suited to the adopting country. Dolowitz and Marsh, 'Who Learns What from Whom' (n.48) 351.