

# STATE INC.

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## INTRODUCTION

Conventional wisdom—at least in contemporary thinking<sup>1</sup>—holds that citizenship is not a consumer good, and that the goods that the state confers upon its constituents—e.g., social and economic rights and entitlements, access to its publicly provided goods, political voice and identity—are not for sale. In fact, the relationship between states and actual

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<sup>1</sup> *But see* MAURITS H. VAN DEN BOOGERT, *THE CAPITULATIONS AND THE OTTOMAN LEGAL SYSTEM: QADIS, CONSULS AND BERATLIS IN THE 18TH CENTURY* (2005) (providing examples of a market-based conceptualization of the relationship with the state). We would like to thank Professor Assaf Likhovski for providing us with this historical example.

or potential citizens is ideally conceptualized as standing in stark contrast to a seller-buyer relationship. The ideal type of state-citizen relationship is based in an entirely political sphere, disconnected from the market. In accordance with this ideal conceptualization (which we will term “the democratic model”), the state is depicted as the legal guardian of citizenship, entrusted with the authority to determine who its members are and to exercise its powers in a manner that is compatible with the underlying normative values shared by its political members. It has an obligation to reinforce and represent the politically pronounced collective will. Being a citizen, according to this view, translates into being a member of a political community, participating in its deliberative process, and as such, bearing rights vis-a-vis the state and being entitled to the benefits it confers.

This ideal depiction of the relationship between the state and its actual or potential citizens is not fully aligned with the current reality where various dimensions of the state-citizen relationship are being gradually subjected to consumerist logic. States desert their role as trustees of citizenship and assume a market player position, recruiting human capital and investments by putting their real and political assets up for grabs. They engage in the sale and barter of various aspects of membership in their polities, and at times even in the sale or barter of full-fledged citizenship. Individuals, as well, shop for citizenship, residency, work, and other permits as well as for additional goods that states provide. This process has been the subject of a heated debate. While some view the sale of various aspects of the individual-state relationship as welfare enhancing and as a source of mobility, others criticize it for its commodifying effects on citizenship and for its distributive consequences.

We argue, that in order to fully account for this process of market infiltration into the realm of citizenship—both on the descriptive and on the normative levels—we need to widen the perspective through which state-citizen interaction is viewed. The state-citizen relationship does not stand in a vacuum. Rather, it is situated within a greater global order, dictating competition among states, plagued with democratic and political deficits. In this decentralized global order states inevitably participate and function as market players vis-a-vis other states. They compete for capital and human resources by offering their public goods and political participation for sale. This market thus conflates monetary and political currency, and puts a price tag on political membership. At the same time, individuals and corporations compete for state-provided membership, rights, and public goods.<sup>2</sup>

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<sup>2</sup> This Article will not address the issue of corporate citizenship, focusing instead on the interaction between states and individuals.

This built-in and inevitable competition does not only change the strategic positions of states in pursuing their goals. It percolates into the interaction between states and individuals (potential and actual constituents), altering traditional roles of both states and citizens; it changes the kinds and quantities of public goods and entitlements being offered; and it alters modes of democratic participation, schemes of distribution, and the meanings and values underlying the state-citizen interaction.

The purpose of this Article is to contextualize the marketization of the citizenship and the state, by challenging the validity of the ideal type state-citizen relationship, depicted above, and by exposing the inherent interconnectedness between the political and the market spheres in a globalized world. The market forces operating on the supranational level constantly challenge the ideal of a discrete political sphere, insulated from consumerist logic, and must be taken into account when evaluating any “erosion” of such state-market dichotomy. Our argument in this regard is different from the traditional public choice literature. It is not aimed at showing how market actors operate within the political realm, but rather seeks to demonstrate how market logic defines and constitutes the political realm.

Part I will unravel some real-world practices where state-citizen relationships are being marketized in full or in part, thus demonstrating a seeming transition from the democratic model to a consumerist model. Part II will juxtapose the democratic model and the consumerist model in their ideal form. In Part III we demonstrate why these two ideal types are not mutually exclusive, but rather inherently intertwined, and how globalization reshapes this interaction given the strategic goals of states vis-a-vis citizens.

## I. THE REALITY OF CITIZENSHIP À LA CARTE

Conventional wisdom holds that citizenship is not a consumer good, and that the goods that the state confers upon its constituents—e.g., social and economic rights and entitlements, access to its publicly provided goods, political voice and identity—are not for sale. In fact, the relationships between states and actual or potential citizens are ideally conceptualized as standing in stark contrast to a seller-buyer relationship. The ideal type of state-citizen relationship is based in an entirely political sphere disconnected from the market. As will be discussed in Part II, in accordance with this ideal conceptualization of the state-citizen relationship, the state is depicted as the legal guardian of citizenship,<sup>3</sup> entrusted with authority to determine who its members are and to exercise its pow-

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<sup>3</sup> AYELET SHACHAR, DANGEROUS LIAISONS: MONEY AND CITIZENSHIP. SHOULD CITIZENSHIP BE FOR SALE 3 (2014).

ers in a manner that is compatible with the underlying normative values shared by its political members. It has an obligation to reinforce and represent the politically pronounced collective will. Being a citizen, according to this view, translates into being a member of a political community, participating in its deliberative process and as such bearing rights vis-a-vis the state and being entitled to the benefits it confers.

This ideal depiction of the relationship between the state and its actual or potential citizens is not, however, fully aligned with current reality, where we are witness to gradual erosion of various dimensions of state-citizen relationship, and an infiltration of consumerist logic into this interaction.<sup>4</sup> States seemingly desert their role as trustees of citizenship, and assume a market player position, recruiting human capital and investments by putting their real and political assets up for grabs. They engage in the sale and barter of various aspects of membership in their polities and at times even in the sale or barter of full-fledged citizenship. Individuals as well, shop for citizenship, residency, work and other permits as well as for additional goods that states provide. To illustrate this, what follows will provide some examples.

The practice of offering full-fledged citizenship to prospective parties is becoming increasingly popular. In the words of Allison Christians: “for the world’s most prosperous individuals and their families, multiple states extend a warm welcome.”<sup>5</sup> The consideration sought by the state in exchange for citizenship varies: some states require considerable monetary investments. Hence, for example, in 2013 Cyprus, Antigua and Barbuda and Malta approved bills that allow the granting of citizenship to foreign investors in their economies.<sup>6</sup> In this they joined jurisdictions such as St Kitts & Nevis and Dominica who have had formal citizenship for investments programs since 1984 and 1993 respectively. Other states offer citizenship to individuals demonstrating extraordinary merits—in what Ayelet Shachar termed “the brain gain.”<sup>7</sup> The US, for example, offers O-1 visas, targeting individuals who possess “extraordinary ability in the sciences, arts, education, business, or athletics . . . or, with regard to motion picture and television productions a demonstrated record of

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<sup>4</sup> For a recent discussion see Ayelet Shacar, *Citizenship for Sale*, in *THE OXFORD HANDBOOK OF CITIZENSHIP*: Oxford University Press. Retrieved 2 May. 2018, from <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780198805854.001.0001/oxfordhb-9780198805854-e-34>.

<sup>5</sup> Allison Christians, *Residence and Citizenship by Investment*, ([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3043325](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3043325))

<sup>6</sup> Laura M. Johnston, *A Passport at Any Price? Citizenship by Investment through the Prism of Institutional Corruption*, Edmond J. Safra Working Papers, No. 22 (2013),

<sup>7</sup> Ayelet Shachar, *The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes*, 81 N.Y.U. L. REV. 148 (2006). Ayelet Shachar, *Picking Winners: Olympic Citizenship and Global Race for Talent*, 120 YALE L.J. 2098 (2011).

extraordinary achievement.”<sup>8</sup> Austria also offers citizenship to individuals of remarkable talent.<sup>9</sup> In a similar vein, people demonstrating an exceptional athletic potential are being offered citizenship in return for their willingness to represent the state in international sports events.<sup>10</sup> States in search of a young labor force that would contribute to their declining social security systems,<sup>11</sup> or looking to strengthen certain professions in high demand sometimes offer citizenship to prospective workers<sup>12</sup>

Against this quid-pro-quo background underlying citizenship, it is not surprising to discover that some states offer various aspects of their citizenship à la carte.<sup>13</sup> Thus, for example, many states offer residence visas (either as stages towards final acquisition of citizenship or as an independent status) in return for investments. Italy recently launched a new immigration program intended to attract affluent individuals by allowing them to pay an annual “substitute tax” of 100,000 Euros on their foreign income.<sup>14</sup> The US, Ireland, Australia, New Zealand, Canada and Hungary also offer programs that grant immigrant visas in exchange for investments.<sup>15</sup> Similarly, Portugal and Spain recently offered a golden residence permit in return for real estate investments and other investments.<sup>16</sup> States often offer temporary work permits to unskilled workers in an effort to augment their labor market. States also offer parts of their

<sup>8</sup> 8 U.S.C. § 1101(a)(15)(O)(i) (2006)

<sup>9</sup> Art. 10 (6) of the Austrian Citizenship Act

<sup>10</sup> See Shachar, *supra* note 7.

<sup>11</sup> See e.g., Seth R. Leech & Emma Greenwood, *Keeping America Competitive: A Proposal To Eliminate The Employment-Based Immigrant Visa Quota*, 3 ALB. GOV'T L. REV. 322 (2010); Kenneth Rapoza, *Here's Why Europe Really Needs More Immigrants* <https://www.forbes.com/sites/kenrapoza/2017/08/15/heres-why-europe-really-needs-more-immigrants/#31732ded4917>

<sup>12</sup> for the Canadian example see <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/become-candidate/eligibility/federal-skilled-workers.html>

<sup>13</sup> Dafna Hacker addressed this fragmentation, and the thicker conceptualization of citizenship which results thereof, dividing citizenship into: ‘industrial citizenship’; ‘cultural citizenship’, ‘partial citizenship’ and ‘virtual citizenship’. See DAFNA HACKER *LEGALIZED FAMILIES IN THE ERA OF BORDERED GLOBALIZATION* (2017)

<sup>14</sup> Allison Christians, *Buying In: Residence and Citizenship by Investment* (September 26, 2017). St. Louis University Law Journal, Forthcoming. Available at SSRN: <https://ssrn.com/abstract=3043325> and see also for an elaborate review of such programs.

<sup>15</sup> Laura M. Johnston, *A Passport at Any Price? Citizenship by Investment through the Prism of Institutional Corruption*, Edmond J. Safra Working Papers, No. 22 (2013), As Ayelet Shachar, *supra* note 4 notes: “An important step in the process of policy legitimization occurred when the world’s major immigrant-receiving countries, including Canada and the United States, adopted legislation that granted direct or conditional permanent residence (or ‘green card’) status following an applicant’s investment in government bonds (Canada) or private businesses (the United States), waiving standard admission requirements. Shachar *Id.*, further notes that about a half of the members of the EU offer investment-based entry visas, many of which allow for later application for permanent residence.

<sup>16</sup> AYELET SHACHAR, *DANGEROUS LIAISONS: MONEY AND CITIZENSHIP. SHOULD CITIZENSHIP BE FOR SALE* 3 (2014).

regulatory regimes to interested parties based on specific criteria. Thus, for example, states offer their bankruptcy regimes based on one's center of main interests,<sup>17</sup> their jurisdiction in securities laws to those trading on their markets,<sup>18</sup> their corporate governance to those registering their corporations under their jurisdiction,<sup>19</sup> and their financial, maritime or transportation regulation to those registering their financial instrument,<sup>20</sup> their vessel, or their vehicle.<sup>21</sup> Finally, states frequently offer public services and tax benefits to local property owners.<sup>22</sup>

In sum, states offer both full-fledged citizenship for sale and the wide array of functions that states fulfill in peoples' lives in a more compartmentalized manner, for individuals to assemble almost completely according to their preferences. This variety of options redefines the dynamics between states and individuals. The ability of individuals to choose the legal regime that applies to them not only marketizes the relationship between states and their constituency by allowing the latter to shop for their jurisdiction of choice, but also allows them to unbundle the

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<sup>17</sup> The insolvency rules of many countries apply to the assets of MNEs whose center of main interests is located within their territory. See Sefa M. Franken, *Cross-Border Insolvency Law: A Comparative Institutional Analysis*, 34 OXFORD J. LEGAL STUD. 97, 98, 102 (2014):

The EC Insolvency Regulation first introduced the concept of "centre of main interests" as a connecting factor, which concept was later adopted by the UNCITRAL Model Law. Both the EC Insolvency Regulation and the Model Law presume that in the case of a company or legal person, the place of the registered office shall be the centre of main interests in the absence of proof to the contrary. Many countries define corporations' central management and control matters for tax purposes (see, e.g., UK, Canada, France, Germany, Italy, and Japan).

<sup>18</sup> U.S. securities laws will generally apply only to securities sold on a U.S. exchange or to companies with a significant economic presence in the country. See Chris Brummer, *Post-American Securities Regulation*, 98 CAL. L. REV. 327, 336 (2010). Antitrust laws apply to those doing business within a jurisdiction and may apply where the activity of a foreign person affects competition in domestic markets. See HANNAH L. BUXBAUM & RALF MICHAELS, *Jurisdiction and Choice of Law in International Antitrust Law—A US Perspective*, in INTERNATIONAL ANTITRUST LITIGATION: CONFLICT OF LAWS AND COORDINATION 225 (Jürgen Basedow, Stéphanie Francq & Laurence Idot eds., 2012). In the vast majority of taxing jurisdictions, nonresidents are taxed only on income sourced within the country. See REUVEN AVI-YONAH, *INTERNATIONAL TAX AS INTERNATIONAL LAW: AN ANALYSIS OF THE INTERNATIONAL TAX REGIME* 64-85 (2007).

<sup>19</sup> The corporate governance rules of the jurisdiction apply to corporations incorporated within the jurisdiction. See, e.g., Eric L. Talley, *Corporate Inversions and the Unbundling of Regulatory Competition* (2014), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2511723](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2511723)

<sup>20</sup> Securities regulation in the U.S. applies to corporations listed in a public securities market. See *id.* at 26.

<sup>21</sup> Many states require the registration of motor vehicles and boats (see, e.g., the California Vehicle Code, available online at [www.dmv.ca.gov](http://www.dmv.ca.gov); the Republic of the Marshall Islands Maritime Act 1990, available at [http://www.lowtax.net/information/marshall-islands/maritime\\_act.pdf](http://www.lowtax.net/information/marshall-islands/maritime_act.pdf)).

<sup>22</sup> Many tax incentives are determined by the location of the property. See Edward L. Glaeser, *The Economics of Location-Based Tax Incentives* (Harvard Inst. of Econ. Research, Paper No. 1932, 2001).

packages of public goods and services. Indeed, in this market, individuals and businesses can buy à la carte fractions of regulatory regimes under different state sovereignties. As a result, they can reside in one jurisdiction (and consume its police protection, parks, and clean air), do business in another (and use the local court and banking systems), invest in a plant in a third (and reap the benefits of a publicly-educated workforce), vote in a fourth, and pay taxes, if any, in a fifth. Globalization allows people and businesses to detach these factors from one another. In some cases, this involves relocating actual resources, while in others it is merely a matter of signing specific documents or doing some paperwork. Thus, capital can move separately from its owner, IP can shift separately from the technology it manufactures, production can be separated from sales, and corporations can be separated from their stakeholders. People can own property, open bank accounts, invest, and consume in various locations simultaneously. As a result, they can establish residency or be physically present in the location that offers them the package most compatible with their preferences, while, at the same time, invest, do business, or consume in other locations.

This market for state-provided goods, and the consumerist approach it facilitates, can be described as an extension of Tiebout's vision, and beyond.<sup>23</sup> While Tiebout endorsed the multiplicity of jurisdictions, offering differential public good packages, these packages come in all-or-nothing bundles. Current reality takes this consumerist logic to its end, by allowing the sale and consumption of unbundled state-provided goods, highlighting the electivity and flexibility of public good packages. Instead of looking at individuals' ability to shift their choice of jurisdiction *en bloc* by moving their residency to a new jurisdiction, it stresses their leeway to mix-and-match jurisdictions. This reality impacts the strategic choices of individuals. Whereas absent this jurisdictional fragmentation, the optional strategies for individuals are essentially either voice (using their political power to shape state policy) or exit (relocating to a jurisdiction that offers a more favorable regulatory "package"),<sup>24</sup> they now have another option to maximize their utilities: diversification of state-related interactions.

This process has been the subject of a heated debate among legal and political theory scholars.<sup>25</sup> While some view the sale of citizenship and various aspects of individual-state relationship as welfare enhancing, as a more transparent way of acquiring citizenship, and as a source of

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<sup>23</sup> Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 5 (1956).

<sup>24</sup> ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY* (1970).

<sup>25</sup> See Ayelet Shachar & Rainer Baubock (eds.), *Should Citizenship Be For Sale?* Rscas 2014/01 Working Papers.

mobility,<sup>26</sup> others criticize it for its commodifying effects on citizenship<sup>27</sup> and for its distributive consequences.<sup>28</sup> Another objection to the sale of citizenship is that states ought to offer it to those threatened by persecution elsewhere, rather than to the ultra-privileged.<sup>29</sup> This Article does not aim to participate in this rich normative debate, but rather to contextualize it and to reframe it, by widening the perspective through which state-citizen interaction is examined, so as to include the role of states as market players.<sup>30</sup>

## II. THE DEMOCRATIC MODEL VERSUS THE CONSUMERIST MODEL

As demonstrated in the previous section, we are witness to the encroachment of the consumerist approach on the state and the utilities the state provides. This phenomenon reflects a transition from the democratic ideal of the state to a consumerist model. In order to fully understand this shift, in what follows we will juxtapose the democratic and consumerist approaches to statehood.

But first, a preliminary word of clarification is in order. We are aware of the fact that there are numerous distinctive versions of the democratic model, both individualistic and communitarian in nature. Similarly, the rationales underlying the marketization of the state are multifaceted, offering diverging libertarian and utilitarian variations of the market ideal type. The classifications we will offer for distinguishing between these two ideal types of individual-state interaction do not attempt to fully capture the subtle complexities within each classification and in their various real-world manifestations, and may, therefore, appear overly simplistic at times. The aim of the analysis, however, is a rudimentary depiction and comparison of the two ideal types to create an analytical framework through which to evaluate the marketization of the state.

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<sup>26</sup> Raul Magni Berton, *Citizenship for Those Who Invest into the Future of the State is Not Wrong, the Price is the Problem*, Ayelet Shachar & Rainer Baubockeds (eds.), *Should Citizenship Be For Sale?* Rscas 2014/01 Working Papers (2014) p. 11.

<sup>27</sup> Ayelet Shachar, *Dangerous Liasons: Money and Citizenship*, Ayelet Shachar & Rainer Baubock (eds.), *Should Citizenship Be For Sale?* Rscas 2014/01 Working Papers (2014) p. 3.

<sup>28</sup> David Owen, *Trading, Human Capital and the European Union*, AYELETSHACHAR& RAINERBAUBOCKEDSRSCAS2014

<sup>29</sup> Vesco Paskalev, *If You Do Not Like Selling Passports, Give Them for Free to Those Who Deserve Them*, AYELETSHACHAR& RAINERBAUBOCKEDSRSCAS2014

<sup>30</sup> RAINER BAUBOCK, *TRANSNATIONAL CITIZENSHIP: MEMBERSHIP AND RIGHTS IN INTERNATIONAL MIGRATION* (1994).



### A. *The Essence of Political Community*

One point of divergence between the democratic and consumerist models is with regard to the phenomenology of political community and its essence.

#### 1. Political Community as Identity versus Political Community as Purpose

The democratic model endorses a thick phenomenology of the political community, essentially viewing it as a means for satisfying the human quest for social stability and belonging. The prototype political agency of the democratic model is, accordingly, the national, cultural, ethnic or social community. Such communities are conceived of as representative of “a people.”<sup>31</sup> Members of the polity share a collective consciousness which may be founded on a common history, a joint language, or a shared culture. Political communities of these types are in Robert Cover’s terms, “paideic,” constituted by a common narrative that is embedded in their members’ internal, normative worlds.<sup>32</sup> Community members share common understandings of the meanings of the normative aspects of their common lives<sup>33</sup> above and beyond the promotion of particular enterprises or the realization of specific goals.<sup>34</sup> Under this paradigm, people need political communities not only to attain various material or other ends, but also for identity and self-reference. The collective identity of the group—the shared spirit and collective normative apparatus—are part of community members’ “self understanding.”<sup>35</sup> The political community constitutes a “causal component in the makeup of the self.”<sup>36</sup> We term the allegiance with this prototype community “a democratic citizenship.”

The consumerist model, in contrast, presents a thin and diffuse version of participation in a political community. The political community is perceived as a necessary mechanism for the provision of public goods, and for the amelioration of collective action problems, by preventing oth-

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<sup>31</sup> Richard T. Ford, *Law’s Territory (A History of Jurisdiction)*, 97 MICH. L. REV. 843, 860 (1999).

<sup>32</sup> Robert Cover, *The Supreme Court 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 14 (1983).

<sup>33</sup> *Id.* at 16.

<sup>34</sup> For a similar distinction, see Hanoch Dagan & Michael Heller, *The Liberal Commons*, 110 YALE L.J. 549, 558 (2001).

<sup>35</sup> See Hanoch Dagan & Michael Heller, *Conflicts in Property*, 6 THEORETICAL INQUIRIES L. 37, 58 (2005).

<sup>36</sup> Stephen A. Gardbaum, *Law, Politics and the Claims of Community*, 90 MICH. L. REV. 685, 701 (1991).

erwise atomistic individuals from free-riding on the efforts of others.<sup>37</sup> Political community thus conceived is a simple aggregation of individuals who aim to maximize their utilities. The political community's parameters are fluid. Community members are rootless in the sense that they are mobile across states.

Furthermore, the ideal type of political community in the consumerist model is not necessarily premised on common associational worlds or shared normative beliefs, but rather, on the converged preferences of its members. These members need not necessarily have a shared purpose in life beyond the specific motivation for joining the polity (in full or in part). The political community is conceived as comprising individuals temporarily united for their mutual benefit. It is viewed through a market prism, as opposed to a social one:<sup>38</sup> membership in the community is fundamentally instrumental or functionalist. Members conceive of themselves as consumers, as rational maximizers of their utilities who choose to conform to a set of rules and activities in order to facilitate their ends and preferences. We term the allegiance with this prototype community "a consumerist citizenship."

## 2. The Community as All-Encompassing versus Partially Encompassing

Another feature that distinguishes between the prototype political community of the democratic paradigm and the political community under the consumerist model is their permeation and containment of the associational worlds of their constituents. Under the democratic model a political community typically constitutes an all-encompassing order,<sup>39</sup> addressing all the central aspects of social interaction and providing a cohesive set of public goods. To achieve this, the political community bundles together various areas of social ordering. Membership in the political community usually entails subordination to and entitlement of this bundle of rights and duties en-bloc.<sup>40</sup> Exclusivity is often embedded in the membership in this type of political community. This ideal type of political community is typically less receptive of cross-cutting affiliations.<sup>41</sup> In this respect, it can be claimed that the democratic model ultimately endorses a singular ethos with respect to political personhood.

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<sup>37</sup> For further discussion of the role of community with regard to the supply of public goods, see Gideon Parchomovsky & Peter Siegelman, *Selling Mayberry: Communities and Individuals in Law and Economics*, 92 CAL. L. REV. 75, 81 n.16 (2004).

<sup>38</sup> Kenneth L. Grasso, *Theological Perspective: The Rights of Monads or of Intrinsically Social Beings? Social Ontology and Rights Talk*, 3 AVE MARIA L. REV. 233, 234 (2005).

<sup>39</sup> Leslie Green, *Rights of Exit*, 4 LEGAL THEORY 165, 168 (1998).

<sup>40</sup> Ford, *supra* note 29, at 844.

<sup>41</sup> Hanoeh Dagan & Michael Heller, *The Liberal Commons*, 110 YALE L.J. 549, 571 (2001).

The consumerist model, for its part, is premised upon limited-purpose affiliations. Bundling remains a viable option but is not a prerequisite to the political association. Under this model, voluntary political associations may be formed for specific enterprises—for the provision of particular state-supplied goods. Ideally, individuals can choose to de-bundle the public good “packages” that states provide. Indeed, the consumerist model facilitates and normatively promotes simultaneous associations with numerous parallel states. It thus advocates a plurality ethos in the deepest sense of the word, because from a conceptual point of view (as opposed to what occurs in practice), there is no objective of totality or coherence in the legal and political regime to which one is subject.

It should be stressed that the difference in this regard is one of degree rather than kind. The claim being made is not that under the democratic model all states necessarily demand exclusivity with regard to their citizenship. Likewise, we do not contend that the consumerist model promotes unlimited flexibility with regard to multiple affiliations. Transaction costs, for one, are likely to limit the viability of endless cross-cutting citizenships. Our claim is far less presumptuous, namely, that under the democratic paradigm states are more likely to offer bundles packages of citizenship, whereas the consumerist model tends to envision affiliations between states and individuals that are relatively limited in scope.

### 3. Voice versus Exit

The consumerist paradigm and the democratic model also vary with regard to the nature of the relationship between citizens and states. The consumerist model fosters open boundaries: it places strong emphasis on exit, on each individual’s ability to dissociate herself or himself from the state.<sup>42</sup> The libertarian stream of the consumerist model attributes intrinsic value to exit and views social mobility as a crucial component of individual freedom and autonomy.<sup>43</sup> The utilitarian strand of the consumerist model is similarly deeply committed to exit and regards the ability to exit as a vital component in ensuring that the state is acting efficiently. Under the democratic model, in contrast, the commitment to effective exit is significantly weaker. The models’ differing approaches to the role of exit are manifested at a number of levels, as explained below:

The consumerist model stresses the *role of exit* as a benefit-generating mechanism, that enhances the utility individuals can derive from

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<sup>42</sup> See ALBERT HIRSCHMAN, *EXIT VOICE AND LOYALTY* (1970).

<sup>43</sup> See Hanoch Dagan & Michael Heller, *The Liberal Commons*, 110 *YALE L.J.* 549, 558 (2001).

their association with the state. Citizens' unencumbered ability to exit their state's jurisdiction is considered the central incentive-creating mechanism for states to comply with the choice of their constituency and is said to ultimately enhance the benefits citizens can derive from membership in the state. The democratic paradigm, on the other hand, stresses the tension between easy exit and the benefits of political life, reflecting the vision that it is actually the non-exit from certain communities that enhances the benefits of membership.<sup>44</sup> The democratic model thus stresses patriotism, solidarity and other forms of commitment to the state as a weighty factor in the unique goods and benefits derived from political affiliation. Again, the difference described here is one of degree or emphasis rather than kind. The consumerist model acknowledges the role that restrictions on exit play in preventing opportunistic behavior, enabling effective social cooperation for the attainment of mutually desired ends. Likewise, within the democratic tradition, there is strong commitment to social mobility and to the effective ability of individuals to exit their communities. Our claim, however, is that the former model stresses the role of exit as a mechanism for generating benefits, whereas the latter stresses the role of commitment as a benefit-generating device.

The second distinction from a slightly different perspective, relates to the fact that the consumerist model emphasizes the role of exit as an important mechanism for transforming the apparatus of the state and bringing it in line with consumer demand. The democratic paradigm, in contrast, highlights instead the role of voice mechanisms in facilitating political transformation. In other words, under the consumerist model, exit (or non-consumption) is acknowledged as the dominant mode of registering consumer dissatisfaction as compared to voice. The a-priori preference of exit over voice stems from the model's conception of individuals as consumers, as well as from the ideal non-exclusivity of a single state in the lives of its members and the plurality of competing political communities: since consumers are not conceived of as attributing intrinsic value to affiliation with a particular state, dissociating from it and switching to a competing group may be more appealing than trying to impact and change the state apparatus from within. In accordance with the consumerist vision, if the package of public goods and services offered by a particular state is not appealing to consumers, they may simply opt out and join a competing entity. In the democratic model, however, voice plays a more prominent role. It offers the possibility of gradation and does not necessitate binary on-off decisions, characteristic of exit mechanisms. In a world in which detachment from the political community carries with it intrinsic loss, members may opt a priori to

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<sup>44</sup> Eduardo M. Penalver, *Property as Entrance*, 91 VA. L. REV. 1889, 1911 (2005).

remain in the political community and change it from within rather than switch to an altogether new entity.<sup>45</sup>

Finally, the *particular characteristics* of the state under the democratic model stand in stark contrast to the ideal of consumption-based associations endorsed by the consumerist model. Exit's less commanding position is reflected, by means of cultivating patriotism, solidarity and loyalty. These commitment mechanisms constitute a deliberate external interference in individuals' lives, whose object is to bind them more closely together and to the political community. The presence of loyalty mechanisms alters the character of exit, and transforms it from the legitimate and rational mode of behavior of the alert consumer to a form of defection.<sup>46</sup> The weaker role of exit is also exemplified by the ascriptive nature of political associations under the democratic model. In certain cases, one's ability to exit is restricted by the unwillingness of other states to welcome incomers.

Differences in the nature of the restrictions on exit further deepen the distinction between the democratic model and the consumerist paradigm. The barriers to exit under the latter model are impersonal and purely economic in nature, constituted by various forms of market costs. The strongest impediment emanates from pure monopoly situations, with other barriers including exit taxes, cooling-off periods, and mechanisms of delayed reward (options). In the democratic model, on the other hand, the individual's capacity to exit is limited by reputational and personal costs<sup>47</sup> that derive from the socialization processes of state membership. These may include costs associated with linguistic, cultural, national affiliation and personal identity.<sup>48</sup>

### B. *The Ontology of Public Goods*

The consumerist model and the democratic paradigm represent two opposing approaches to the essence of public goods provided by the state.

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<sup>45</sup> Leslie Green, *Rights of Exit*, 4 LEGAL THEORY 165, 170 (1998).

<sup>46</sup> Gregory S. Alexander, *Dilemmas of Group Autonomy: Residential Associations and Community*, 75 CORNELL L. REV. 1, 29 (1989).

<sup>47</sup> These costs may also include costs to the community itself. According to Albert Hirschman, "In deciding whether the time has come to leave an organization, members, especially the more influential ones, will sometimes be held back not so much by the moral and material sufferings they would themselves have to go through as a result of exit, but by the anticipation that the organization to which they belong would go from bad to worse if they left . . . ." ALBERT HIRSCHMAN, EXIT VOICE AND LOYALTY 98 (1970).

<sup>48</sup> Leslie Green, *Rights of Exit*, 4 LEGAL THEORY 165, 172 (1998).

### 1. Public Choice as a Plurality of Individual Preferences versus Public Choice as a Collective Will

The consumerist model advances a “market chosen”<sup>49</sup> vision of public choice—namely the decision as to the level, nature, and scope of the goods that the state should provide, as well as the decision-making process concerning the provision of public goods. The services and goods the state provides are conceptualized as consumer goods, as the product of individual choice. The norm that is formed to govern a certain human interaction embodies a meeting-point between converging choices that are singular and individual by nature, choices that are fundamentally structured around the dichotomy of “to consume or not to consume.” Public goods are perceived as analogous to other economic goods, such as clothing or credit services, the demand for which constitutes an aggregation of detached, atomistic converging choices. Moreover, under consumerist approach, individuals would choose among alternative jurisdictions by employing a logic similar to consumer choice logic. The consumerist paradigm conceives public choice as “facilitative,” and the infusion of “value” into it as solely transactional: public choice is conceptualized as a product of aggregate preference and as a realm for the expression of subjective particularistic visions of the good life, however idiosyncratic. It is not considered a sphere for the collective elucidation of conflicting notions of justice. It does not seek to promote collective conceptions of the good life. In other words, under the consumerist model, the abovementioned notion of public choice is perceived as an institutional embodiment of the individual’s sovereignty and as a sphere for individualistic decision-making, based upon a utilitarian calculus of self-interest or subjective particularistic notions of the good life.

Under the democratic paradigm, in contrast, public choice is conceived of not only as an institution delineating or demarcating the lives of individuals together, but also as a locus of collective moral judgment. As we will claim, in other words, Public Choice, under this view, is “public” in the sense that it is not simply an aggregate of individual choices, but rather a whole that is greater than its parts; it is a qualitatively different choice than a consumerist one, in the sense that it is value based and not preference based. Thus, Public Choice is conceptualized as a sphere for the communal elucidation of conflicting visions of the good life and the expression of the shared judgment.<sup>50</sup> The enterprise of public good provision is considered a collective process under this paradigm; it is a component of communal life<sup>51</sup> In addition to its innate “public” qual-

<sup>49</sup> Edward Stringham, *Market Chosen Law*, 14 J. LIBERTARIAN STUD. 53 (1999).

<sup>50</sup> ROBERT NOZICK, *THE EXAMINED LIFE: PHILOSOPHICAL MEDITATIONS* 286 (1989).

<sup>51</sup> Ronald Dworkin, *Liberal Community*, 77 CAL. L. REV. 479, 492 (1989).

ity, Public Choice is also conceived by the democratic tradition as an object of value rather than a preferential choice. The *sine qua non* of public choice is the fact that it expresses the community's constitutive morality. Of course, the assertion that infusion of value is a constitutive feature of public choice is a normative, rather than descriptive, claim, as what is known as the public choice literature demonstrates, oftentimes, there are instances of capture of decision making process by different interest groups. The argument is not that public choice actually reflects the social value scale or that it expresses communal morality standards, but rather that such reflection is a central feature of its ontology. Thus, in sum, there is room to understand the democratic paradigm as conceptualizing public choice ultimately as an embodiment of the political community's sovereignty rather than individuals' sovereignties and as a sphere for collective judgment of the good life.

## 2. Public Goods as Meaning versus Public Goods as Order

States provide material and symbolic public goods and services—ranging from economic and social rights to education, infrastructure and legal institutions. In what follows we would refer to this entire array of goods and services as “public goods.”

Within the democratic paradigm, beyond being a system of goods and services, state-provided goods are also conceptualized as a system of meaning. The public sphere is perceived as a mechanism for merging sporadic, diverse, occasionally conflicting fragments of choices, narratives and normative commitments into a meaningful comprehensible universe.<sup>52</sup> It organizes the complexity of choices as to the makeup of the state-provided package and the normative commitments and integrates them into a coherent voice, thereby endowing them with meaning. In addition, under the democratic paradigm, not only does such package consolidate and reflect the community's shared value scale, but it also plays a central role in constituting human cognition and serves as a filter through which citizens understand and experience the world around them.<sup>53</sup>

The consumerist model rejects the very assumption underlying the “public goods as meaning” argument, according to which human and political ordering can be reduced to any sort of unity.<sup>54</sup> It is the ability to effectively choose to consume only portions of the goods and services a

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<sup>52</sup> Anna-Maria Marshall, *Communities and Culture: Enriching Legal Consciousness and Legal Culture*, 31 LAW & SOC. INQUIRY 229, 237 (2006).

<sup>53</sup> Anna-Maria Marshall, *Communities and Culture: Enriching Legal Consciousness and Legal Culture*, 31 LAW & SOC. INQUIRY 229, 237 (2006).

<sup>54</sup> See Andrew J. Cohen, *Does Communitarianism Require Individual Independence?*, 4 J. ETHICS 283, 297 (2000) (citing ALASDAIR MACINTYRE, *AFTER VIRTUE* 213 (2d ed. 1984)).

state provides, to interact with it on only certain levels, and to dismantle the “public goods” package that negates the meaning-creating capacity of the interaction with the state and the composition of “public goods.” The debundling mechanisms, under the consumerist conceptualization, relieve of the need to prioritize—to create a clear hierarchy between different sets of normative choices as to the composition of the “public good” package. In the absence of such a prioritizing process, it is impossible to derive a clear narrative pattern from any set of eclectic normative choices. The public sphere remains fragmented and pluralistic in nature, irreducible to a single consolidated meaningful discourse.

### C. *The Political Subject*

From the democratic perspective, political interactions are considered valuable not simply due to the goods or ends that they enable individuals to attain, but because such interactions pave way for engagement in self-expressive political activity.<sup>55</sup> In other words, political participation and citizenship are regarded as intrinsically good, as ends in their own right—distinct from the purposes they facilitate.<sup>56</sup>

Under the consumerist of law model, on the other hand, political membership is viewed in instrumental terms. It is considered a tool for attaining ends and benefits, not an end in-and-of itself.<sup>57</sup> Individuals do not ascribe inherent value to political affiliation and interaction in general, nor to any particular political attachment. They lose nothing intrinsic by achieving certain ends privately as opposed to by collective political means, and likewise, there is no intrinsic loss entailed in trading one political attachment for another.<sup>58</sup>

Our discussion hereto contextualized the phenomenon of marketization of state-citizen relationship by drawing the distinction between the two polar organizing logics and ideal types of state-individual interaction, which we termed the “democratic model” and the “consumerist model”. In what follows we will further contextualize our own discussion, by viewing the state-individual interaction through the prism of interstate interaction. This will demonstrate why the two ideal types are not mutually exclusive—why in a globalized world there is no escaping the infiltration of the market logic from any interaction with the state, and why the political sphere cannot be isolated from market logic. This does not necessarily undermine the significance of the democratic ideal type, for the ideals to which we aspire—attainable or not—inform our choices

<sup>55</sup> ROBERT NOZICK, *THE EXAMINED LIFE: PHILOSOPHICAL MEDITATIONS* 287 (1989).

<sup>56</sup> The value of cooperation is synergistic rather than aggregative. See Hanoch Dagan & Michael Heller, *The Liberal Commons*, 110 *YALE L.J.* 549, 572 n.99 (2001).

<sup>57</sup> Eduardo M. Penalver, *Property as Entrance*, 91 *VA. L. REV.* 1889, 1900 (2005).

<sup>58</sup> MICHAEL LUNTLEY, *REASON, TRUTH AND SELF* 151, 152, 173 (1995).



and impact reality. Moreover, the fact that the political sphere and the market sphere are inherently intertwined does not undermine the significance of the quantitative transformation from a less marketized to a more marketized form of interaction with the state, or from subtle to crude consumerism in this regard. That said, exposing the inherent interconnectedness between the consumerist and democratic model in a globalized world, is crucial for understanding the current reality of state marketization and for contending with the normative issues underlying the debate around it.

### III. THE STATE AS A MARKET PLAYER—HOW COMPETITION RESHAPES THE FUNCTION OF THE STATE

To fully account for the process of market infiltration into the realm of citizenship both on a descriptive and a normative level, one needs to widen the perspective through which state-citizen interaction is viewed. The ideal depiction of a distinct separation between the political sphere and the market realm fails to take into account the fact that the state-citizen relationship does not stand in a vacuum. Rather, it is part of a greater market order plagued with democratic and political deficits. In this decentralized order states themselves inevitably participate and function as market players *vis-à-vis* other states. They compete for capital and human resources by offering their public goods and political participation for sale. This market thus conflates monetary and political currency, and puts a price tag on political membership. At the same time, individuals compete for state-provided membership, rights, and public goods.

Such competition does not only change the strategic positions of states and citizens in pursuing their goals—it percolates into the interaction between states and their subjects (their current citizenry as well as potential constituents) altering traditional roles; it affects the ontology of public goods and the kinds and quantities of public goods and entitlements being offered. Lastly, it alters modes of democratic participation, schemes of distribution, as well as the meanings and values underlying the state-citizen interaction. Put differently, under globalized competition the state cannot be the primary locus of political control.<sup>59</sup>

In the absence of competition, policymakers could design state policies with one clear purpose in mind: serving their constituents, namely, the group of people whose interests they are supposed to promote. Once the relevant group of constituents has been identified, the state must set its goals (e.g., maximizing welfare, promoting distributive justice, or supporting desirable social institutions and communities) and determine

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<sup>59</sup> See D. RODRIK, *THE GLOBALIZATION PARADOX* 357 (2011).

the optimal strategies for their advancement. These goals often clash and require sophisticated balancing, which makes policymaking anything but trivial. Yet, at least it is relatively clear whom the state should primarily serve and what means are available for achieving this.

To be competitive, on the other hand, states need to design policies that will attract the right mix and level of activities and investments into their jurisdiction. To win the competitive game they also need to attract (and keep) “the right kind” of constituents. Moreover, because in today’s global order some constituents are able to pick and choose from among the public goods offered by different regimes, the public goods and services which states offer must each prove independently attractive or else constituents might be able to replace them with the compatible rules and rates of a foreign regime. This multilayered competition for residents and investments, in unbundling the packages of state provided goods and services, has altered how states set policies, and creates ambivalence about everything from efficiency, to redistribution, to the very concept of political identity.

Moreover, since competition provides some constituents with an alternative (to shift their capital, residency, economic activity, and their citizenship to another jurisdiction), it also determines the composition of the group of people whose interests will (indeed should) be served. As described above, in the current decentralized international regime, people do not even have to fully commit to the jurisdiction of any given state in its entirety. Competition often enables them to unbundle regimes and (for those who are able to effectively plan their affairs) pick and choose from among the public goods and services of different states.

This competition is by no means perfect—there are barriers to shifting economic activity, residency and certainly citizenship, from one state to another. The public goods being offered (as well as their “price” in terms of taxes entailed) are certainly not the only consideration in residency, investment, and citizenship choices. Yet, overall, it seems generally plausible to assume that changing jurisdictions is a viable option for the marginal constituent to actually influence her pattern of investment, how she runs her business, the location of her residency, or her political choices. Of course, not all constituents are able or interested in considering alternative jurisdictions. But, in order to make a difference for policy purposes, it is sufficient that there is a group of taxpayers, investors, and residents who are weighing such alternatives.

By providing constituents with practicable alternatives, competition turns the state-individual interaction on its head. The state no longer makes coercive demands on a set group of subjects to promote its collective goals (which ideally are jointly set through the political process) but rather, increasingly acts as a recruiter soliciting investments as well as

constituents. And since the state's policy shapes (among other things) the incentives of individuals to be (or become) citizens, residents or otherwise make use of the public goods and services the state provides, such policy needs to be competitive. Thinking strategically, the state must provide incentives that not only maximize the benefits for its current constituency but also attract "the right kind" of residents and investments. The costs of not playing the competitive game may be harsh, and at any rate, even selecting a non-competitive strategy would probably affect the constituency by, for example, driving away less satisfied "customers."

Different groups of potential constituents and the various public goods and services the state provides entail varying costs in terms of efficiency, distribution, and even political identity. Indeed, whether they like it or not, in the current reality of global competition, states' decisions affect both the size and makeup of their constituency. State goals are no longer tailored to a fixed set of constituents, but rather, the group of constituents and the public goods and services provided by the state are shaped simultaneously. States' additional power to shape their constituent group limits their ability to set policy goals that are independent of it.

We will now turn to elaborate on how the state's role as a market actor, and its subjection to global competitive forces, inherently infuses its relationship vis-à-vis individuals with consumerist logic—starting with the impact on political personhood and participation.

#### A. *The Front of Political Personhood*

Global competition transforms the relationship between states and individuals by challenging political personhood, putting domestic loyalties to the test, and altering forms of political participation. Global competition calls into question the very definition of who comprises "us." Are "we" in any meaningful sense a cohesive group with a shared sense of solidarity, commitment, and belongingness, as the democratic ideal would command? Or are "we" simply a group of people with an ad hoc shared interest in increasing our aggregate net-worth, as the consumerist ideal type model would suggest?

States under competition face an inherent tension: they must choose between adhering to their "unfettered" criteria for the inclusion of their members, on the one hand, and the need to recruit new, desirable constituents on the other hand. The competitive setting brings to the forefront a consumerist logic highlighting two market currencies that would generally not be considered components of the constituent's identity under the democratic model: a constituent's attractiveness to the state and her degree of mobility. When competing for constituents, states are more likely to pursue attractive constituents and to offer more generous deals to the mobile amongst them. In highlighting attractiveness and mobility, the

competitive context places emphasis on people's willingness to exit their current communities as well as on their use-value—namely, how beneficial they are. These criteria reduce the notion of being a viable part of a community to a cost-benefit calculus.

The use-value perspective affects political personhood. On the personal level, it associates one's civic identity with a narrow, commodified version of political membership. Competition's emphasis on consumer-like choices, preferences, and transactional quid pro quo fosters a commodified version of contribution to public goods. When constituents are offered viable alternatives that are more beneficial (or less costly, or both), they—or at least the marginal group thereof—will (almost inevitably) have to weigh their local commitments against the costs and benefits of moving (or relocating all or some of their activities) to a different jurisdiction. This evaluation of their loyalties in such instrumental terms (sometimes, as in the tax context, even in strict monetary terms) could have commodifying consequences. Constituents are pushed to compare the costs of their local affiliation with the price of other commodities they can purchase instead. Those constituents who have the capacity to relocate to another jurisdiction will need to choose between their domestic loyalties and the benefits of the alternative residency.

Like the use-value perspective, mobility also raises a set of new related (but not identical) concerns about one's political personhood. Mobility per se focuses on one's provisional status and rewards it. The more impermanent constituents are, the better deal they can expect from their own state and from other states that are competing for them. Rewarding mobility, however, creates the risk that political affiliations may become tenuous: more dependent on the quality and extent of the services the state provides and less related to a sense of belongingness based on a shared commitment amongst community members.

The aspiration to have community members contribute to the provision of public goods and services based on their ability to pay, on the one hand, and the desire to offer attractive deals to in-demand mobile constituents, on the other, clash head-on when the mobile are also the wealthier residents with greater opportunity costs. Such individuals are more likely to weigh their political affiliation against the costs and benefits they are offered by the state. This will weaken what membership implies in terms of responsibility towards co-members of the political community. Global competition, in sum, leads us to consider political identities in consumerist terms.

### *B. The Democratic Participation Front*

Another effect of both the mobility of existing citizens and the pursuit of attractive newcomers is their potential bearing on the state's polit-

ical processes. Specifically, when the state functions as a recruiter, traditions of political participation could be altered as a result. Mobility leads to greater emphasis being placed on exit over voice and thereby elevates the one form of democratic participation over the other.<sup>60</sup> Rather than trying to influence the political system using their voice, and resorting to exit only as a fallback position, constituents with easily available exit options may be less inclined to facilitate change from within and more inclined to exit (or threaten to exit). At a certain level, the emphasis on exit might be even more destructive, for it will cease to be a means of conveying one's discontent with current policies and will instead become an independent factor in the decline of the state. The exiting of strong segments of society also means that there will be less public funds (and fewer public services) for the remaining residents.

The emphasis on exit—which is mandated by global competition—may also imply that capital owners, as well as young or talented individuals, might exercise more influence over the national decision-making process than others. States may be incentivized to internalize the narrow interests of such mobile individuals into policymaking. This is dictated by the consumerist logic, imposed upon the state by its participation in the global competitive market. According to this consumerist logic, the preferences of mobile individuals or investors need to be catered to if the states wish to prevent substantial negative externalities on other segments of society (those without an exit option). Furthermore, because of the competitive pressure to recruit attractive individuals, non-citizens may also have significant political influence over provision of public goods, as well as wealth-distribution policies. The very presumption that such benefits are necessary to attract desirable non-residents to the state could have a significant effect on domestic policies. Hence, foreign investors and potential residents may play an important role in local decision-making without formally having a voice in the process. In fact, it is not actually the foreign investors or potential residents themselves who influence this process but what policymakers imagine their preferences to be. In other words, at best, decision-makers can only estimate the preferences of foreign residents and investors, to whom they are not even accountable.

Under competition, states are forced to choose between recruiting new members and their old constituents. Specifically, they have to choose between supporting an open, yet commodified and somewhat tenuous political community, and a community that is bound by the sense of no viable alternative. Moreover, they have to eyeball the preferences of foreigners (to whom they are not accountable) and grant them benefits

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<sup>60</sup> ALBERT O. HIRSCHMAN, *EXIT, VOICE AND LOYALTY* (1970).

beyond what is offered to their current constituency, in the hope that the positive externalities from the prospective investments and residents will outweigh the costs of those benefits.

To conclude, the background of global competition forces the state to relinquish its monopolistic sovereign power over its constituents, and to adapt its regime to the global market forces. This inevitably means that the criteria for the provision of public goods and services are no longer determined by a deliberative political process—as the democratic model would prescribe— but rather is inevitably subjected to consumerist logic and determined by market forces of supply and demand.

### C. *The Distributive Justice Front*

The market competition for constituents and resources significantly affects the types of criteria underlying redistribution, and constrains the state's capacities in this regard. Redistribution ceases to be a discretionary mechanism for promoting justice, and turns into a price states are or are not able to extract as part of the utilitarian calculus. Thus, under global competition an additional cost plays a role in the state's calculus for and against redistribution: the cost of constituents on the contributing side of redistribution opting out of the system, either by physically relocating or by shifting their activity elsewhere. The outcome of the state's struggle to attract investments (by offering attractive policies) and woo residents with attractive public good packages is the infamous "race to the bottom." In this race, competition brings pressure to bear on states to restrict redistribution or else pay the overall welfare price.

Of course, several factors serve as counterweights to competition's downward pressure on redistribution. One is the cost of relocation— people must take into consideration the significant costs entailed by shifting their residences, families, cultural ties, and jobs and switching their domestic loyalties. Another limitation affecting a state's redistribution leverage is its "intrinsic" market power—natural resources, an attractive residential environment, particular loyalties, (such as historical cultural, or national ties), or other comparative advantages. These factors could well explain how and why states continue to engage in certain levels of redistribution even in the current conditions of global competition. But, whatever the degree of resilience these factors allow, the mobility of constituents implies that states are compelled to weigh the benefits of redistribution relative to the potential costs entailed.

### D. *The Efficiency Front*

To survive competition, states—like business firms—must provide the goods and services that are catered to the preferences of potential and actual constituents. A competitively successful state will manage to re-

cruit (and keep) the “most attractive” constituents, the most profitable investments, and the most beneficial industries by designing attractive regimes and providing desirable public good packages. It will attempt to cater to the preferences of young, skilled residents, entrepreneurs, potential employers, and the like. Moreover, under the global competition states also need to adapt their strategies to the reality of electivity under fragmentation.<sup>61</sup> Public policy and the determination of public goods and services the state offers thereby become a matter of determining the optimal market strategy for a supplier of goods (the state) competing for clientele (residents as well as investors) rather than an internal maximization exercise. These are clear-cut manifestations of market logic.

### CONCLUSION

The central objective of this paper was to put the “marketization of the state” debate into context, both on the descriptive level and on the normative level, by viewing it through the prisms of the ideal types of interaction between states and individuals, and against the background of global competition. At the outset of the paper, we began by presenting various manifestations of “citizenship for sale” and the marketization of the state-individual interaction. We then turned to portray two ideal types of state-individual interactions, which we termed “the democratic model” and “the consumerist model,” and depicted the erosion of the state-market dichotomy as a shift from the democratic to the consumerist ideal type. But this, we claim, is only part of the story: for, when global competition is taken into account these two ideal types no longer serve as discrete end points on the spectrum. Rather, they become inherently interconnected, and the infiltration of market logic into the state-individual interaction becomes inevitable. In a world in which the state is forced to compete for residents and resources, its position as a market player inevitably infiltrates into its interaction with individuals, and defines its political realm. The political realm, in other words, is constituted by the market, and cannot operate in a manner that is detached from consumerist logic.

Beyond providing a context for the understanding of current reality, the fact that the democratic model and the consumerist model are intertwined in a globalized environment also informs the normative debate, both with respect to the normative goals to be attained and with respect to the means for attaining them. The fact that a political realm, secluded

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<sup>61</sup> They must internalize the fact that they (should) operate as competitive players in multiple markets and should rethink, accordingly, their optimal market strategies or pay a price in terms of how well they do in those markets. The competition occurs simultaneously in a number of parallel markets: the market for residents, the market for capital, the market for production sites, the market for jobs, the market for IP, etc.

from market logic, is not a feasible option in the international market for states defines and impacts the normative ends in the state marketization debate.<sup>62</sup> It also affects the means which ought to be utilized for the realization of these normative goals- for ameliorating the competitive pressure, in order to promote a less commodified version of the state-individual interaction, requires the cooperation of peer-states in a globalized world, and entails significant problems, in and of itself, on all fronts (efficiency, distribution, political personhood, and democratic participation). The discussion hereto sheds light on the normative debate, underlying state marketization, frames it, and paves way for its evaluation. It does not provide a conclusive answer to the state marketization debate, nor argues for particular normative goals or specific strategies. Such a normative examination, we leave for future work.

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<sup>62</sup> And yet, this does not imply that the ideal type has no significance. Not only are there variations across time and place in terms of more or less commodification of the state, more explicit or more salient expressions of infiltration of market logic etc., but also, the ideal type to which we aspire, even if unattainable still shapes our choices.