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Changing Boundaries, New Structuring?

by

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June 1, 2003

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With the creation of EMU, European Welfare States have entered a new phase of development. The margins for manoeuvring public budgets have substantially decreased, while the unfolding of the four freedoms of movement within the EU have seriously weakened the traditional coercive monopoly of the state on actors and resources that are crucial for the stability of redistributive institutions. The article explores these issues adopting a Rokkanian perspective, i.e. building on Rokkan's pioneering insights on the nexus between boundary building and internal structuring.

The first part of the paper briefly presents the theoretical perspective. The second part sketches the development of national welfare institutions from their origin up to the early 1970s, discussing their implications in terms of boundary building and internal structuring. The third part describes the challenges that have emerged in the last couple of decades to the "social sovereignty" of the nation state: challenges that are largely linked to the process of European integration, but that are partly reinforced by endogenous developments as well. The final part offers some more speculative remarks of the potential de-structuring of the traditional architecture of social protection, with some hints at cross-national variations and possible developments at the EU level.

*Maurizio Ferrera, Professor, Department of Political and Social Studies, University of Pavia, Italy*

# EUROPEAN INTEGRATION AND NATIONAL SOCIAL CITIZENSHIP: CHANGING BOUNDARIES, NEW STRUCTURING?

by

**Maurizio Ferrera**

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## **Introduction<sup>1</sup>**

With the creation of the Economic and Monetary Union, European welfare states have entered a new phase of their century-long historical development. The centralization of monetary and – increasingly - fiscal decisions has severely constrained the margins for manoeuvring domestic public budgets. In its turn, the unfettering of the "four freedoms" (the free movement of goods, capitals, services and workers) has eroded the capacity of national authorities to maintain coercive rule on actors and resources (most notably, tax bases) which are crucial for the stability of state redistributive institutions. The negative externalities of EMU have started to attract increasing attention in both academic and policy debates. Some promising political efforts are also visible at the EU level to counteract these externalities by way of co-ordination rules and new methods of open and "soft" cooperation, such as the European employment strategy<sup>2</sup>. The underlying idea is

that with appropriate institutional remedies the distinct national systems of social protection can hopefully be encouraged to “*faire système*”, embarking upon a common path of modernization and thus absorbing the most harmful effects of a negative integration essentially based on the removal of barriers to free circulation and on automatic safeguards for competition rules.

The possibility of building a Social Europe, resting on a virtuous combination of sub-national, national and supranational programs and regulations, is of course a fascinating topic for discussion and speculation. Sound reasonings about this topic must however be anchored to some theory capable of identifying the specific *de-structuring* effects of the new European context on national welfare systems: a theory that goes beyond a mere checklist of inconvenient externalities and possible “quick fixes” at the level of EU institutions.

In this article my anchor will be the theory of Stein Rokkan and, more specifically, his basic argument about the link between boundary building/reduction and internal structuring/de-structuring. In full accordance with Stefano Bartolini (1998) and Peter Flora (1999 and 2000), I find that Rokkan’s perspective offers a rich analytical framework for the interpretation of current European politico-institutional developments (including those affecting the sphere of welfare) and for the generation of hypotheses concerning both cross-country variations and future scenarios.

The first part of the article will briefly present my basic theoretical underpinnings. The second part will sketch the development of national welfare institutions from their origin up to the 1970s, discussing their implications in terms of boundary building and internal structuring. The third and fourth parts will discuss the challenges that have emerged in the last couple of decades to the social sovereignty of the nation state: challenges that are largely exogenous (and mainly connected to the process of European integration), but partly reinforced by endogenous developments as well. The final section will offer some more speculative remarks on the interplay between the transformation of boundaries *around* and *within* European welfare states and their politico-institutional structuring.

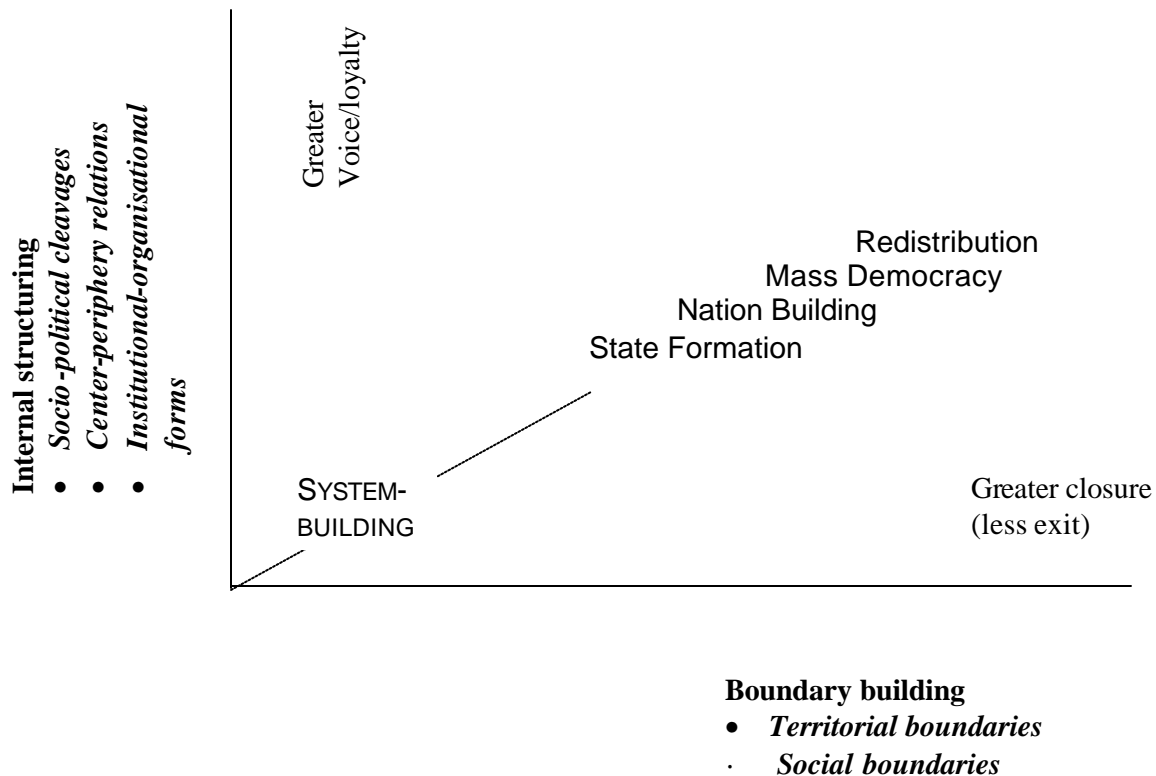
### **“Bounded structuring”: Rokkan’s perspective**

The notions of “structuring” and “de-structuring” are crucial components of Stein Rokkan’s theoretical framework on the historical process of state formation and nation building in Europe (Rokkan, 1970; Lipset and Rokkan, 1967)<sup>3</sup>. As is well known, for Rokkan this process took place in the wake of complex dynamics of functional and territorial differentiation in Europe after the fall of the Roman empire, that gave rise to a variety of structures: cleavage structures, centre-periphery structures and institutional-organisational structures. Cleavage structures are those sets of fundamental (“obdurate and pervasive”) contrasts, rooted in socio-economic and cultural differences, which have come to systematically divide national communities. Center-periphery structures are those systems of relationships and transactions linking the dominant *loci* of command and control, within relatively “bounded” territories, to their subordinate areas. Institutional-organisational structures are all those more or less formalized hierarchies of roles that have emerged to support the territorial and functional division of labour: from interest associations to central executives, from parties to administrative agencies. The concept of “structuring” (i.e. of structure formation) connotes the stabilisation of all these patterns of interaction through the creation of various rules and norms of behaviour, specific coalitions among actors and the establishment of inter-organisational links. In the wake of some critical historical junctures, in many countries cleavage structures and center-periphery structures got “crystallized” or “frozen”, i.e. they came to be embedded in, and supported by, a dense network of organisations (especially corporate and partisan organisations, but also service bureaucracies), whose main effect was (and still largely is), precisely, that of reproducing the structures themselves.

State formation and nation building were slow processes implying the creation of increasingly solid boundaries and the parallel “internalization” (or nationalization) of pre-existing structures (cf. fig. 1). Elaborating on Hirschman’s work (Hirschman, 1970), Rokkan conceptualized this process as a gradual foreclosure of *exit* options of actors and resources, the establishment of “system maintenance” institutions capable of eliciting domestic *loyalty* (including the consolidation of what he called the “cultural infrastructure”) and the provision of channels for internal *voice*, i.e. claims addressed to national centres from social and geographical peripheries. The locking-in of resources and actors in a bounded space “domesticated” the latter’s strategies, focussed them towards central elites, encouraged the formation of new organisational vehicles for the exercise of voice and the strengthening of loyalty and, as a consequence of all this, sparked off processes of territorial

“system building”, i.e. the emergence of area-specific, functionally integrated constellations of institutions and actors.

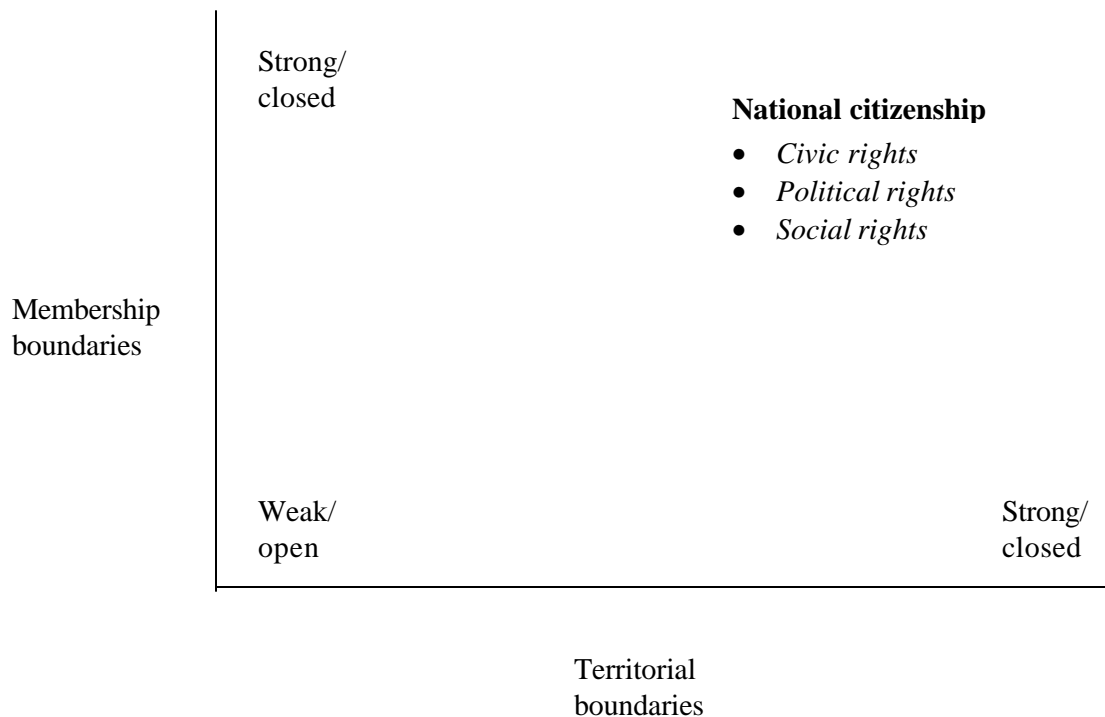
Fig. 1 Bounded structuring: dimensions and macro-processes



For Rokkan the notion of space had two dimensions: a territorial dimension and a “membership” dimension, involving socio-political and cultural elements. Thus boundary building must be understood in two ways: 1) as the demarcation of physical space through the deployment of effective instruments of territorial defence – primarily of military and administrative nature; 2) as the creation of explicit codes and forms of distinction -e.g. citizenship rights- between insiders and outsiders, nationals and non nationals. Membership (or “social”, in a wide sense) boundaries are very important: as Rokkan put it “(they) tend to be much firmer than geographical boundaries: you can cross the border into a territory as a tourist, trader or casual labourer, but you will find it much

more difficult to be accepted as a member of the core group claiming pre-eminent rights of control within a territory” (in Flora et al. 1999: 104). Membership boundaries can also be used to differentiate within the core group itself, establishing barriers or thresholds for accessing political decisions or socio-economic resources and opportunities. For example the differential voting rights across population strata in the XIX century created distinct spheres of membership to the political community, which became the object of harsh and prolonged confrontations. The development of culturally embedded systems of national citizenship, resting on universal civic, political and social rights, took place in a space of interaction characterised by increasing degrees of social and territorial closure (cf. fig. 2). For Rokkan, in general, the history of the structuring of human societies can be fruitfully analysed in terms of the interplay between geographical spaces and membership spaces: and such interplay can in turn be understood by observing boundary formation and internal structuring – two sides of the same coin.

Fig. 2 The two dimensions of spatial closure



Although he never systematically used or discussed the concept in his writings, for Rokkan (in line with the Weberian tradition) “sovereignty” basically meant the capacity of demarcating geographical space and exercising authoritative control on both exit/entries and voice/loyalty dynamics *into* and *within* that space<sup>4</sup>. Since the mid-XVIII century, the consolidation of such a two-fold ability was no easy task –not least for the constant appearance of “boundary transcending technologies” (from the press to underground movements), requiring the deployment of “boundary maintaining counter-forces”. Towards the end of the XIX century, however, in certain parts of Europe the process of bounded structuring gave rise to a novel variant of the sovereign state: that *national, democratic* and *welfare* state which was the most successful political protagonist of the subsequent century.

In his work, Rokkan focussed primarily on state formation, nation building and democratization, analysing them in the context of growing external closure and the ensuing internal structuration of specific territorial areas (fig. 1). He did not systematically explore the fourth stage or dimension of “bounded structuring”, i.e. the establishment of redistributive arrangements. Yet he recognized that these arrangements played a crucial role in stabilizing the new form of politico-territorial organization that gradually emerged in Europe. This stabilisation occurred through the anchoring of people’s life chances to state-national institutions, via the creation of explicit entitlements to (a modicum of) material resources. System-specific social rights became new, important ingredients of national membership spaces: their introduction accelerated the fusion between the concept of citizenship and that of territorial identity. The basic duo “cultural identity *cum* political participation” – within a demarcated territory - was complemented with a novel “social sharing” component (Flora, 2000)<sup>5</sup>, reinforcing on the one hand those “feelings of we-ness” which are a crucial underpinning of the nation state construct and offering to national elites, on the other hand, new tools for differentiating between insiders and outsiders.

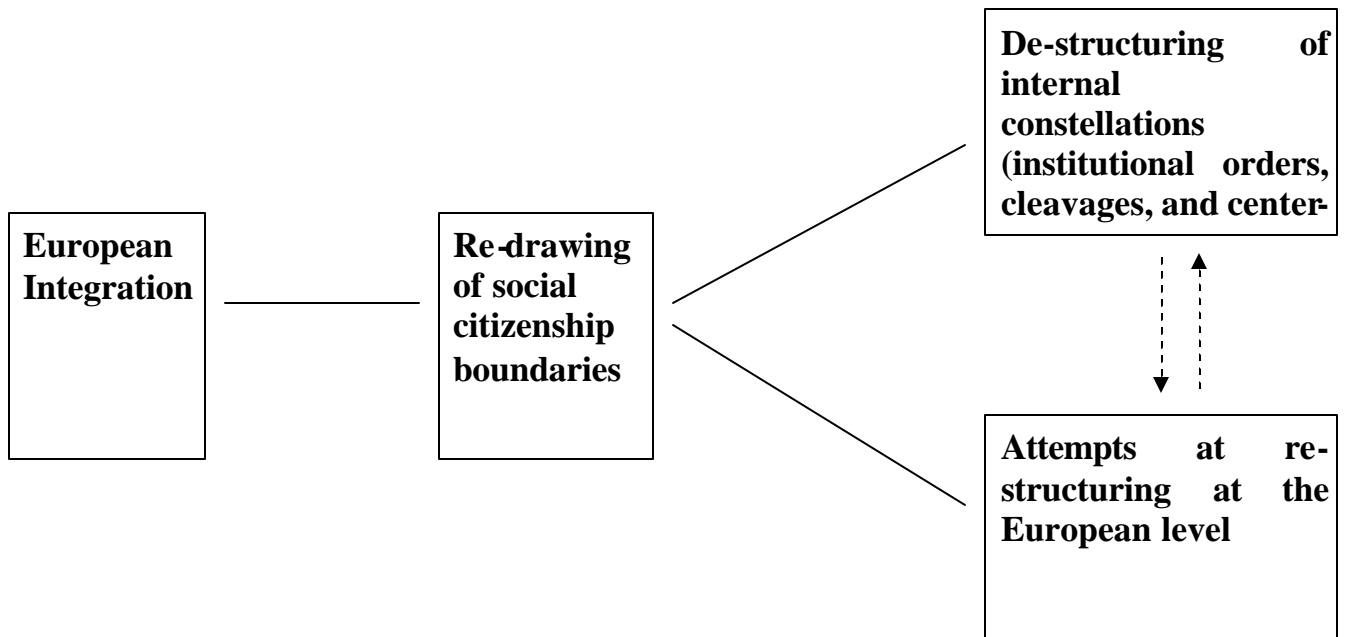
At the beginning of the XX century, the welfare state became a distinct institutional order, closely interacting with pre-existing or co-emerging orders: the cultural infrastructure, the state decision making and administrative machinery, the party and corporate system, etc. And during the subsequent decades the fusion between territorial identity, mass democracy and the welfare state produced very solid and highly integrated political systems, functioning according to distinct internal logics. Of course, these systems maintained several channels of mutual communication, especially in the economic sphere. Looking at institutional developments from a (very) *longue durée* perspective, Rokkan was well aware of the tensions inherently building up between processes



of system closure, on the one hand, and the counter-pressures for “opening” brought about by cross-border transactions on the other hand. Writing in the 1960s and 1970s, however, he remained rather skeptical about the prospects for European integration – and in particular about the formation of new cross-system structures “beyond cooperation between corporate agencies”.

In the last two decades, however, European integration has proceeded much beyond the stage of a mere open arena of economic transactions and administrative cooperation. Cross-system boundaries have been extensively re-defined, differentiated, reduced and in some areas altogether cancelled. Following Rokkan’s framework, we should expect that such dynamics – occurring along the horizontal axis of figure 1 - may have significant consequences on the vertical dimension as well, i.e. on the configuration of internal institutional orders, socio-political cleavages and center-periphery relations. Developing general hypotheses about the de-structuring effects of cross-system boundary re-drawing on these three broad fronts is a very complex analytical task, which falls way beyond the scope of this article<sup>6</sup>. Rokkan’s theoretical framework can be mobilised, however, also for raising questions and advancing theoretical expectations about the specific theme which interests us, i.e. the impact of European integration on national systems of social sharing (cf. fig. 3). To what extent have EU rules affected the territorial and membership boundaries of domestic welfare systems? Is this “re-bounding” likely to undermine the institutional foundations (or prerequisites) of redistribution at the national level? Are there symptoms of wider de-structuring dynamics, e.g. on cleavages and/or center-periphery relations –dynamics originated *by* or likely to impact *on* social policy? And if European integration can be looked at as an attempt at “system building”, following novel modes of “bounded structuring” and searching for original solutions to the challenges posed by such process, what are the prospects for a re-structuring of social citizenship within this new emerging space?

Fig.3 The impact of European integration on social citizenship



Keeping such broad questions in the background, our analysis will proceed in four steps. First, we will offer a brief historical survey of welfare state formation, based on the concepts and theoretical links summarised in figures 1 and 2. Secondly, we will discuss some developments that started to challenge the national closure of social citizenship between the 1950s and 1970s. We will then move to analyse in more depth the tensions that built up during the 1980s and 1990s between the member states and the EU in three relevant sectors: health care, social assistance and pension insurance. In order to identify the critical fault lines in national-supranational interactions, we will have to engage in a rather detailed discussion of EU case law and regulatory developments. Our fourth and final step will be to return to the Rokkanian framework: building on the empirical findings of the previous steps, we will suggest some possible scenarios and lines of research about the causal sequence charted in figure 3.

## **The structuring of “social sharing”: from local assistance to national welfare**

How precisely did “social sharing” get structured historically in the European states? Which institutional-organizational forms were created in order to stabilise the new ties of solidarities between social groups? How did such forms interact with the cleavage and center-periphery structures? As is well known, entire libraries have been filled with studies on the evolution of social policy and on its distinct typological trajectories. In this paragraph, I will briefly re-sketch the story from a Rokkanian angle.

An original European invention, the welfare state emerged as a result of a slow process of policy experimentation, which began with the “liberal break” vis-à-vis conservative paternalism around the middle of the 19<sup>th</sup> century and ended with the establishment of mass social insurance in most countries by the end of 1920s (Briggs, 1961; Rimlinger, 1971). Social insurance was a real institutional breakthrough in the history of the European nation state. Prior to it, the management of social risks was predominantly in the hands of locally anchored institutions. These operated through occasional, residual and discretionary interventions, considered as “dispensations” which society granted to persons often considered as undeserving. Beneficiaries were thus the object of severe stigma and very often lost their civil and (to the extent they had any) political rights. The actual delivery of assistance took highly differentiated organizational forms, on a very narrow territorial basis.

Social insurance overhauled almost completely this traditional approach (Alber, 1982; Ewald, 1986; Heclo, 1981; Perrin, 1969). Its new objective was to provide standardized benefits, in an impartial and automatic form, based on precisely defined rights and obligations, according to highly specialised procedures and *with a national scope*: all citizens possessing certain requisites were subject to the new rules. The institutionalization of solidarity through the pooling of certain risks (old age, disability, sickness, work injuries and unemployment – to name the most important) across the whole population (or large sections thereof) served in this way to strengthen that link between territories, cultural identities and participatory institutions on which – as noted above – the European nation state ultimately rests. The connection between the establishment of social rights and the objectives of political integration and nation building of central elites in many countries – in the face of an increasingly bitter class conflict under capitalism- has been well documented by empirical research (Alber, 1982; Banting, 1995; Heclo, 1974; De Swaan, 1987; Ferrera, 1993a; Friedman, 1981; Zincone, 1992).

One of the core traits of the new technique – social insurance – was its *compulsory* nature. It was precisely the obligatory inclusion of wide categories of workers that allowed the new institution to affirm itself as a powerful redistributive machine, capable of affecting the life chances of millions of citizens. Obligatory inclusion meant that risks could be shared across wide populations, with three big advantages: a less costly protection per insured, the possibility of charging “contributions” (i.e. flat rate or proportional payments) rather than “premiums” (i.e. payments differentiated on the basis of individual risk profiles, as in policies offered by private companies) and the possibility of granting special treatment (e.g. lower or credited contributions, or minimum benefits) to categories of disadvantaged members. In contrast to private and/or voluntary insurance, compulsory social insurance could thus produce not only horizontal redistributions – flowing from the “non-damaged” to the “damaged” - but also vertical ones, from higher to lower incomes (Alber, 1982). Under certain conditions, a compulsory insurance scheme could also produce financial surpluses that could be mobilized for other social or wider state-national purposes.

The principle of compulsory inclusion lends itself well to being analysed in a Rokkan-Hirschman perspective. The new compulsory insurance schemes can be seen as very concrete manifestations of that process of institutional differentiation vis-à-vis foreign spaces and parallel internal structuration that characterized the European state system between the end of the 19<sup>th</sup> and the beginning of the 20<sup>th</sup> century.

To begin with, the introduction of nationally differentiated systems of insurance added one extra substantive dimension to the *external boundaries* of the nation state (i.e. its demarcation from other territorial systems). From Westphalia (1648) to Vienna (1815), external boundaries were essentially of a military nature and had only a vague administrative-regulatory component – in the sense that within state territories there remained numerous internal barriers (e.g. in terms of labour and even physical mobility) as well as a high degree of legal differentiation (Bartolini, 2000). The very notion of a uniform legal code (in penal law, but especially in civic law) only made its appearance at the doctrinal level with the Enlightenment towards the end of the XVIII century and had a very slow take off in practical terms (Tarello, 1998). The right to engage in a work activity of one's choosing only emerged with the dismantlement of the rigid guild systems and corporatist protections (Alber, 1982) – the other side of this right being of course the rapid “commodification” of workers in the capitalist labour market (Esping Andersen, 1990; Polanyi, 1957). The removal of barriers to free circulation as well as regulatory standardization across the state territory proceeded

at an increasingly rapid speed during the XIX century and the establishment of social insurance schemes with a national scope constituted a sort of quantum leap for certain countries in this respect. The first country to ever introduce compulsory insurance was Germany: in 1883 against sickness, in 1884 against work injuries and in 1889 against old age. The German reforms had a vast international echo. Austria-Hungary was the first country to follow suit (in 1887 as regards work injuries and in 1888 as regards sickness). Prior to the turn of the century came Denmark (means-tested national pensions in 1891), Norway (work injuries, in 1894), Finland (work injures in 1895), France and Italy (work injuries in 1898). The other countries took off with subsidised voluntary insurance, but shifted to compulsory schemes in the first two decades of the new century. At the outbreak of World War I, only Belgium was missing from the list: compulsory pension insurance arrived in this country in 1924<sup>7</sup>.

The significance of the new social-regulatory component of state borders became evident in the territorial adjustments that followed World War I. For example when Alsace and Lorraine returned to France, both regions had been enjoying for some more than two decades the schemes introduced by Bismarck in the 1880s, which were much more solid and generous than those in place in the rest of the country. This created a pressure for improvements on the French government throughout the 1920s, which led to the establishment of the system of compulsory social insurance in 1928-1930 (Hatzfeld, 1989; Baldwin, 1990; Saint Jours, 1982). In its turn, when advancing its claims on the “unredeemed” provinces of Trento and Trieste (still part of the Hapsburg empire between 1861 and 1919), the Italian government had to promise already in 1916 that in case of “redemption” it would have maintained the more generous sickness insurance introduced by the Austrians in 1888 (Ferrera, 1993a).

Secondly, social insurance schemes created new *membership spaces* internal to the territory of each nation state. As brilliantly underlined by Marshall (1950), the extension of social rights was no less significant for the development of modern citizenship than the extension of civil and political rights. In contrast to the latter, insurance membership was typically extended upwards rather than downwards through the social structure, i.e. from lower to higher incomes and from manual to non manual occupations (Flora and Alber, 1981). At their origins compulsory schemes only covered employees, and typically only industrial employees earning up to a certain wage. Only Sweden introduced from the beginning (1913) an old age insurance covering the whole population regardless of income or occupational status. Starting from the end of World War I all countries began a rapid process of coverage extension. In Britain and Scandinavia this process developed

with just a few big waves of inclusion. In the Continental countries the Bismarckian tradition prevailed, leading to a sequence of differentiated inclusions, typically flowing from industrial employees to agricultural workers, then to the self-employed and finally to other marginal or inactive categories. It is important to stress that even if occupationally fragmented the continental schemes rested on a *nation-wide* pooling of risks and standardized rules. Only the more traditional forms of social assistance to the poor remained localized and discretionary– with a gradual decline of salience.

Thirdly – and largely as a consequence of the first two elements – the original establishment and subsequent development of compulsory social insurance became an important element in the *internal structuring* of all European nation states, closely interacting with the existing cleavage constellations, with centre-periphery relations and with the wider institutional organisational order. In the North of Europe welfare policies re-enforced the state’s penetration of civil society and enhanced the latter’s loyalty to the state and “nation” via materially substantial, organisationally efficient and symbolically strong “social sharing” flows (think of the Swedish notion of a *volkhemmet*, i.e. the welfare state as the home of all people). In many Continental countries, on the other hand, social sharing arrangements remained characterized by a much lower degree of “stateness”<sup>8</sup> and structured themselves (often at a slower pace) in accordance with pre-existing social and/or cultural differentiations. Thus for example in the Netherlands sub-cultural pillars shaped social insurance virtually in their own image and likeness – the *zuilen* being at their origin confessional organisations with precisely social assistance goals (Therborn, 1989) – and it took German occupation to make sickness insurance de facto compulsory. In its turn, the creation of pillar-specific social schemes contributed to “freeze” the cleavage structure and the *verzuiling* system (i.e. the “pillarization” of Dutch society and politics) well into the 1960. In Switzerland (to mention another extreme case) the federalization (i.e. nationalization) of social sharing had to fiercely struggle its way upwards against the stubborn resistance of peripheries (i.e cantons) to relinquish sovereignty on this matter. In the Southern European countries, finally, the structuring of welfare institutions was confronted with a particularly complex set of challenges: economic backwardness, regional differentiations, a harsh church-state conflict (especially in Italy), ideological polarization and –last but not least – low administrative capacities, that paved the way for the emergence of patronage machines and clientelistic dynamics (Ferrera, 1996).<sup>9</sup>

The creation of the new membership spaces via social insurance served to re-configure (and generally speaking, to strengthen) the sovereignty of the European nation-state – in the sense

specified above. Not only did it enlarge the functional scope of centralised authority, but it offered new means for governing both exit/entry and voice/loyalty dynamics within the territory under its jurisdiction. The “triggers” of such re-configurations varied across countries. In the authoritarian German and Austrian empires, for example, the trigger was essentially the sudden mobilisation of the workers’ movement and the *octroyance* of social rights on the side of paternalist elites had the primary objective of hopefully silencing the increasing (and alarming) voice of this movement. Also in the UK the trigger was primarily political: but in this country the first social scheme (means-tested old age pensions in 1908) was an ingredient that served to cement the newly formed alliance between the liberals and labour. A similar development took place in France two decades later: the 1930 reform was introduced in the wake of a political *rapprochement* between the *republikains de progres* and the reformist, non revolutionary wing of the workers movement. In the Scandinavian countries, the prime trigger was instead the end-of-century agricultural crisis, linked to the increasing inflows of cheaper North American grains in domestic markets that could not afford protectionist tariffs. In the countries of this area (and especially in Denmark) the first social policy schemes thus served to compensate those occupational groups that were more exposed to foreign trade. For most of the other countries, the trigger only came with the Great War and the social upheavals that followed it<sup>10</sup>.

However originated, the creation of new membership spaces within the state opened up various opportunities of entry and exit (or better: “staying out”) on the side of social and political actors, greatly articulating their interaction. The new welfare policies soon became the object of increasing voice activity: voice for entry (on the side of social groups left uncovered) but also voice *against* entry (on the side of social groups that thought they were self-reliant or that regarded social insurance as a “trap of capitalism”). Besides the activation of voice, the principle of compulsion encouraged in some cases and countries (e.g. again the self-employed, or most of the agricultural sector in Southern Europe) a second type of response: *hiding*<sup>11</sup> – i.e. strategies to avoid membership or eschewing its costs by operating in the underground economy and/or evading contributions.

In the wake of their structural consolidation, in the inter-war period, but especially after World War II, public insurance schemes turned into relatively autonomous channels for the shaping of social and political interests – channels that were moved and maintained through their own laws of inertia. The famous “freezing hypothesis”, that Lipset and Rokkan (1967) formulated in respect of the structural consolidation of European party systems, could be fruitfully developed in respect of welfare systems as well. In the latter’s case, the channelling of interests was driven less by a

politico-organisational logic than by an economic and financial logic. The new membership communities created by welfare schemes had to safeguard those chains of redistribution activated by the original institutional choices. For a given insurance scheme, structural consolidation did not only mean an organisational strengthening and in some cases a growing political interest in self-expansion, but also the gradual achievement of “actuarial maturation”, i.e. a self-sustaining equilibrium between contributions and benefits, given the risk profile of the target population. This was especially true for the occupational schemes of Continental Europe, which more or less explicitly rested on actuarial criteria and thus incorporated a natural bias against any “path shift”. After World War II in both France and Italy, for example, articulated proposals were made to create new highly comprehensive (if not wholly universal) social insurance regimes: but the constellations of material interests around pre-war occupational separatism effectively blocked such proposals (Ferrera, 1993a; Palier, 1999)<sup>12</sup>. Policy legacies and institutional feedbacks – which have become central notions in current theories about the new politics of welfare (Pierson, 2001) – were already at work in the critical juncture crossed by European welfare systems at the time of their post-war re-structurations.

The *trentes glorieuses* (1945-1975) were the apex of the *national* welfare state. The coverage of its schemes reached its “natural” limits (i.e. the whole citizenry, at least de jure). The more localized systems of protection were progressively marginalised in their financial size and functional scope. Sophisticated techniques were invented and deployed in order to improve and rationalize the extraction of taxes and contributions, govern redistributive flows from the center and deliver benefits and services to the various clientele. Of particular importance in this respect was the adoption of the “pay-go” system of pension financing, whereby the contributions paid by active workers are immediately used to finance the benefits paid to pensioners. This new technique greatly expanded the scope for intergenerational redistribution. Finally, alongside the various insurance schemes for the standard risks, new non-contributory programs of general social assistance were created, as well as increasingly articulated health care systems providing a wide array of medical services. The new programs of social assistance distinguished themselves from traditional public charity to the extent that they were based on rights (e.g. to a guaranteed minimum income in case of lack of resources) rather than bureaucratic discretion. Health care systems shifted in their turn the emphasis of social sharing from the provision of cash transfers to the provision of benefits in kind (pharmaceuticals, medical treatments etc.). This shift made the institutional articulation of the welfare state more complex, because of the new role gained by service providers as relevant actors.



It also made the welfare state more popular in general, and the European welfare state more distinct from its US counterpart, which remained much leaner in terms of public health cover.

Thus in the first three post-war decades the “social citizenship” attached to state-national institutions displayed its fullest bloom and also its fullest degree of both external and internal closure. Referring back to the two-dimensional space of figure 2 above, in this period welfare rights situated themselves at the extreme upper right corner. For non nationals, it was rather difficult to enter the solidarity spaces of other states, especially when it came to deriving benefits out of them. Under certain conditions, legal foreign workers were admitted into the schemes and thus obliged to pay contributions: but “vesting” rules concerning minimum contributory seniority often barred them from the actual fruition of benefits (typically pensions). The “principle of territoriality” – a central tenet of international labour law (Pennings, 2001) – strictly reserved control over the most relevant aspects of social security in the hands of national governments, putting non nationals in conditions of systematic disadvantage in dealing with issues of contribution cumulation, transferability etc. (Cornelissen, 1996; De Matteis and Giubboni, 1998). More importantly, still, as a rule non nationals were excluded from accessing social and medical assistance benefits, either directly through explicit nationality requirements or indirectly via “gainful residence” requirements (i.e. the possession of legal work permits). Nationals, on the other hand, were virtually “locked in” – being subject to the obligation to be members of public schemes. Internally, the level of voice activity and political conflict around welfare policies tended to increase, but the expansion of these programs gave also a big contribution to enhancing citizen’s “loyalty” towards their national variant of welfare state. The availability of need-based benefits and “social minima” linked to citizenship contributed to strengthening such loyalty and enhancing general feelings of collective solidarity. Welfare rights, legitimized through the electoral channel, gave a fundamental contribution for nationalising the citizenry and accentuating territorial identities. As Rokkan noted, “this sets definite limits to any effort of internationalisation and Europeanisation: ... once broad masses of each territorial population have been mobilised through the electoral ... channels it will prove very difficult to build up a genuine community of trust across the systems. ... Once a population has developed some minimum level of trust in the efficiency and fairness of the territorial government, it is unlikely to favour the transfer of substantial authority from this body to agencies beyond direct electoral control” (in Flora et al., 1999: 265). Survey data seem to confirm Rokkan’s expectations: public social protection is considered a “fundamental achievement of modern society” by very vast majorities in all European countries; in most countries the majority of people think that decisions regarding this matter should remain the preserve of their own national government (Ferrera 1993 b).

## **National closure under challenge: endogenous and exogenous pressures**

Yet, already during the *trentes glorieuses*, some first cracks started to emerge in these solid institutional compacts, testing the ability of European nation-states to maintain monopolistic control over their social sharing spaces. Two main developments were responsible for this: one of endogenous and the other of exogenous origin.

The endogenous development is connected with the internal differentiation of social insurance and has to do with the creation of the so-called “second pillar” schemes, most notably in the field of pensions. The problem arose already in the 1950s in the North European countries, which had opted for universal schemes providing relatively low, flat rate “minimum” or “basic” benefits. In the new post-war climate of greater economic prosperity and social mobility, this type of benefits were regarded as increasingly inadequate to meet the welfare aspirations of the middle classes. Thus some occupational groups (e.g. skilled blue collar workers and many categories of white collar employees) started to subscribe to various forms of supplementary insurance, in order to top up their state pension with additional benefits. Such initiatives posed however a number of regulatory and distributive problems, which prompted state intervention. Not surprisingly, one of the fundamental dilemmas that governments had to face was the issue of compulsion: was membership to “second pillar” schemes to be made obligatory – as in the first pillars -or should it be left voluntary? Another controversial issue was the public vs. non public nature of such schemes. In both cases what was at stake was the degree of “closure” of this new space for redistribution along the membership axis (cf. fig. 2 above). Choices on these critical fronts were doomed to have far reaching implications in terms of allocative efficiency and distributive equity. Less explicit, but equally far reaching, were also to be their “structuring” implications on the overall national patterns of social sharing. Socialdemocratic parties and trade unions strongly favoured for example the option of compulsory affiliation into publicly regulated collective schemes run by the social partners, which they saw as promising tools for strengthening traditional class allegiances and alliances. Liberals and conservatives, on the other hand, favoured freedom of choice and market based solutions.

Different countries made different choices. The two extreme cases are the UK and Sweden. In the former country, after a long controversy, in 1958 the conservative government introduced a bill that established a public supplementary scheme, but allowed workers to “contract out” from it if they so wished, into non public funds (Hecló, 1974). This decision planted an institutional seed of high

“destructuring” potential for British pension insurance. This seed matured in the 1980s, when Margareth Thatcher promoted a virtual privatisation of supplementary pensions and set the UK on a quite unique course in Europe (Bonoli, 2000; Myles and Pierson, 2001). In Sweden, instead, second tier provision remained firmly in the hands of the state. In 1959 the social-democratic government decided that all employees would be obliged to enter the new ATP scheme offering supplementary benefits on top of the basic universal pension: a highly controversial choice, that caused one of the fiercest political squabbles of post-war Sweden, but also consolidated the public and all inclusive nature of this country’s welfare state (Esping Andersen, 1985; Heclø, 1974). The other Nordic countries aligned themselves with Sweden (though in attenuated forms). Somewhat later in time, also Continental countries with Bismarckian regimes had to face the challenge of “second tier” insurance: most of these countries (typically Germany) proceeded with contractual supplementary schemes run by the social partners; France introduced a fragmented system of compulsory *regimes supplementaires* (Guillemard, 1986) while in Southern Europe the second pillar remained relatively underdeveloped well into the 1980s.

The issue of supplementary insurance did not affect the territorial dimension of social sharing: external boundaries and cross-border controls were not in question. The issue did affect, however, the nature and contours of domestic social membership spaces, creating new institutions and offering new entry or exit options for the various occupational groups. This in turn had significant implications both for voice (i.e. conflict) dynamics and for redistributive outcomes. As mentioned, the space of manoeuvre that Margareth Thatcher could exploit to push through her market oriented pension reform in 1986 can be traced back to earlier decisions taken in the 1950s. In a Rokkianian perspective, changes along the membership dimension of boundaries do matter for structuring dynamics, even within a framework of full national sovereignty/territorial closure.

In the 1960s and 1970s, however, the process of European integration was starting to challenge precisely this framework. As is well known, the expansion of the Common Market and the first steps of institutional supranationalisation originated a creeping process of erosion of state sovereignty *at large*. A more specific development began however to weaken *directly* the external boundaries of national welfare states: the emergence of a supranational regime for the co-ordination of social security systems<sup>13</sup>. This body of rules specified the conditions under which entitlements matured in a given national system could be exported or converted into the system of another member state. The regime made sure, in other words, that the new exit options opened by the

Common Market were actually matched by corresponding entry opportunities – a true pre-condition for real exit, a point already well underlined by Rokkan (1973).

The elaboration of the coordination regime was a rather lengthy and controversial political process. France aimed at a gradual, but far reaching harmonization of social provisions across the Community, while Germany was in favour of spontaneous mutual adjustments by means of a virtuous "system competition". The compromise was found in the Council Regulation 1408 of 1971 and rested on four basic principles: equal treatment for all EC nationals; the cumulability of insurance periods; the exportability of benefits; the applicability of a single legislation – the *lex loci laboris* (Cornelissen, 1996; Schoukens, 1997). The Regulation did not substantially affect the sovereignty of the member states as regards membership boundaries. As a matter of fact, this legal provision did not challenge the right of domestic authorities to define and change the content of their social rights. Moreover, the norm for settling conflicts of law, i.e. clashes between external and internal rules, was set in favour of the latter: the single applicable legislation was to be that of the host country. The Regulation weakened nevertheless social sovereignty along the territorial dimension, i.e. in terms of control over external exits/entries: nationality became an explicitly prohibited criterion and could no longer be used for filtering access into the domestic schemes. Furthermore, the principles of cumulability and exportability meant that states were obliged to let in and out of their borders "bundles of entitlements": imports of entitlements matured under external regimes (e.g. in the case of cumulability claims) or exports of entitlements to be redeemed in foreign territories (e.g. in case of claims for payments abroad).

Thus, in the background of the national apex of social citizenship (1945-1975), the issue of exit options from redistributive spaces was slowly, but significantly re-opened. With the creation of second tier insurance, on the one hand, and the establishment of the coordination regime on the other hand, the monopolistic control of the state over both the membership and territorial boundaries of social sharing started to be undermined from within and from without.

The 1980s marked the beginning of a new phase for European nation states, characterised by a rapidly increasing external "vulnerability" in the wake of multiple dynamics of *boundary removal*, especially in the economic and monetary sphere. The *indirect* implications of these dynamics on the autonomy of European welfare states have already been discussed at length by a vast literature, which does not need to be surveyed here<sup>14</sup>. For the purposes of this article it is more important to focus on the *direct* implications connected to the deepening of European integration.

In a well known study on the EU and national social policy, Leibfried and Pierson (1995) have suggested an articulated diagnosis about the declining sovereignty (in their terms: legal authority) and autonomy (i.e. de facto capacity do act) of the member states' social protection systems. This decline has been primarily and directly caused by negative reforms occurring through the imposition of "market compatibility requirements" on the side of the Commission, the Council, but especially the European Court of Justice. These reforms are called "negative" because, aimed as they were at consolidating the internal market, they tended to strike down or at least to attenuate those social norms that were seen as an impediment to the four freedoms – and especially the free movement of workers and the free movement of services. More in detail, the gradual expansion of EU regulations – and especially Court rulings- have gradually eroded:

1. the *national control over beneficiaries*. In compliance with the freedom of movement, member states can no longer restrict welfare state access to their own citizens only. Workers of other EU countries must be automatically admitted too. In order to avoid controversies over the definition of "worker", the Court of Justice has itself elaborated through various rulings a wide *notion communautaire* of this concept, extended not only to the self employed, but also to part time workers, *au pair* workers and even missionary priests (Giubboni, 1997).
2. the *spatial control over consumption*. On the one hand, benefits paid by each member states (e.g. a pension) have become portable across the whole internal market. On the other hand, the insured of a given national system can increasingly shop around and consume services of other EU systems (e.g. in the field of health care) – the so-called passive freedom of service.
3. the *exclusivity* of coverage on their own territory. Member states are increasingly obliged to accept the "infiltration" within their territory of other countries' regimes. The most emblematic case relates to the so-called posted workers, i.e. workers employed in country x who are temporarily sent to work in country y, remaining under the jurisdiction of the country of employment.
4. the *control over access to the status of benefit producer*. In compliance with the active freedom of service, states must grant access to foreign providers into their national welfare system (e.g. in the case of supplementary, "second tier" insurance, or in the case of health care services: see below).
5. The *control over administrative case adjudication*. Member state must in fact accept that the determination of beneficiary status (e.g. of being "sick" or "disabled") be carried out by bureaucratic agencies of other member states.

As a consequence of these processes, European welfare states have witnessed an increasing erosion of their external boundaries and of their capacity to control them. On the demand side, exit options from national systems have expanded for all workers and their families, in parallel with new entry options in the systems of other countries. On the supply side, the jurisdiction of a national regime has been extended outside its borders in certain cases, national providers can enter the membership spaces of other states and, more generally, national authorities have seen a restriction on their capacity to regulate and control. According to Leibfried and Pierson, all these changes have essentially transformed European welfare states from sovereign to *semi-sovereign* entities, irreversibly embedded in an institutional framework characterised by a systematic pro-market bias and by the opacity of a Court led decision making process.

Leibfried and Pierson have offered a valuable analytical grid for ordering factual developments and their diagnosis about a growing an unusual tight-coupling between the Single European Market and social policy during the 1980s and 1990 can hardly be questioned. But for our purposes, the nature and implications of the new “semi-sovereign” condition of domestic welfare state need to be further investigated and qualified. The crucial aspect to be assessed is less what national welfare states have surrendered to the internal market (the “lost half” of semi-sovereignty, as it were) than what they have been able to preserve in terms of boundary control (the remaining half). Has negative integration (and especially the rulings of the ECJ acting as “market police”) structurally undermined the institutional foundations of national social sharing or do such foundations still lie under member state control? Are there significant variations across different policy areas? And have some areas already reached “critical thresholds” beyond which boundary maintenance on the side of the state becomes impossible or irrelevant? We will address these questions in the next paragraph.

### **The differential impact of semi-sovereignty**

As noted by Rokkan, in modern European history the appearance of boundary transcendence options (generally stemming from the expansion of markets) has tended to provoke boundary maintaining counter-moves on the side of state-building (or state-keeping) elites. The last thirty years of social policy developments have been no exception. Member states have not acquiesced without resistance to the erosion of their sovereignty and autonomy originated by the advancement of negative integration. While basically accepting –after the approval of the 1971 Regulation – the

neutralization of the territoriality principle for workers and employment-related entitlements, they have shifted the line of defence around three narrower, but crucial aspects of their national social sharing systems: 1) the external boundaries of their health care systems; 2) the external boundaries of their social assistance schemes and, last but not least 3) the internal boundaries of social insurance (and in particular the issues of compulsory membership and public monopoly). Why these three aspects? Health care and social assistance were less directly related to employment and to the free circulation of workers: the maintenance of state prerogatives could be more easily defended on both doctrinal and practical grounds. Compulsory membership and public monopoly were in their turn essential ingredients of national social insurance systems: thus fighting for their preservation was almost a question of survival. A summary reconstruction of developments on these three fronts is necessary in order to correctly appreciate the import of semi-sovereignty and its de-structuring potential in respect of the institutional status quo.

*Cross-border mobility in health care.*

The 1971 Regulation included a chapter on sickness benefits, covering both cash transfers and medical treatments. In this latter field, however, the co-ordination regime was tuned in a very conservative way (McKee, Mossialos and Belcher, 1996). Apart from trans-frontier workers and emergency care for short term movers, the mobility of patients seeking care abroad remained subject to prior authorization on the side of competent national authorities (e.g. the health funds of affiliation or the NHS administration): a filter that had been dismantled by the Regulation in the case of insurance cash benefits. The principle of authorization was challenged rather early, towards the end of the 1970s. Two rulings of the Court in 1978 (*Pierik I*)<sup>15</sup> and 1979 (*Pierik II*)<sup>16</sup> opened a serious breach, finding that authorisation for treatment abroad was to be granted “when the treatment in question cannot be given to the interested party in the territory of the member state in which he lives” – irrespective, that is, of the coverage rules of the scheme of affiliation and of financial considerations. This Court decision risked to open up a syndrome of continental “regime shopping” for the best (and more costly) treatments, with uncontrollable consequences for national systems. Thus the member states reacted swiftly to these judgements and in 1981 forced a restrictive amendment of the Regulation, which not only confirmed the need of discretionary authorization, but re-affirmed the principle that only treatments already included in the health care package of the national system of affiliation could receive such authorization (Bosco, 2000). In other words, national welfare institutions re-appropriated control over eligible benefits –even if their actual consumption could be authorized abroad.

The whole issue was however re-opened at the end of the 1990s, again as a consequence of supranational jurisprudence. In the *Dekker* case<sup>17</sup> (regarding the purchase of a pair of spectacles in Belgium from an insured of Luxembourg) the Court ruled that the refusal of Mr. Dekker's fund to reimburse the purchase was in contrast with the free circulation of goods. In the *Kohll* case<sup>18</sup> (regarding orthodontic treatment sought in Germany again by an insured of Luxembourg) the Court ruled that the refusal to reimburse was in contrast with the free circulation of persons. In both cases the Court argued 1) that member states do have the right to organise their health care system as they like, but 2) that nonetheless public provisions in this field are not exempt from the basic principle of free movement; 3) that the principle of prior authorisation to seek treatment in another country under the rules of that country does not prevent reimbursement at the tariffs of the same treatment in effect in the country of insurance; 4) that the principle of prior authorisation penalises service providers established in other member states and 5) that the requirement of prior authorisation (and *a fortiori* its denial) can be invoked only in cases of a serious threat to the financial balance of the domestic scheme or for reasons related to public health (AIM, 2000; Hermans 2000)<sup>19</sup>.

The *Kohll* and *Dekker* cases are unquestionably of great importance for the neutralization of territoriality conditions in EU health care systems (Pennings, 2001). They have not re-established that virtually complete recognition of the free movement of patients that had followed from the *Pierik* cases almost two decades earlier. But the national counter-move of 1981 has been partly offset by the new judgements, originating a destructuring potential that – as we shall see below – may lead to significant changes in the institutional configuration of this sector of the welfare state, especially in certain countries.

#### *Social assistance and the residence issue.*

Article 4 of the 1971 Regulation excluded “social assistance” from the material scope of coordination. The rationale behind such provision was that the free circulation of workers required the portability of work-related entitlements, but not necessarily the neutralization of the territoriality principle for social rights unrelated to work (and contributions). Not surprisingly, member states wanted to reserve these rights to their own citizens. The sphere of “a-symmetrical” solidarity (i.e. public support purely based on need considerations) pre-supposes in fact those ties of “we-ness” that typically bind the members of a national community – and them only. But the Regulation did not provide a clearcut definition of social assistance. Thus the responsibility of drawing distinctions fell on the ECJ, which from the very beginning adopted an “expansionary” orientation, aimed at bringing most of the controversial cases under the notion of social security (as opposed to social



assistance) and thus under the scope of coordination. The landmark ruling on this front was the *Frilli* case<sup>20</sup> in 1972, in which the Court ruled that, whenever the claimant has a legally defined position which gives them an enforceable right to the benefit – with no discretionary powers on the side of the granting administration – the benefit cannot be treated as social assistance by national authorities. This ruling gave to non nationals access to most of those “social minima” linked to citizenship (typically social pensions) which had been created in many countries towards the end of the *trentes glorieuses*. Another ruling in 1987 proceeded even further by making these benefits exportable from the country of payment to the country of (new) residence. The case in question (*Giletti et al.*)<sup>21</sup> regarded the refusal of French authorities to pay a means-tested pension to Italian migrants who had returned home. As a consequence of this ruling, French taxpayers were de facto subsidising some needy Italian elderly residing in the Mezzogiorno.

Again, the ECJ activism in striking down national boundaries in such a delicate area prompted member states reactions and a new Regulation was approved in 1992 (no. 1247). Its text includes a fixed list of benefits that, for each state, are subject to limited forms of coordination: but it strictly subordinates the fruition of such benefits to residence requirements. Nationals of other EU member states can claim the social assistance subsidies included in the list: but in the first place they must be in possession of legal residence in the host state; and secondly they must “consume” the benefit in the latter’s territory, abiding by the conditionality requirements attached to such benefit (e.g. work availability).

In this new regulatory framework, the line of defence on the side of national systems thus shifted to the control over rules of residence. While the various European Treaties are based on the principle of free circulation of *workers*, member states have maintained some important prerogatives in deciding who can legally reside on their territory if this person is not a worker. Family members do have residence (and benefit) rights and so have persons looking for a job: but only if these persons are in receipt of an unemployment benefit from the country of last employment and only for up to three months if they move to a different country. Residence eligibility for all other kinds of non workers (e.g students, pensioners, unsubsidized unemployed etc.) is disciplined by three directives (no. 90/364; 30/365 and 93/96) that leave some room to member states to deny eligibility based on economic and other criteria. The host state can for example foresee a sort of “affluence test”: would-be residents must give evidence of “sufficient resources”, higher than those income thresholds which give right to social assistance benefits.

As it did for the notion of “employment”, the ECJ has recently made steps towards defining a “Community concept” of residence (Mabbet and Bolderson, 2000). In the *Swaddling* case<sup>22</sup>, for example, the Court said that the meaning of residence cannot be adapted to suit the unilateral and uncoordinated preferences of the various national systems, while in the *Martinez Sala* case<sup>23</sup> the Court went very close to recognizing to a Spanish citizen the right to a German social assistance benefits purely based on her status as EU citizen. But this “Community concept” of residence has still to be formalized: as regards social assistance, member states can still pull institutional levers to close off this sphere of national social sharing.

*Compulsory membership and public monopolies contested.*

As discussed in section 3 above, the core element of modern welfare state is the principle of compulsory membership within public schemes for the nationals (or residents) of a given territory. It is this principle that gives a solid institutional and financial foundation to national social policy as a key tool for redistribution. How have things evolved on this critical front, in the context of EU market making? Within this battleground, an important distinction must be drawn between the different tiers of insurance.

At the level of “first pillar insurance” (i.e. the basic schemes of monetary transfer: the *regimes legaux* in France, the *assicurazione generale obbligatoria* in Italy, the *Sozialversicherung* in Germany etc.) the coercive monopoly of the nation state was indeed put in question before the European Court of Justice, but it has been upheld. In a landmark ruling of 1993 (*Poucet-Pistre*)<sup>24</sup>, the Court established that the freedom of service cannot be invoked in order to exit from compulsory national insurance schemes. The case originated from an appeal of two French citizens that opposed an order of payment of their social insurance schemes, arguing that the obligation to insure with such schemes (rather than with a private scheme of their choice) violated Treaty norms on the free circulation of enterprises and on the abuse of dominant position. The Court’s ruling rested on the recognition of the solidaristic purposes of public insurance schemes, emblematically represented by such features as the absence of risk selection, the redistribution occurring between income groups (from the better to the worse off: distributive solidarity), between different risk branches (financial solidarity) and especially between different age groups (intergenerational solidarity: the adoption of the pay-as-you-go method of financing was regarded as an especially important factor by the Court). Thanks to these features, basic social insurance schemes cannot be considered as undertakings and the principles of obligatory coverage and public monopoly do not violate Treaty norms.

At the level of second pillar insurance, however, the situation has evolved in a different direction. In a ruling of 1995 (*Coreva*)<sup>25</sup>, the Court specified that public monopoly is not justified when the funded method of financing is used and where benefits depend on contributions and their returns. As second pillar schemes are more geared towards investment, consumers should be free to choose and providers free to sell “the best investment opportunities”. In a number of other cases, the ECJ contrasted attempts from the member states to manipulate domestic legislation in order to maintain or introduce obstacles to foreign providers of supplementary pensions and life insurance. In 1998 a Directive introduced specific and detailed safeguards for the portability of supplementary pension rights, thus enabling the free circulation of workers affiliated to such schemes<sup>26</sup>. Finally, starting from 1997, a series of steps have been undertaken in order to establish a true “internal market” for supplementary pensions, via the removal of all direct and indirect obstacles to the free movement of covered workers and of service providers – on a common floor of basic prudential rules (EC 1997, 1999 and 2001).

One of the few contrasting notes on this path was the *Albany* ruling of 1999<sup>27</sup>, regarding the principle of compulsory affiliation in schemes originating from collective bargaining. As was pointed out earlier, in many countries the second pillars were designed by collective agreements establishing compulsory affiliation to publicly regulated funds run by the social partners. In 1996 Dutch employers tried to exit from such arrangement by opting out of the pertinent industry scheme and purchasing a group policy with an insurance company. The ensuing controversy reached the ECJ, which ruled in favour of the status quo. While admitting the anti-competitive nature of the agreements in question, the Court found that they were not subject to competition rules, based on the new provisions of the Amsterdam Treaty promoting the right of association, collective bargaining and the social dialogue. Important as it may be for the sphere of industrial relations, the “immunity” recognised by the ECJ to the monopoly and obligation prerogatives of the specific Dutch scheme is not likely, however, to block the process of increasing “opening” of this tier of welfare provisions.

To summarize, we can say that as regards the internal boundaries of social insurance the interplay between national and supranational authorities has so far resulted in the maintenance and protection of the central tenet of domestic social sovereignty, but has posed a “cap” on it: residents can be “locked in” to secure a proper functioning of domestic social insurance arrangements, but only up to the reach of their existing basic schemes, where solidaristic elements are more evident. Outside the

cap, however, member states have lost virtually all boundary-setting prerogatives, along both the territorial and the membership dimensions. The above mentioned Regulations of 1971 and 1992 (as well as the 1998 Directive on supplementary pension rights) provide for the co-ordination rules that make these “capped “ territorial/membership spaces compatible with the internal market.

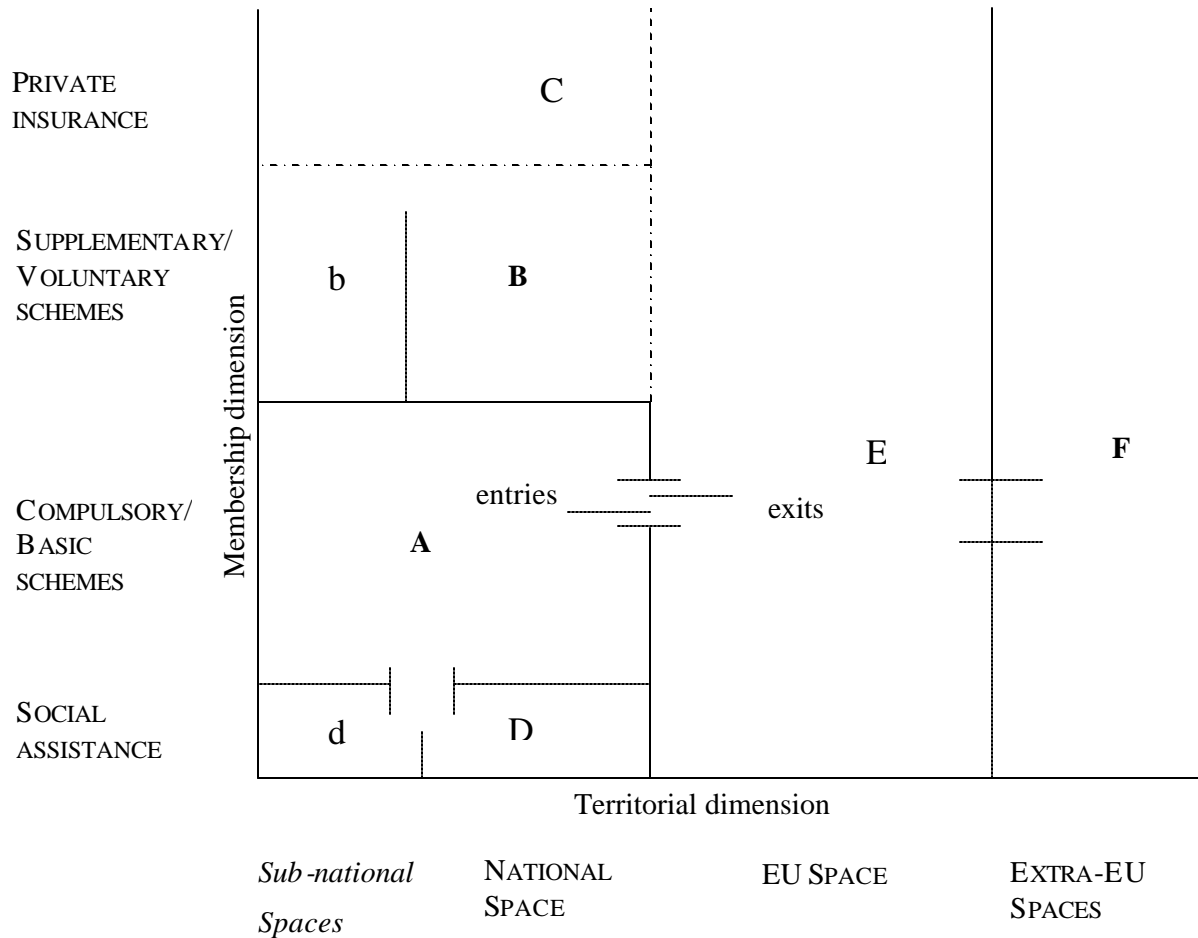
These three brief surveys of case law and regulatory developments lead to some interesting conclusions. The first conclusion is that, far from being a linear and unilateral, top-down process of erosion, the re-drawing of cross-state boundaries in the social sphere since the 1970s has resulted from a tug of war between the national and the supranational levels, during which the former have been able in various cases to assert their interests and to claw back prerogatives regarded as critical for their sovereignty. Many boundary-maintaining counter-moves on the side of member states have indeed been successful. The second conclusion is that, far from ruling systematically in favour of the market, the ECJ has in some critical instances defended essential pre-requisites for national solidarity (e.g. in the *Poucet-Pistre* or *Albany* cases) or struck down national impediments not to the market, but to cross-border *redistributions* (e.g. the *Giletti et al.* case). In this light, the view of the Court as “market police” ought to be partly re-considered: the issue of reconciling the principle of social protection with that of free movement in a widening market has been taken more seriously by the Court than usually acknowledged. The final and more general conclusion (which relates to the questions raised at the end of the previous paragraph) is that case law and regulatory developments have had so far a differential impact on distinct areas/tiers of national social protection. As regards pensions, member states have been able to preserve effective barriers around the principle of compulsory membership into public schemes in their first pillars (an essential bulwark for domestic redistribution), but have lost considerable grounds at the second pillar level. In the field of social assistance, the re-assertion of the territoriality principle after 1992 has given back to the member states important prerogatives in determining who can enter the “inner circle” of need-based solidarity. The critical fault line on this front is constituted by residence rules: the formalization of a “Community concept” of residence may in fact undermine national control over entries into this tier of provision. The balance has tilted further from national control in the case of health care: together with supplementary pensions, health care currently appears as the sector most exposed to de-structuring dynamics.

## **Social citizenship in contemporary Europe: new boundaries, new structuring?**

What do all the described dynamics add up to, in the light of our initial discussion about the structuring of social sharing at the national level? Let us return for a moment to the causal sequence charted in figure 3 above. The institutional developments discussed in the previous paragraphs do indicate that a significant re-drawing of social citizenship boundaries has indeed taken place in the last decades, largely (although not exclusively) as a consequence of European integration. Is there a way of capturing the nature and direction of change in a more systematic fashion? We will try to do this with the help of figure 4, which can be read as a follow-up (the "re-configured" version) of figure 2 above. Like figure 2, the new figure outlines a space defined by two dimensions:

- a territorial dimension, on which geographical movements occur, physical borders between systems are located and rules defining what can pass through such borders are of prime importance. On this dimension, the main novelty in respect of the past (figure 2) is the formation of a new space, the EU, next to (or better: underneath) the traditional space occupied by national systems<sup>28</sup>. Through the four freedoms and the coordination regime, the EU can now legitimately encroach into national social citizenships; this new space is in turn increasingly demarcated by its own external borders, set against foreign territorial units and "third country nationals": the *extra-comunitari* (as this group is called in the Italian language);
- a membership dimension, on which "movements" across the various layers or pillars of social sharing occur, institutional boundaries between schemes are defined and rules over who is eligible to what benefits and over who can provide such benefits are of prime importance. On this dimension, the main novelty is the "cap" posed on statutory, first pillar schemes and the emergence of an increasingly salient space occupied by supplementary (second pillar) and private (third pillar) schemes: a space which extends beyond the reach of obligatory affiliation and public monopoly on provision.

Fig 4. The new configuration of boundaries for social sharing



The intersection between the two dimensions and of their internal partitions generates a number of different sub-spaces, characterised by different kinds of boundaries. Space “A” is the historical core of social sharing systems: it includes those compulsory and public insurance schemes which still constitute the fundamental pillars of national welfare - as well as a prime source of domestic legitimation for the member states. This space remains relatively protected from external encroachments as far as its internal structuring is concerned: as discussed above, the EU regulatory framework rests on the *lex loci laboris* principle, while the Court has so far upheld the principle of compulsory affiliation and public monopoly as pre-requisites for social solidarity. The novelty for this particular space is the opening of a relatively wide gate, through which workers, some other

social categories and certain providers from other EU member states can enter and exit, according to the rules set by the coordination regime, constantly monitored (and often re-interpreted) by the ECJ.

Space “B” is the new area of second pillar schemes –particularly important in pensions and health care. Here, as we have seen, endogenous and European pressures have combined to weaken the degree of both membership and territorial closure: hence the broken lines used by the figure in order to demarcate this space both vis-à-vis private insurance and the larger EU space. The primacy of funding as a method of financing, the much stronger link between contributions and benefits and the high importance of investment decisions have invited a growing “tight coupling” between this sector and the single market. Member states can still maintain some internal and external bounding prerogatives (as confirmed, for example, by the *Albany* ruling discussed above): but the creation of an internal market for supplementary pensions (and plausibly for health care supplementary funds) is only a few regulatory steps away. This market already exists for third pillar schemes (space “C” in the figure) in the wake of the liberalization of the insurance sector (Mabbet, 2000): at this level only fine tunings are needed (primarily in the field of taxation) in order to strike down the remaining impediments for a fully free circulation of customers and providers throughout the whole Union.

Space “D” is that of means-tested benefits and services. Here the external wall of national systems is still buffered by member state prerogatives on rules of residence. The gate opened in space “A” does allow non nationals to access social assistance benefits “from above” (through the horizontal gate in the figure): a worker from another EU country can for example claim means-tested non contributory benefits if he or she meets the requirements set by the host country for its own nationals. But “lateral” accesses are still barred. In this respect, the EU is not (yet) like the US or other federal polities, whose citizens are free to settle where they choose<sup>29</sup>. As mentioned, steps have already been made towards the definition of a Community concept of residence (the fully federal solution): thus the wall is getting thinner, but it is still there for the moment and has not been challenged by the recently approved Charter of fundamental rights (Giubboni, 2001). In figure 4, space “D” and space “B” are crossed by (incomplete) dotted lines that give rise to internal sub-spaces (“d” and “b”). These lines are meant to signal the emergence, within many domestic systems, of some internal differentiations based on territory rather than (or on top of) categorical membership. Regional and even municipal responsibilities in the area of social assistance and services are growing everywhere in Europe. In some countries (e.g. Italy) regions may soon become

the most active level of government for the regulation and even the creation of region-specific supplementary pension and health funds. Decentralization trends are (re)-creating infra-national boundaries which – though much weaker than cross-national ones – could lead to new forms of fragmentation and may thus represent a threat *from within* to the maintenance of nationally bounded (standardized and integrated) social rights. In a few countries (e.g. Italy, Belgium or Spain) this trend is affecting health care systems as a whole. In these cases, the dotted line of boundary “infra-nationalization” cuts across space “A” as well – to the extent that the latter includes compulsory sickness insurance.

Space “E” corresponds to the “near abroad” of national welfare systems: i.e the EU space from which entries and exits are legitimized by either rights of free movement (especially of workers and services) or by portability rules. The figure visualises this space at the same level as the national space. In reality, what we find next to the latter are all the other EU national spaces. The EU space as such should be considered as an underlying floor on which national spaces rest. The formation of this space has been primarily regarded in terms of “market making” and therefore as a source of disturbance and erosion for national solidarity. The ability of the EU to engage in “activist social policy” (i.e of affirming itself as a source of “market braking” social rights) is limited by those inherent obstacles of “positive” integration that have been identified and analysed by a vast literature<sup>30</sup>. In our perspective, however, in the midst of its negative and positive rule making, the EU has slowly started to perform two tasks with at least some degree of “structuring” potential. Along the membership axis, it has started to point towards the existence of possible pan-European solidarity publics. The *Frilli, Giletti at al., Martinez Sala* cases discussed above can be seen as attempts at stretching the boundaries of redistribution (including its inner core, i.e. purely need-based redistribution) beyond individual member states, to the whole EU space. Along the territorial axis, the EU has in turn started to act as boundary-builder vis-à-vis the “far abroad” of the member states, i.e. non EU countries. Figure 4 includes a space “F”, in respect of which the EU – through its visa, immigration and asylum policies – is increasingly acting as the legitimate authority for drawing the lines. Of course, the new external territorial boundaries can be crossed following general and/or bilateral rules of access (a “guarded” gate is marked with a dotted line in figure 4). But even when legally admitted, “third country nationals” do not enjoy, at the moment, the same rights of movement and of social protection as EU citizens<sup>31</sup>.

If table 4 does offer an accurate picture of the new boundary configuration of social citizenship in Europe today, what further speculations can be suggested as regards its “de-structuring” and “re-



structuring” implications (the right hand boxes of figure 3)? As noted above, in Rokkan’s perspective, the possibility of boundary “transcendence” (i.e. the opening up of new exit options) is always likely to have significant “de-structuring” consequences for a given political space: actors’ resources and incentives will change, existing social coalitions and political alignments will be challenged, inter-organisational links will weaken or break, old institutions will be de-stabilised. If new, more external boundaries are created, a wider process of structuring and system-building may in turn begin. The scope and intensity of such developments will mainly depend on two elements: first, the range and distribution of the new exit options and, second, the profile of the existing structural constellations. From Rokkan’s own pioneering research and from a vast subsequent literature, we know that through processes of institutional freezing these constellations can become very solid overtime and highly resistant to change. Being the historical core of the modern welfare state, space “A” (and to some extent also space “D”) in our figure definitely shows many features of frozen landscapes: its internal fabric has close links with both the cleavage structure and the center-periphery structure and it is crowded with deep-rooted and inter-locked organisational networks. Thus it should not surprise that such space has succeeded to remain largely protected from external encroachments.

The space of supplementary insurance (i.e. space “B”) is instead of more recent origin and thus much less crystallized than space “A”: it is thus plausible to expect that de-structuring dynamics will hit at this level first. The social reach and economic salience of the sector is quite considerable. In the field of pensions, for example, it is estimated that around 25% of the Union’s population is now covered by occupational schemes. Around 5 million European individuals aged 15 and over reside in a member state different from that of origin: the number is increasing and the enlargement will certainly contribute further to this trend. The value of funded pension assets as a percentage of the EU’s GDP is also rather substantial: 20.3% for second pillar schemes and nearly 50% more for third pillar schemes (EC, 1997 and 1999). The share of private expenditure represents in its turn between a quarter and a third of total expenditure for health care in most countries: a big potential market for supplementary forms of insurance. These data indicate that at this level of provision there is a wide potential basis for interest articulation and aggregation, both via the electoral and the corporate channels. The relevant actors will not only be the trade unions, business and professional associations, but also the service providers themselves: insurance companies, provident funds, mutual societies. Economic and political pressures are likely to build up for changing existing institutions, creating new ones and perhaps, in the future, for challenging the traditional mix of statutory and supplementary provision.

In figure 4 the internal design of the national space is a mere exemplification. In reality, each individual welfare state has its own mix of layers and pillars of different size and scope. Given the wide variation in structural profiles, we should expect that the potential de-structuring (and re-configuration) of European welfare systems will take place in different forms and degrees of intensity. This expectation is very much in line with the perspective of Rokkan and his constant effort to contextualize general trends and hypotheses according to specific “typological-topological” variables. A detailed contextualization of the de-structuring hypotheses stemming from figure 4 cannot be offered in this paper. We can however advance the suggestion that de-structuring pressures on national systems will be filtered by two main critical factors (or “intervening variables”).

The first factor is the *institutional status quo at the national level*. In the field of pensions, what seems important is in particular the extant division of labour between basic and supplementary schemes, on the one hand, and the extant mix of public and private provision. In those countries where first pillar schemes are small and the middle classes *already* enjoy extensive exit options (e.g. the UK), the impact of the developments illustrated in the previous paragraphs will not make much of a difference in politico-institutional terms. At the other end of the spectrum, in those countries where basic schemes play the dominant role and supplementary schemes only a marginal one (e.g. Italy’s pension system), such developments constitute, for the moment, only a distant source of disturbance. Stronger incentives for the expansion of second tier provision might accelerate the consolidation of the new pillar (thus helping to improve the bleak financial prospects of hyper-generous basic schemes), but the latter will also be shaped by the emerging supranational regime and a Europe-wide market of pension funds – e.g. forcing an institutional bias in favour of voluntary membership and individual choice. The highest potential of de-stabilisation is probably to be found in the “Scandinavian model”. As mentioned above, the Nordic systems designed their second tiers in analogy with the first, i.e. by forcing all employees to enter the same public supplementary schemes. The original designs have been subsequently modified and fine-tuned several times since the 1950s and 1960s and recent assessments of the state of affairs in the face of globalisation and European integration indicate that the Scandinavian model “is alive and well” – financially and politically. These assessments do recognise however that the institutional balance is gradually shifting away from the tradition of “full universalism”, giving way to a more “plural” landscape in which non public and non national options will play a greater role in the social protection of citizens. Where this might lead in terms of institutional design and – more importantly

– in terms of distributive outcomes is hard to predict at this stage, with speculative evaluations ranging from serious preoccupation (Hagen, 1999) to moderate optimism (Alestalo and Kuhnle, 2000).

In the field of health care, what is important about the status quo seems to be the internal organisation of the statutory insurance system. The impact of the recent ECJ case law is likely to be more direct on those systems which are based on a plurality of occupational funds (Belgium, France, Luxembourg, Austria, Germany and the Netherlands), especially if these funds operate through ex post re-imburement as in the first three countries of the group. The impact should remain more limited in those countries which have a national health service (the UK, Ireland, the Nordic and Southern European countries). But even in such systems we might expect some destabilising consequences. The idea that reimbursement is always due in case of territorial “exit” may undermine cost containment strategies introduced at the national or sub-national level; it may challenge the logic of functioning of national health services resting on in-kind provisions (especially their rationing policies); it may by implication lead to claims for reimbursement also in cases of partial exits, e.g. into the private market of the same country, thus strengthening the position of private providers. Some of these concerns (already vocally expressed in the policy debate prompted by the Court rulings) may sound exaggerated. But as suggested by Leibfried and Pierson, “the health area will be a first Europe-wide testing ground for the turf struggle between national welfare states and the Community plus the market, as represented by private insurance, producers etc.” (Leibfried and Pierson, 2000, p. 283).

The second critical factor that will “filter” national dynamics of institutional de-structuring is the *changing constellation of cleavages and center-periphery relations*. We have already underlined – following Rokkan – that the original architecture of European welfare states closely reflected the cleavage and center-periphery structures that were active at the moment in which mass social insurance was introduced. The hypothesis discussed in this article is that these original architectures may have now begun a process of (partial) unfreezing, in the wake of both exogenous and endogenous pressures. We know that national cleavage and center-periphery structures have in their turn undertaken a process of transformation, with the incipient emergence of new sub-national, cross-national, functional and cross-functional interest coalitions (Bartolini, 2000, Ferrera 1993a, Mair, 1998). It is therefore plausible to expect a “mutual attraction” between the two processes and an ensuing re-configuration of European social protection in which new social sharing institutions will tend to match with the new cleavages. There are signs that this process is already under way:

let us think of Belgium, where national welfare institutions are under pressure for outright dismantlement, to be replaced by subnational schemes; let us think of Italy, whose national health service is increasingly being transformed into a system of health care regions; let us think of the growing activism of some “Euro-regions” in experimenting with cross-border cooperation of their welfare systems (e.g. Meuse-Rhine, Scheldemond and Alpe Adria; Hermans, 2000). And let us finally think of the active lobbying in Brussels on the side of multinational enterprises in order to create a space for cross-border schemes reserved to their employees: the so-called pan-European pension institutions (EC, 2001). The study of the link between changes in the institutional profile of European welfare states and changes in the cleavage and center-periphery structures is a very promising front for future empirical research and theory in comparative social policy.

All the described trends towards *national* de-structuring will interact with developments at the *supranational* level, i.e. the further evolution of EU rules: and with this we touch the last box shown in figure 3. It should be clear from our reconstruction that European integration has produced a gradual shift from “un-coordinated social sovereignties” to “coordinated semi-sovereignties”, increasingly subject to the constraints and to the *Eigendynamik* of supranational governance. Some institutional re-structuring at the EU level has already taken place: turf struggles over what level of government has the right to do what (what benefits and what services? how defined and how provided?) are bound to become more frequent and more delicate in the coming years. Among the crucial issues we can mention: will the principles of compulsory affiliation and public monopoly in respect of basic schemes be retained? How rapidly will a harmonised EU regime for the market of supplementary benefits (especially as regards pensions and health care) be created, resting on a close coordination (if not harmonization) of tax regimes? In the wake of this latter development, the supply at European level of comprehensive, market-based alternatives to national provision could rapidly reach a critical mass, capable of significantly accelerating de-structuring developments. One scenario which is frequently evoked in the debate is that of “Emu-winner” strata (higher income groups and informed consumers) maturing stronger incentives to opt out of public/national schemes (or actively voicing in order to be granted such options), choosing the “best investment” for themselves, and leaving “losers” to fall on increasingly lean basic schemes and means-tested assistance (Hagen, 1999). But there might be other, less gloomy scenarios. As noted by Alesina and Wacziarg (2000), the possibility of exit does not necessarily lead to massive exit. In most European countries, cultural norms and institutional rules and dynamics do not make a US style “dualisation” of society very likely. And there might be ways of creating new virtuous circles between public and private, on both the demand and the supply side (especially in the field of health

care: cf. Ferrera and Rhodes, 2000). It must also be kept in mind (as noted above) that supranational jurisprudence need not rule in all cases and systematically in favour of more competition and individual choice. While it seems relatively safe to predict, in general, more moves down the road of supranational social governance<sup>32</sup>, characterising these moves as a one-way road to outright marketization and residualisation of the so-called European social model sounds at this stage as an exaggeration.

Especially after the quantum leaps of the 1990s, European integration has now fully entered the phase of system-building. Clashing with pre-existing (and largely frozen) systems, this process is deemed to produce lasting structural strains and a long time may elapse before new institutional solutions are found and put in place, capable of enhancing and safeguarding cross-system integration<sup>33</sup>. Due to their deep embedding into the framework of the nation state, European welfare systems will encounter many delicate dilemmas in their transition towards new multi-tier and multi-level configurations. A fully-fledged reconstruction of social citizenship at the European level appears today so unrealistic to render the question of its actual desirability a non issue. But the landscape charted in figure 4 shows that things are moving and some ideas have started to circulate about the introduction of modest, but symbolically significant social rights attached to EU citizenship, as desirable corollaries to free movement rights (e.g. a universal minimum income guarantee)<sup>34</sup>. For all those who attribute prime importance to equality and solidarity, the rise of exit options and its de-stabilising potential on national social contracts is mainly looked at with preoccupation and suspicion. But as Rokkan noted in his early commentary to Hirschman (Rokkan, 1973), exit can be a potent generator of positive (i.e. virtuous) institutional innovation. Scenarios are still open: and if structures do count, it is actors that ultimately decide.

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## Notes

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<sup>1</sup> **Acknowledgements**

<sup>2</sup> For a discussion of the new processes of “open co-ordination” and of “soft law” cf. Ferrera, Hemerijck & Rhodes (2000) and Scharpf (2001)

<sup>3</sup> Rokkan’s theory has been patiently and skillfully reconstructed with a systematic (rather than a chronological) approach by Peter Flora, in collaboration with Stein Kuhnle and Derek Urwin: cf. Flora et al. (1999). For a chronological sketch of the theory and a discussion of Rokkan’s distinctive methodological approach, cf. Mioset (2000).

<sup>4</sup> If we take Krasner’s four meanings of the concept (Krasner, 1999), what Rokkan had implicitly in mind in his reflections about system-building were both “Westphalian sovereignty” (i.e. the exclusion of external actors from authority structures within a given territory: domestic authorities become the sole arbiter of legitimate behaviour) and “interdependence sovereignty” (i.e. the ability of domestic authorities to control what passes through territorial borders). The other two meanings are: sovereignty as external recognition and sovereignty as the ultimate legal right to decide. As argued by Caporaso & Jupille (2000), Westphalian sovereignty in particular seems to offer greater analytical leverage over the other three for many questions currently debated about the strains between EU and member states authority.

<sup>5</sup> The three basic components of the contemporary European nation-state – cultural identity, political participation and solidaristic institutions – did not historically emerge in the same sequence everywhere: in many cases (e.g. Wilhelmine Germany) social insurance institutions made their first appearance prior to political rights (see Flora & Alber, 1981; Alber, 1982).

<sup>6</sup> Cf. Bartolini (1998) for a stimulating exercise in this direction.

<sup>7</sup> See Alber (1982) for a full picture and discussion of the sequence of introduction of compulsory schemes.

<sup>8</sup> According to Flora (1986), “stateness” refers to the degree of penetration of public institutions into the sphere of welfare, displacing non public institutions such as churches and other intermediary associations.

<sup>9</sup> Rokkan distinguished between various possible channels of citizen influence on decisions for the territorial collectivity: the electoral-territorial (or electoral-numerical) channel, the corporate-functional channel, but also the traditional channel, based on kinship ties and local notables. While social policies became an early target of mobilisation via the two former channels, and especially the electoral one, in certain countries the traditional channel continued to play an important role in the formation of social and political coalitions and thus the internal structuring of the welfare state also after the advent of mass democracy.

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<sup>10</sup> This checklist of “triggers” is only meant to exemplify: causal constellations behind the early origins of European welfare states are very complex and articulated and I have discussed them elsewhere (Ferrera, 1993a). There was a clear link between the economic openness and vulnerabilities of European domestic economies and the characteristics of their early social policies. For an accurate discussion of this point in respect of Denmark, Sweden, Germany and France cf. Baldwin (1990).

<sup>11</sup> For a discussion of hiding as a behavioural response distinct from both exit and voice cf. Laponce (1974).

<sup>12</sup> The preservation of occupational separatism after the second World War had of course far reaching consequences in these two countries not only for the organisation of social protection, but, more generally, for wider dynamics of social consensus and political legitimation. In Italy social insurance legislation (often “micro-legislation”) served the purposes of a strategy of “particularistic attraction” of the middle classes within the social bloc controlled by the Christian democratic party (Ferrera, 1993b) while in France professional separatism (and especially the separation between *cadres* and *ouvriers*) promoted forms of legitimation based, precisely, on a “*differentiation corporatiste*” (Castel, 1995; Jobert & Muller, 1987).

<sup>13</sup> Until recently, the coordination regime was seen as a relatively marginal component of “Social Europe”: most observers implicitly took as a yardstick for judging the social dimension of the EU the components which were typical of national welfare states (i.e. explicit redistributive policies). As noted by Majone already in 1993, however, the very existence of national redistributive institutions set inherent limitations to the establishment of policies of this nature at the supranational level and has pushed the EU to orient its activity in the social sphere towards regulation rather than redistribution (Majone, 1993).

<sup>14</sup> A useful analytical grid to sort out indirect and direct pressures for change is suggested by Leibfried & Pierson (2000). For an articulated theoretical discussion of the increasing vulnerability of the welfare state to internationalization and detailed, updated case studies, cf. Scharpf & Schmidt (2000).

<sup>15</sup> Case 117/77.

<sup>16</sup> Case 182/78.

<sup>17</sup> Case 33/65.

<sup>18</sup> Case 120/95.

<sup>19</sup> In July 2001 the Court ruled on two other health related cases: the *Geraets-Smits/Peerbooms* (C-157/99) and *Vanbraekel* (C-368/98) cases. It basically confirmed its previous orientations, with two important additions: national agencies must specify in advance the criteria that they wish to apply to grant or deny authorization; patient reimbursements must be made in accordance with the legislation of the state in which treatment was received.

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<sup>20</sup> Case 1/72.

<sup>21</sup> Cases 379/85, 380/85, 381/85 and 93/86.

<sup>22</sup> Case 90/97.

<sup>23</sup> Case 85/96.

<sup>24</sup> Case 159/91 e 160/91.

<sup>25</sup> Case 244/94.

<sup>26</sup> Directive No. 1998/49 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community.

<sup>27</sup> Case 67/96.

<sup>28</sup> EEA.

<sup>29</sup> This freedom tends to originate “welfare magnet effects”, i.e. incentives on the side of “the poor” to shop around for those sub-federal units that offer more generous benefits. For a discussion of these issues, cf. Mabbet & Bolderson (2000).

<sup>30</sup> On the concept of “negative” and “positive” integration and their application to the analysis of the process of European integration, see: Tinbergen (1965); Scharpf (1996) and Liebfried & Pierson (2000).

<sup>31</sup> A proposal to reform the Regulation (EEC) n. 1408/71 relating to the coordination of social security systems was prepared by the Commission (COM 1998/779) and sent to the Council (COD 1998/0360). On 3rd December 2001 the Council adopted the parameters for the modernisation of Regulation No 1408/71 and submitted such conclusions to the European Council in Laeken (14-15 December 2001), which eventually endorsed them.

<sup>32</sup> I use here the notion as conceptualised by Stone Sweet & Sandholtz (1997).

<sup>33</sup> For an interesting discussion of the EU as an “imperfectly integrated political order”, cf. Olsen (2000).

<sup>34</sup> See the debate about the “Euro-stipendium” (in “Journal of European Social Policy”, vol. 11, n. 4) that followed the article by P.C. Schmitter & M.W. Bauer (2001).