



## ARTICLES

### SPECIAL SECTION – REGULATORY COMPETITION IN THE EU: FOUNDATIONS, TOOLS AND IMPLICATIONS

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## LOYALTY MATTERS: THE DELICATE BALANCE BETWEEN JURISDICTIONAL COMPETITION AND POLITICAL ORDER

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ABSTRACT: Supporters of regulatory competition typically claim that cross-system “free”, “unbounded” competition (such as in the EU) is capable to select the best regulations (institutions/policies/practices/jurisdictions). The posited causal mechanism runs somewhat like this: if “customers/consumers/citizens” can shop around, governments have an incentive to keep/attract them through better regulations – precisely. There are at least two hidden assumptions in such reasoning: *a*) politics is about producing efficient regulations; *b*) regulatory boundaries operate as obstacles, boundary removal as advantages. This *Article* will challenge such assumptions, arguing that they rest on a limited and narrow conception of what politics is all about. Building on the well-known “exit-voice-loyalty” of Albert Hirschman as well as on classical State theory, I will show that the prime and “absolute” objective of politics as a value-sphere is the maintenance and cultivation of political community. Pursuing this objective is a delicate balancing act between “opening” and “closure”. By looking exclusively on the benefits of opening and boundary removal, theories of regulatory competition entirely neglect the potentially destructive spiral that the latter may trigger of for the institutional foundations of political community.

KEYWORDS: jurisdictional competition – European integration – exit – voice – loyalty – boundaries.

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## I. INTRODUCTION

The idea that competition among institutional systems (also known as *regulatory* or *jurisdictional* competition: from now on JC) is an effective mechanism to select or deselect laws, rules and policies has a long pedigree in the disciplines of public finance, public choice, law and economics, and is a tenet of theories of fiscal federalism and constitutional economics.<sup>1</sup> Through the influence of Hayek,<sup>2</sup> JC has also influenced neo- and ordo-liberalism. According to one of its earliest and still much quoted formulation, that of Charles Tiebout,<sup>3</sup> JC is about attracting and retaining scarce and valuable economic resources on the side of governments (typical sub-national units within a federation) in a context which allows the consumers or users of jurisdictional services (i.e. corporations, individuals, workers etc.) to freely switch their resources to alternative jurisdictions. Under conditions of imperfect information, the matching between consumers and jurisdictions cannot generate a spontaneous equilibrium, but rather an incessant variety of regulatory and policy solutions and cross-system movements, promoting efficiency and diversity.

With increasing globalization and the deepening of European integration, the JC debate has acquired a new momentum.<sup>4</sup> The EU in particular can be seen as a historically unprecedented laboratory to gauge the alleged virtues of this type of competition (at the level of States, not just sub-national governments), to identify the meta-rules which can sustain or hamper such virtues and, last but not least, to derive prescriptions for improvement.<sup>5</sup>

Not everybody shares, however, the favor with which law and economics approaches look at JC. The most widespread critique is that the latter may well generate efficiency gains and economic advantages through policy selection, but is also likely to cause an overall race to the bottom among systems,<sup>6</sup> especially as regards social standards, with detrimental effects for the most vulnerable.<sup>7</sup> While certainly plausible and empirically grounded, such critique still accepts the premises of JC theory: what is contested are the

<sup>1</sup> W. OATES, *Fiscal and Regulatory Competition: Theory and Evidence*, in *Perspektiven der Wirtschaftspolitik*, 2003, p. 377 *et seq.*

<sup>2</sup> F. VON HAYEK, *The Economic Conditions of Interstate Federalism*, in F. VON HAYEK (ed.), *Individualism and Economic Order*, Chicago: University of Chicago Press, 1948, p. 131 *et seq.*

<sup>3</sup> C.M. TIEBOUT, *A Pure Theory of Local Expenditures*, in *The Journal of Political Economy*, 1956, p. 416 *et seq.*

<sup>4</sup> P. BERNHOLZ, R. VAUBEL (eds), *Political Competition and Economic Regulation*, London: Routledge, 2007.

<sup>5</sup> D. ESTY, D. GERADIN (eds), *Regulatory Competition and Economic Integration: Comparative Perspectives*, Oxford: Oxford University Press, 2001; V. VANBERG, *Globalization, Democracy and Citizen Sovereignty. Can Competition Among Governments Enhance Democracy?*, in *Constitutional Political Economy*, 2000, p. 87 *et seq.*; V. VANBERG, *Competition Among Governments: The State's Two Roles in a Globalized World*, Freiburg: Walter Eucken Institut e.V., 2010, [www.econstor.eu](http://www.econstor.eu); for a critical view see M. HÖPNER, A. SCHÄFER, *Embeddedness and Regional Integration: Waiting for Polanyi in a Hayekian Setting*, in *International Organization*, 2012, p. 429 *et seq.*

<sup>6</sup> H.W. SINN, *The Selection Principle and Market Failure in System Competition*, in *Journal of Public Economics*, 1997, p. 85 *et seq.*

<sup>7</sup> P. GENSCHEL, *Globalization, Tax Competition, and the Welfare State*, in *Politics & Society*, 2002, p. 245 *et seq.*

consequences of JC, not its analytical assumptions about political competition – and democratic politics more generally.

Competition does play a significant role in contemporary political science. Rather than focusing on citizens and their need to shop around governmental jurisdictions in order to satisfy their preferences, empirical democratic theories tend however to focus on governmental authorities (or would be such) and their propensity to compete for citizen votes. Even though the rational calculus plays a role in vote choices, an equally significant role is played by ideological orientations, partisan identifications, habitual and emotional factors, and other non-rational elements. Elections are in their turn always embedded in a larger framework of “diffuse support” for the democratic polity as such, i.e. as community of citizens and groups sharing a political identity and thus a deep – and often implicit – attachment to the community and its authority structures (“right or wrong, my country”). Logically and empirically, the baseline of any reasoning about JC should thus be a set of relatively closed democratic associations/communities which democratically decide to open up to each other through the dismantlement of boundaries, accept the principles of free movement and nondiscrimination and create the conditions for JC. Most emblematically, this has been the experience of the European Union. The logical and empirical priority of shared political identities and democratic competition over JC has significant implications, especially as regards the transition process leading from democratic closure with no institutional competition among systems to democratic opening with full institutional competition.

Fiscal federalism, constitutional economics and ordoliberal ideas have provided many ideational insights for shaping the EU institutional architecture, especially that of the European Monetary Union (EMU). But the expected virtuous effects of these theories are now hugely at odds with recent developments. During the last decade the issues of open boundaries, the free movement of persons, workers, capitals and services have become increasingly contentious. How can we account for such developments? They have resulted – I contend – from a mechanism linked with “opening” which is entirely neglected by law and economics approaches: boundary removal promotes exit, but is inherently exposed to the risk of provoking a political countermovement and/or eroding the diffuse support for jurisdictional authorities. In his masterful book, *The Great Transformation*, Karl Polanyi argued that during the 19<sup>th</sup> century the utopia of a self-regulating market caused a social counter-movement, whose ultimate offspring was the welfare State.<sup>8</sup> It can be suggested that the 20<sup>th</sup> century has closed with a powerful strike back of the same utopia, extended, this time round, from economic to institutional competition. Also this second great transformation has produced a countermovement, of an essentially political nature. The rise of *souverainisme* can be in fact interpreted as a defensive reaction of nation-states against the erosion/dispersion of their authority. Politics cannot be reduced to a rational selection of

<sup>8</sup> K. POLANYI, *The Great Transformation. The Political and Economic Origins of Our Time*, Boston: Beacon Press, 1957.

public policies in response to regime shopping. It is a much wider and delicate sphere whose fundamental task is that of keeping the polity together through democratic authoritative decisions. It is a difficult task which requires much more than just smart economic constitutions and whose failure may have tragic consequences.

Starting from these premises, in this *Article* I intend to highlight some features of democratic politics which are neglected by JC theory and weaken its explanatory and prescriptive effectiveness. I will try to argue my points by using the well-known categories of "exit", "voice" and "loyalty" first introduced and systematically linked with each other by Albert Hirschman.<sup>9</sup> JC theories explicitly build on the mechanism of "exit" as a reaction to quality deterioration on the side of consumers/citizens and thus as a prompt for quality recuperation on the side of producers/jurisdictional leaders. JC theories also make use of the notion of "loyalty" and occasionally mention voice as well. In their turn, democratic theories have heavily drawn on Hirschman's concepts and insights to investigate both the historical process of State-building and, more recently, the process of European integration and EU-building. Hirschman's model lends itself well, in other words, to open a hopefully constructive dialogue between democratic theorists and JC scholars, raising the latter's awareness of some neglected aspects of the democratic political process.

The *Article* is divided into four sections. The first summarizes some key tenets of JC theories and discusses in particular the role which the latter assigns to exit. The second section illustrates the logic of democratic competition within spatially bounded territorial communities and highlights the role of voice and loyalty, which JC theories tend to downplay or neglect. The third section focuses on the current EU political predicament and interprets it as the outcome of the destructuring side-effects of increased exit opportunities. The last section concludes.

## II. JURISDICTIONAL COMPETITION AND THE VIRTUES OF EXIT

JC theory is the offspring of different schools of thought. As mentioned, its origins date back to Tiebout's model, according to which the best match between citizens' preferences and government public policies can be achieved through a "market" of competing legal jurisdictions offering tax-benefit packages to a customer base of mobile taxpaying citizens. Rational individuals will survey the range of available choices and will act in accordance with their preferences for specific bundles of public goods (and levels of taxation) offered by location-specific jurisdictions. In line with such reasoning, Tiebout was a strong supporter of administrative and fiscal devolution. The Tiebout model has had a profound influence on public economics and public choice theory. According to the "Leviathan"

<sup>9</sup> A.O. HIRSCHMAN, *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations, and States*, Cambridge, MA: Harvard University Press, 1970.

theory of the tax-welfare State proposed by Buchanan,<sup>10</sup> governments use their monopolistic positions to pursue revenue maximization, while powerful interest groups capture the benefits of public spending programs. Since traditional political controls fail to contain government growth, decentralization – backed by a strong economic constitution – proves intrinsically beneficial because it reduces the scope of the central government monopoly and contains the negative effects of regulatory capture. JC has exerted a significant influence also on the interdisciplinary field of law and economics.<sup>11</sup> Legal scholars have extended the focus of JC theory from the production of goods and services to all outputs of legal regulation, from contract enforcement to social and labor law. In this perspective, governments are just another type of producers in the overall economy and law is their product. In recent decades, JC has become a tenet of legal and fiscal theories of federalism and has attracted the attention of some ordo-liberal scholars of the Freiburg school.<sup>12</sup> These scholars (and in particular Viktor Vanberg) have offered novel elaborations of JC theory, discussing in more depths its political underpinnings and applying it to the process of European integration.

In line with Tiebout, contemporary JC looks at States as enterprises providing packages of jurisdiction services and regulations for inhabitants and users of their territories.<sup>13</sup> States have, however, a second function: like cooperatives or member-owned organizations, they “should serve the common interests of their members, the citizens”.<sup>14</sup> Citizen sovereignty must be safeguarded by rules that encourage the “producers of politics” to respond to citizens wants. In line with Hayekian theory and the principles of fiscal federalism, the most appropriate institutional architecture is a system of split-level governance, involving the sharing of legal powers between a central or federal authority and lower-level States, regions or localities. The main function of the central authority is to ensure free movement across jurisdictions, which requires legislative and judicial action to remove barriers to circulation and eliminate distortions of competition. The worst evil to be guarded off is “rent-seeking”, i.e. the acquisition of selective privileges or regulatory capture by special interest groups. This worry was central in the doctrine of first generation Ordo-liberals.<sup>15</sup> Public choice theorists have traditionally argued that rent seeking must be contrasted

<sup>10</sup> J.M. BUCHANAN, *The Limits of Liberty. Between Anarchy and Leviathan*, Chicago: University of Chicago Press, 1975.

<sup>11</sup> T.F. COTTER, *Legal Pragmatism and the Law and Economics Movement*, in *Georgetown Law Journal*, 1996, p. 2071 *et seq.*; V. VANBERG, *Freiburg School of Law and Economics*, in P. NEWMAN (ed.), *The New Palgrave Dictionary of Economics*, Vol. 2, London: Palgrave Macmillan, 1998, p. 172 *et seq.*

<sup>12</sup> A. PEACOCK, H. WILLGERODT (eds), *German Neo-Liberals and the Social Market Economy*, Vol. 1, London: Macmillan for the Trade Policy Research Centre, 1989.

<sup>13</sup> V. VANBERG, *Globalization, Democracy and Citizen Sovereignty*, cit.; V. VANBERG, *Competition Among Governments*, cit.; V. VANBERG, *Competitive Federalism, Government's' Dual Role and the Power to Tax*, in *Journal of Institutional Economics*, 2016, p. 825 *et seq.*

<sup>14</sup> V. VANBERG, *Globalization, Democracy and Citizen Sovereignty*, cit., p. 89.

<sup>15</sup> J. HIEN, C. JOERGES, *Ordoliberalism, Law and the Rule of Economics*, London: Hart, 2017.

by an economic constitution<sup>16</sup> that equips governments with adequate tools to implement schemes which benefit all citizens (the enabling part of the constitution) but also prevents them from acting in the interest of some special groups or against the interests of all (the limiting part of the constitution). In the recent Freiburg re-formulation, the economic constitution is not enough: the best remedy is a combination of the latter with JC.<sup>17</sup> JC also enhances the capacity for learning based on diversity and for solving that “knowledge problem” which had been highlighted by Hayek. Since knowledge is dispersed, it is inherently difficult to establish where the common interest lies and how best to achieve it. JC operates not only as a motivational force, but also as a vehicle of discovery, a way to improve knowledge and understanding about efficient performance.

JC brings into light the “protectionist dilemma” of democratic polities and at the same time provides a solution. Intra-jurisdictional special interests will tend to lobby in order to capture protectionist advantages. Since no actor can be sure that other actors will refrain from such behaviors, everybody has an incentive to adopt them, generating a typical prisoner dilemma. The economic constitution can pose constraints on government authorities in order to contain this dilemma. But in the Freiburg reformulation, constitutional provisions have only limited disciplinary powers.<sup>18</sup> The most effective counterforce against rent-seeking protectionism is, precisely, JC. It is true that inter-jurisdictional competitive relations can themselves degenerate into collectively harmful “beggar-thy-neighbor” confrontations (e.g. exploiting the possibilities provided by a context of unbridled tax competition). But such potential degenerations can be contained through appropriate meta-constitutional provisions valid for the entire association of those associations engaged in JC (e.g. the EU). Such rules must see to it that all participants derive more benefits than costs from intra and inter-state competition and thus consider the system as legitimate, based on its efficient performance.

The proponents of JC are aware that a given democratic polity may choose to insulate certain cherished characteristics of their system from competition; that particular polities may also want to ensure some degree of redistribution among its citizens, opposing potential “races to the bottoms”, e.g. as regards social standards.<sup>19</sup> These proponents of JC argue, however, that these preferences remain fully compatible with their model, as they can be secured through appropriate institutional designs. This case is made especially in respect of the European Union – an association of associations (the Member States) whose economic constitution (the Treaties) is based, precisely, on free movement and undistorted competition. As long as the participant units want to preserve their welfare

<sup>16</sup> J.M. BUCHANAN, *The Domain of Constitutional Economics*, in *Constitutional Political Economy*, 1990, p. 1 *et seq.*; D.J. GERBER, *Constitutionalizing the Economy: German Neo-Liberalism, Competition Law and the “New” Europe*, in *The American Journal of Comparative Law*, 1994, p. 25 *et seq.*

<sup>17</sup> V. VANBERG, *Globalization, Democracy and Citizen Sovereignty*, cit.

<sup>18</sup> *Ibidem* and V. VANBERG, *Competition Among Governments*, cit.

<sup>19</sup> H.W. SINN, *The Selection Principle and Market Failure in System Competition*, cit.

State distinctiveness, then harmful tax competition must be prevented, lest some governments avail of the latter to generate jurisdictional rents.<sup>20</sup>

JC theory is based on a close analogy between citizenship and consumership. It looks at laws and institutions as responses to the preferences of citizens, who can “vote with their feet” by moving to more convenient jurisdictions in the wake of cost-benefit calculations. Competition pressures legislators into being sensitive to exits as signals of dissatisfaction and to potential entries as signal of attractiveness. It is this rational sensitivity that prompts them to act. In JC theory, no autonomous, distinctive and functionally useful role is attributed to politics. Politics is either collapsed into policy production or treated as an arena of parasitic dynamics and exchanges. In the first case, the task of politicians is that of selecting efficient policy solutions through market-driven discovery. In the second case, democratic politics is a fluid field in which the formation of common interests is always exposed to the risks of rent seeking. The only way through which democratic pluralism can avoid the “protectionist dilemma” is by promoting JC embedded in a smart framework of meta-constitutional provisions capable of safeguarding JC and more generally market-conformity.

### III. DEMOCRATIC COMPETITION AND THE VIRTUES OF VOICE AND LOYALTY

As mentioned above, modern empirical democratic theories have indeed borrowed a lot from models of economic competition. Rather than focusing on citizens/consumers, political scientists have however focused on the elites. Joseph Schumpeter was the first to oppose the citizen-centered with an elite centered doctrine of democratic politics. According the first doctrine (which Schumpeter called the classical doctrine), “the democratic method is that institutional arrangement for arriving at political decisions which realizes the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will”.<sup>21</sup> According to Schumpeter’s own “other doctrine”, “the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote”.<sup>22</sup> Individuals who compete to acquire the power to decide are, precisely, the elite (or would-be such). The “producers of politics” – the expression used by JC theorists to designate incumbent democratic rulers – cannot be reduced to policy seekers who try to satisfy in the most efficient way citizen preferences; they are also vote-seekers, for the simple reason that electoral support is a precondition for accessing policy-making offices. And although some citizens may indeed be rational policy demanders ready to vote with their feet, other voters cast their ballots based on a variety of non-instrumental motives: emotions, identifications, traditions and so on. Voters are not mere passive prey to the competitive struggle of the elites. They

<sup>20</sup> V. VANBERG, *Globalization, Democracy and Citizen Sovereignty*, cit.; V. VANBERG, *Competition Among Governments*, cit.

<sup>21</sup> J. SCHUMPETER, *Capitalism, Socialism and Democracy*, London: Routledge, 2003, pp. 250 and 269.

<sup>22</sup> *Ibidem*, p. 269.

organize and mobilize to advance their claims and make themselves heard. In democratic politics, voice is more important than exit. And here we come to Hirschman's model.

As is known, this model focuses on dynamics of quality deterioration and consumer reactions. The model's basic thrust is that consumers or members of an organization have essentially two possible responses when they perceive that the organization's quality deteriorates: they can either exit (i.e. withdraw from consumption or the organization relationship) or voice (i.e. complain in order to repair or improve the relationship and/or making proposal for change). The model includes a third variable: loyalty. If disgruntled consumers/members have a high degree of loyalty *vis-à-vis* the organization, then the cost of exit will increase and that of voice will correspondingly decrease. It was Hirschman himself to recognize from the beginning that the exit-voice-loyalty triplet could be applied not only to the economic but also to the political sphere.<sup>23</sup> The first scholar who systematically applied Hirschman's model to macro-politics was the Norwegian political scientist Stein Rokkan.<sup>24</sup> Even though he did so in a historical perspective with a view to reconstructing the process of State-formation in Europe since the fall of the Roman empire, Rokkan's theory can be reformulated in more general and abstract terms, thus making it more easily comparable with JC theory.

The starting point of what can be called the Hirschman-Rokkan model (herefrom, HRM) is the very constitution of a territorial political community. How does a State become a "territorial enterprise" (*Betrieb*, in Weber's language), capable of taking collectively binding sovereign decisions? The first step is the construction of a center of authority within a given territorial area, commanding adequate resources to rule that area and its inhabitants. The key resource consists in coercive resources (remember Weber's definition of the State as the legitimate monopolist of coercive resources). Center-building always implies boundary setting. The controlled territory must be demarcated and defended from external intrusions. In their turn, subjects (especially those located in the peripheries) must be kept inside. Boundaries and closure are the foundational prerequisites for the very constitution of a political association claiming sovereignty over a territory.

The foreclosure of exits and entries prompts a dynamic which Rokkan called internal differentiation or "structuring". If subjects are locked inside, they will direct their attention towards the territorial center of authority for protecting/advancing their interests. In line with Hirschman's model, actors who cannot exit will tend to voice in case of dissatisfaction. They can do so individually, but soon discover that collective voice is more effective. "Internal structuring" is the process whereby bounded societies gradually put in place channels for interest aggregation and mechanisms that allow political exchanges: support to the authorities (a "who") in exchange of decisions (the "whats") which can be binding for all the

<sup>23</sup> A.O. HIRSCHMAN, *Exit, Voice and the State*, in *World Politics*, 1978, p. 90 *et seq.*

<sup>24</sup> S. ROKKAN, *Entries, Voices, Exits: Towards a Possible Generalization of the Hirschman Model*, in *Social Sciences Information*, 1974, p. 39 *et seq.*; P. FLORA, S. KUHNLE, D. URWIN (eds), *State Formation, Nation Building and Mass Politics in Europe. The Theory of Stein Rokkan*, New York: Oxford University Press, 1999.



members of the political association, precisely because all are bounded within it. No one can escape its jurisdiction. The democratic method *à la* Schumpeter is the most effective way to reconcile societal pluralism and its incessant, but “structured” voice manifestations with a responsive government operating in a context of liberal freedoms.

Albeit relevant, contingent material interests are not the only driver of a bounded society in its relationship with political authorities. The relationship between the external bounding and the internal binding of citizens through sovereign decisions is mediated by a third element: bonding.<sup>25</sup> This is a set of we-feelings that spread throughout the population in the wake of continuous mutual interaction, which generates material interdependence and cultural/emotional ligatures. In addition to the organization and stabilization of voice channels, bounding generates horizontal and vertical “loyalty”, the third notion of Hirschman’s triplet. Loyalty can be considered as a diffuse support, a disposition towards generalized and interest-independent compliance which plays a key role for the legitimation of political authority and the transformation of an association into a fully-fledged political community.

Figure 1 visualizes the application of the HRM model of “bounded structuring” to the long-term process of State formation in Europe. State-building, nation-building, mass democracy and the welfare State are the four ingredients and at the same time the four time phases of that process.

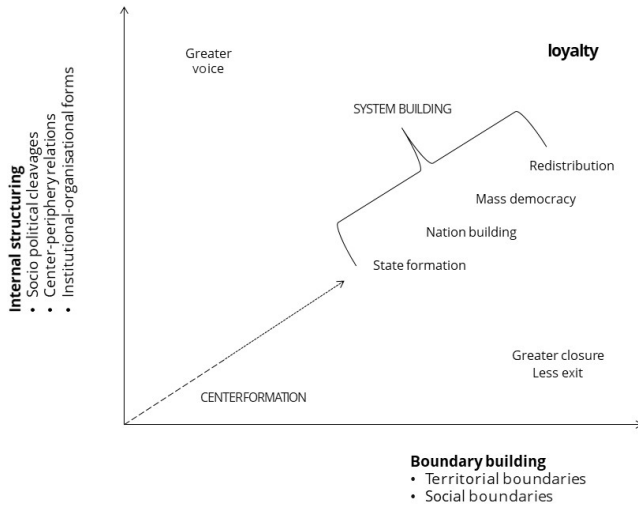


Figure 1

<sup>25</sup> M. FERRERA, *The Boundaries of Welfare. European Integration and the new Spatial Politics of Social Protection*, Oxford: Oxford University Press, 2005.

The consolidation of culturally embedded systems of national citizenship, resting on universal civil, political and social rights can be regarded as one of the most significant products of Western-style bounded structuring: the anchoring of people's interaction to an institutionalized system of mutual rights and obligations has allowed a quantum leap in the stabilization and generalization of social cooperation – the most fundamental task to be performed by “politics” as a distinct sphere of action.<sup>26</sup> The fusion between territorial control and identity, mass democracy and the welfare State produced very solid and highly integrated political communities, functioning according to distinct internal logics. Of course, these systems maintained several channels of mutual communication, especially in the economic sphere (markets typically rest on the availability of exit/entry opportunities, especially for goods). But during the golden age of the welfare-democratic nation-state, national economies essentially functioned as “black boxes” connected to each other by flexible exchange rates.<sup>27</sup> Within the black box, the “voice” dynamics of social and political pluralism shaped allocative and distributive outcomes.

Some of the pathologies of democratic politics (summarized in the notion of “rent-seeking”) denounced by JC theory have not gone unnoticed also on the side of political scientists. Social closure has been found to often serve “usurpative” rather than emancipatory objectives. The struggle for competition between incumbent and opposition parties has sometimes availed itself of top down clientelistic dispensations or bottom-up captures of special benefits. Contemporary rational choice theories have unveiled the dynamics which lead to such undesirable outcomes.<sup>28</sup> But both the awareness and the preoccupation about such dynamics were clearly present already in the early and classical debates about democracy and the welfare State. Commenting on the up rise of unofficial strikes at the time while he was writing his famous essay on class and citizenship, T.H. Marshall lamented that an attempt had been made “to claim the rights of both status and contract while repudiating the duties under both these heads”.<sup>29</sup> In his turn, R.M. Bendix warned that a fundamental civil right and pre-condition of voice, the freedom of association or “right to combine”, can be used “to enforce claims to a share of income and benefits at the expenses of the unorganized and the consumers”.<sup>30</sup>

Well-functioning markets can indeed serve as antidotes *vis-à-vis* such pathologies. And, more generally, the presence of exit options can be a potent generator of positive (i.e. virtuous) institutional innovation – as acknowledged by Rokkan himself in an early

<sup>26</sup> M. WEBER, *Economy and Society: An Outline of Interpretive Sociology*, Berkley: University of California Press, 1978.

<sup>27</sup> R. GILPIN, *The Political Economy of International Relations*, Princeton: Princeton University Press, 1987.

<sup>28</sup> S.C. STOKES, T. DUNNING, M. NAZARENO, V. BRUSCO, *Brokers, Voters, and Clientelism: The Puzzle of Distributive Politics*, Cambridge: Cambridge University Press, 2013.

<sup>29</sup> T.H. MARSHALL, *Citizenship and Social Class*, in T.H. MARSHALL, T. BOTTOMORE (eds), *Citizenship and Social Class*, London: Pluto Press, 1992, p. 42.

<sup>30</sup> R. BENDIX, *Nation-building and Citizenship*, New York: Wiley, 1964, p.105.

commentary to Hirschman.<sup>31</sup> In praising the virtue of exit, one should not forget, however, the interdependence between external closure and internal structuring. Opening increases options and contains “usurpative” exchanges. In this respect, JC theorists are definitely right. But opening can also produce de-structuring, i.e. a de-stabilization of political order and even an erosion of its foundations. This is the aspect neglected by JC theories. The introduction of exit and entry options in a previously closed community alters the distribution and the value of those internal resources around which social and political compromises typically rest. After a threshold, such disruption tends to prompt voice reactions: voice against exit (e.g. against company relocations or capital flights); voice against entries (e.g. voice against “Polish plumbers” or immigrants). Thus the very presence, dynamics and logic of JC gets *politicalized* (it become an issue of contention among opposing interests); it may then become *politicized* (conflicts become increasingly acute, “voice against” gets organized and active); and it may subsequently give rise to *polityzation*: the opponents of JC and opening may arrive at challenging the legitimacy of the wider polity, i.e. that association of associations which has made JC possible in the first place – and even voicing for outright exit from this association (e.g. the Brexit case).

#### IV. TOO MUCH OPENING? THE EU’S POLITICAL PREDICAMENT

The EU trajectory offers an emblematic example of the dynamics just described. European integration has operated since the 1950s as an “opening” force. Cross-national boundaries have been extensively re-defined, differentiated, reduced or altogether cancelled. An internal market has been established, resting on the free circulation of goods, persons, capitals and services. A tightly monitored competition regime forbids national closure practices that are judged as market distortions by supranational authorities. A common currency has been introduced, underpinned by an “economic constitution” oriented towards stability. Firms, capitals and more generally “tax bases” are no longer captive of the nation State, they can freely shop around in search of the most attractive jurisdictional rules and services. The traditional link between rights and territory has become much looser: for most civic and social rights, the filtering role of nationality has been neutralized. Through a long sequence of “opening” provisions, the EU has indeed been able to create an imperfect, but recognizable level playing field for jurisdictional competition.

We know however that during the last decade the issues of open boundaries, the free movement of persons, workers, and services have given rise to increasing conflicts: the EU seems to have fallen prey of disaggregative political and electoral dynamics.<sup>32</sup> Nationalist movements have made their appearance all over the continent, voicing for a restoration of boundaries and domestic sovereignty. A majority of Britons has voted for

<sup>31</sup> S. ROKKAN, *Entries, Voices, Exits*, cit.

<sup>32</sup> M. FERRERA, *The Stein Rokkan Lecture 2016 Mission impossible? Reconciling Economic and Social Europe After the Euro Crisis and Brexit*, in *European Journal of Political Research*, 2017, p. 3 *et seq.*

the exit of the UK from the EU – an odd case in which JC has backfired creating a demand for jurisdictional re-insulation against “entries”. To a large extent, it can be said that also the strictures of EMU’s fiscal rules have backfired, generating in certain countries the belief of an excessive and unwarranted limitation to domestic democratic choices.<sup>33</sup>

It is possible that such backfire may have partly resulted from a bad design of the EU’s economic constitution, and not from JC dynamics as such. But it seems reasonable to search for a more articulated explanation, capable of linking the rise of a novel integration/demarcation divide to the logic of democratic politics under de-bounding conditions. The HRM provides a theory which is uniquely fit for this purpose.

Figure 2 visualizes how the model can be applied to European integration in general as well as to its more recent developments. Compared to the post-war system of European nation-states, EU building may, in principle, be conceptualized as a novel higher order attempt at boundary reconfiguration and internal re-structuring. In this case, however, supranational center building can only take place at the expenses of national centers. For the latter, EU building works, as it were, as State-building in reverse: the HRM predicts “destructuring”.

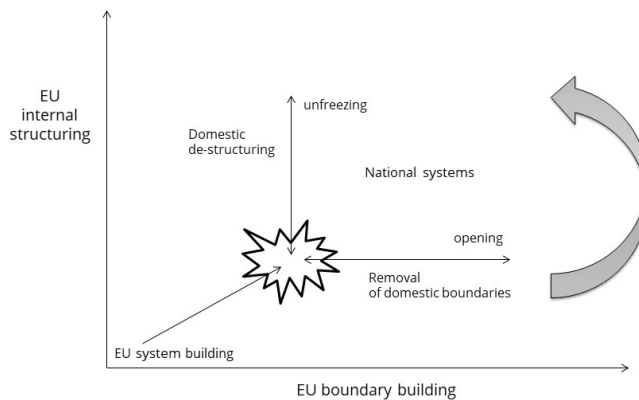


Figure 2

For argumentative purposes, let us break down the process of European integration in a three stage temporal sequence. At the beginning (say, the late 1940s) there was an ensemble of spatially bounded political units (the various European nation-states), separated by thick territorial and regulatory borders. Their political authorities controlled exits

<sup>33</sup> Fiscal rules have certainly contributed to domestic political turbulences during the post 2008 crisis and, in particular, they have triggered off neo-nationalist mobilizations against “Brussels” and its powers. These dynamics have interwoven with the horizontal tensions created by exit and entry movements, but are not per se related to JC.

and entries. The voice of citizens was channeled through established mechanism of interest articulation and aggregation, such as civic society and economic associations, the social partners and parties (internally structured voice). Public policies mainly resulted from domestic dynamics of political exchange between “whos” and “whats” (with different degrees of efficiency). Each national government could count on long-term legitimation, loyalty and durability.

During phase two (say, 1960s-1990s) boundaries started to be removed. A new, larger boundary configuration was established, guarded by supra-unit authorities (the EU). Cross-unit exits and entries became free, no longer under the control of national authorities. JC could thus take off, and (the possibility of) policy shopping/competition linked with free exits/entries created incentives for domestic authorities to adopt more efficient policy solutions. The removal of boundaries also impacted on voice, however. Exits and entries have altered the distribution and value of politically relevant resources. New lines of divisions and conflict potential have arisen (e.g. mobile actors vs. stayers).

And so we reach phase 3 (2000s onwards): established voice channels started to un-freeze (get deranged), political patterns got increasingly destructured and political loyalty/legitimation gradually unsettled. In the wake of boundary removal and JC, new types of voice make their appearance: e.g. voice against exit, voice against entry (right wing populism), voice against opening as such (euroscepticism) voice for re-closure (*souverainisme*) and so on.

In principle, we might imagine EU building to eventually lead to the formation of a much wider bounded association of associations, characterized by its own internal structuring at a higher level. But this scenario cannot be taken for granted. The opposite scenario is equally plausible: separatism (Brexit, Catalonia) or even disintegration.

The re-visitation (and broad generalization) of Rokkan’s theory in the face of EU-building has been masterfully provided by Bartolini. His message is clear: institutional democratization and the direct connection between the dynamics of supranational integration and those of national mass politics are deemed to generate an “explosive mixture of problems”.<sup>34</sup> As is well known, the euro-crisis and the ensuing great recession have heavily aggravated the problematic mixture. Building on a Rokkanian background, Hans Peter Kriesi and his collaborators have conceptualized and investigated the new conflict constellation emerged in the wake of EMU, the Eastern enlargements and the crisis.<sup>35</sup> The EU as such has become a major source of contention, originating a novel “integration-demarcation” cleavage.

<sup>34</sup> S. BARTOLINI, *Restructuring Europe*, Oxford: Oxford University Press, 2005, p. 409.

<sup>35</sup> H.P. KRIESI, *Restructuring of Partisan Politics and the Emergence of a New Cleavage Based on Values*, in *West European Politics*, 2010, p. 673 *et seq.*; H.P. KRIESI, E. GRANDE, M. DOLEZAL, D.M. HELBLING, P.D. HÖGLINGER, P.S. HUTTER, P.B. WÜEST, *Political Conflict in Western Europe*, Cambridge: Cambridge University Press, 2012; M. FERRERA, *The Stein Rokkan Lecture 2016 Mission impossible?*, cit.

Integration has implied a transfer of substantial authority from national governments to supranational institutions. Developments in this direction have been slow-moving, generating incremental cumulative effects. As predicted by JC theory, free movement has indeed generated policy shopping on the side of workers, capitals, service providers, firms and so on. The suppliers of jurisdictional goods have been induced to rationalize their regulatory frameworks. The suppression of exit controls have shifted policymakers' attention towards attracting precious resources from the outside – entry-oriented policies and measures. The completion of the internal market has indeed brought huge efficiency gains. EMU's rules have in its turn acted from above to contain fiscally unsustainable public finances and to promote market-conforming institutional reforms. However, these processes have also started to clash with nation-based welfare democratic practices and institutions, unleashing dangerous and destructive conflicts. Writing in the 1970s, Rokkan already warned about these risks. But he also added that nationalization of the citizenry inherent in the welfare State would not imply "an increase of feelings of xenophobia and distance from others".<sup>36</sup> In certain countries, right wing formations have unfortunately fomented xenophobic and even racist orientations and actual behaviors which have gone beyond Rokkan's wildest dreams. The last decade has unearthed the structural contradiction (to use Bartolini's words) between the dynamics of EU building and the preservation of the cultural, redistributive and political capacities of national governments on the other hand. In such a context, can the new supranational center really "hold"? Or are we faced with an unstoppable spiral of system disintegration, in the wake of an increasingly loud "voice for exit" (the UK case)?

## V. CONCLUSION

This *Article* has discussed the conception of democratic politics which underpins JC theory and has shed light on some dynamics which the latter neglects. My discussion has not challenged the internal logic of JC theory. It has however highlighted a major limitation: by focusing only on exit dynamics and their virtues, JC scholars downplay the key role of loyalty and of the "voice" side of politics. Governing a political community is always a balancing act whose ultimate and absolute mission is to safeguard to stability and durability of political order – which is something distinct and autonomous compared to the economic or legal orders. The existence of boundaries – and thus a certain degree of foreclosure of cross-boundary movements – is a necessary condition for political stability and durability.

European integration provides a telling example of how the virtues of exit find their limit in the potential erosion of loyalty and the disruption of voice structures – two processes which are deemed to backfire against exit itself and prompt dangerous de-legitimation spirals and anti-opening counter-movements. By removing a number of jurisdictional boundaries, integration has unquestionably increased the options of the various

<sup>36</sup> P. FLORA, S. KUHNLE, D. URWIN (eds), *State Formation*, cit., p. 265.

national actors. Individual citizens, service consumers, providers, financial institutions and, more generally, social and corporate actors can now choose among a much wider repertoire of “locality” options, i.e. choices about where to locate themselves within the EU space: staying inside the original or “natural” space of affiliation, exiting from it and entering into other spaces, staying out selectively from what they do not like. Moreover, actors can pursue such options through a wide range of “vocality” strategies, i.e. strategies that exploit all the possible confrontational opportunities offered by the EU multi-level institutional system, and especially the new EU legal order, increasingly serving as a “law-for-exit-and-voice”, i.e. a set of norms and venues (starting from the Court of Justice of the European Union) which actors can use in order to pursue their novel spatial interests. The wider menu of “locality” options and “vocality” strategies has prompted a new spatial politics in Europe, in which the territorial dimension (in its purely geographical, but also geo-hierarchical aspects) has become increasingly salient.<sup>37</sup>

While not denying that opening and jurisdictional competition have brought about some of their expected benefits, my discussion has shown that there are risks involved in the process. Too much emphasis on competition may jeopardize the delicate compromises between efficiency and equity, between the market and the solidarity logics which have been laboriously achieved through the long historical process of welfare State building. Especially after the 2004 enlargement, opening has raised increasing fears of social dumping and “social tourism”, triggering off undesirable dynamics of xenophobia and creating new strains between social groups instead of new ties. Such development has also raised delicate issues of legitimacy and democratic accountability – at least insofar as the EU’s low “polity-ness” is perceived as a problem by important societal actors, large segments of national public opinions and a number of national governments.

In an early commentary to Hirschman’s model, Samuel Finer aptly observed that exit and entries can sometimes turn into “demons” threatening the very basis of political association.<sup>38</sup> Smart and carefully calibrated boundary-building (and maintenance) is the key element for eliciting those “we-feelings” that make citizens loyal to their community and its political authorities. Conflict cannot be suppressed, but it can be channeled, civilized and turned into a spur for virtuous institutional change. Under certain conditions, voice can operate as the “angel” of politics. As I have underlined, in line with the prediction of JC theory, sometimes the angel of voice can be hijacked by petty interests, sectional lobbies, and exclusive groups defending their privileges. In such cases, opening and markets can be robust antidotes to particularistic predations. What matters is keeping an appropriate balance between exit and voice, capable of safeguarding adequate levels of systemic loyalty. Many commentators have criticized the way in which Hirschman treated

<sup>37</sup> M. FERRERA, *The Boundaries of Welfare*, cit.

<sup>38</sup> S. FINER, *State-building, State Boundaries and Border Control*, in *Social Science Information*, 1974, p. 79 *et seq.*

loyalty: as a residual category that “fills the equation” when, in the presence of quality deterioration, the dynamics of exit or voice do not unfold as expected.<sup>39</sup> But loyalty is not merely a “tax” on either exit or voice, that lowers their probability. It is the glue that keeps the polity together by sustaining its legitimation. As Weber aptly suggested more than a century ago, legitimacy is a necessary condition for any exercise of political authority. European politics is now confronted precisely with a legitimacy deficit, at the national and especially EU level. And our future as Europeans will depend on the capacity of political leaders (old and new) to overcome this formidable challenge.

<sup>39</sup> B. BARRY, *Exit, Voice and Loyalty*, review article, in *British Journal of Political Science*, 1974, p. 79 *et seq.*