Local Communities vs. State power
The TGV Case (high-speed trains in Italy): takings, regulatory takings and contingent valuation

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Abstract

Approaching the high-speed train case (TGV) from a law and economics perspective addresses the question of models of realization of large infrastructure projects most efficient for the citizens and communities involved.

The paper will proceed in two directions. Firstly, it will make a theoretical reconstruction and comparison of government’s models of performing public policies, with particular regard to the supply of large infrastructure projects. While the most efficient model for the point of view of the expropriated owner is taking, participation procedures provided by VIA and shared political accountabilities may alter the cost-benefit balance.

Secondly, the research will proceed by offering some analysis of the opportunity of adopting parallel systems of measuring people demand for semi-public goods, such as contingent valuation and revealed preferences methods. Costs caused by Not In My Back Yard (NIMBY) effects may hinder the supply of such projects, though consensus seeking is necessary in pluralistic democracies where infinite potential public policies clash with limited public resources. The notion of “political taking” will be introduced, with the aim of increasing participation procedures and reducing hold-outs behavior by interest groups.

Legal and economics methodology, through the prism of new institutional theory, supplies the analytic tools on which the paper is based and, arguably, provides the best instruments for examining the topics under scrutiny.

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Government taking of private property and other models for performing public policies

The first issue under scrutiny addresses the choice of government taking of private property as the most efficient model for performing large government sponsored projects. A core principle of property rights economics is that owners will make efficient use of property if, among other, those rights are transferred only by mutual consent of parties, as by purchase or gift. This rule encourages the efficient use of property by allocating it, at least in tendency, to those who value it the most. There are, of course, exceptions to the property rule of transfer by mutual consent, and one is government taking of private property.

For economic theory, government’s power to compel private owners to transfer property at market price is justified as far as it is needed in order to optimize the ability to perform its legitimate functions, such as providing so-called “public goods”. Indeed, state may be the most efficient provider of public goods, like highways, military bases, national parks, satellite tracking stations, which require assembly of large or specifically located tracts of land. Traditionally, economic theory indicates two problems which may justify government’s power to force a sale at market value, rather than the rent private owners would otherwise pursue. First, high transaction costs may hinder the conclusion of a large number of land acquisition contracts in order to put together the extensive tract necessary, for instance, to build railways. In particular, if such project had to rely on voluntary sales, owners would probably holdout, for prohibitively high price blocking the entire project.

The second issue is that of monopsony. There may be only one piece of land suitable for a particular use, as is the case with satellite tracking facilities. Only by compelling relevant owners to sell their property, might government be able to provide the public good. From the other side, the necessity of providing a fair compensation (which should amount to the market value) to the owners whose property has been taken, is – economically – unavoidable. Otherwise, owners would under-invest in property and state could externalize part of the costs of its political decisions on citizens.

Property rights economics literature recognizes at least two categories of takings: taking and regulatory taking. These are legal tools which cause a decrease in the economic value of private property by either transferring or not private entitlements. Let us imagine that the state wants to secure a green belt around large cities. It could take the tracts of

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3 Calabresi and Melamed, 1972.
4 Cooter and Ulen, 1997, pp. 149-55.
land in question and pay compensation to legitimate owners. Or, it could proceed by issuing regulations which forbid any use of the lands in question which is not merely conservative (for instance, edification). Lastly, government might decide to tax any different use which owners might make of property or attribute fiscal discounts or monetary incentives to those who turn their properties into green land. The last two examples look very much the same, seen that both cause a decrease in the economic value of private property without transferring its entitlement. However, differences in classification determine effects which have not to be underestimate: those actions, whether defined takings, have to be compensated, while the same does not happen with regard to government’s free powers of regulation and taxation. Specifically, since the famous case of Pennsylvania Coal Co. v. Mahon (1922), the matter is to define when do legitimate government’s interventions, that do not result in physical invasion or transfer of private property, but anyway lower its value, as is the case with taxation or regulation, amount to a taking, and should be compensated.

Indeed, never in history government’s powers of regulation and taxation have been as prolific as they are today. As a matter of fact, in the XIX century, liberal state’s powers of intervention were much more limited in restricting property powers than they are today. As a consequence of the rise of welfare state, many of the prerogatives which traditionally “fully and exclusively” belonged to private owners may, in fact, be exercised by the government at any time. The extensive use of nuisance law and safety regulations, zoning law and building licensing, has led to the creation of a wide-ranging system which regulate private property rights, by defining and regulating any use that can be

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6 The principle underlying regulatory taking doctrines is recognized almost unanimously in western legal orders. However, it is only in 1966 that the Italian Supreme Court recognized that the notion of taking (espropriazione), includes situations in which property rights, although not transferred, have been concretely minimized by government regulation (Cass 20-8-66, no. 2267).

7 There, Justice Holmes held that a regulation that "goes too far" in lowering the property’s value is to be considered a taking (1922, 415). However, the measure of such loss is not easily defined. For, if government were to be held liable for any loss in private property, it would probably under regulate, while owners would make inefficient use of property, for instance by over investing in it. On the contrary, if government was free to restrict private property without fair compensation, it would externalize part of the costs of its actions on private owners, with the consequence that too much regulation would be enacted while owners would under invest in uncertain property rights.

8 At that time in history, in fact, not only private property was considered to be expression of individual freedom and incentive to private entrepreneurship, but it represented the very foundations of social order. For this reason, not only private property was defined as absolute and exclusive right of “using and destroying” (ius utendi et abutendi), but it was called “sacred” (art. 29, 1 of the Italian Statuto Albertino of 1848).

9 Art. 832 of the Italian Civil Code describes property as the right of fully and exclusively use and benefit from assets, under the limits and duties established by the legal order.
made of it. The same can be said with regard to taxation, to the point that the ability of state to regulate private property is quite the rule, rather than the exception. Cyclically, government uses its powers of intervention to restrict and expand the limits of private property rights, creating new ones and abolishing existing rights, and mostly acting under the influence of strong interests groups, as is the case with the recent expansion of intellectual property protection.

In conclusion, taking is not the only instrument government may use to restrict property rights. Indeed, from the point of view of private owners, and contrary to what is commonly perceived, government use of taking is preferable to both taxation and regulation, as it offers compensation. In fact, advocates of property rights protection generally embrace doctrines of regulatory takings. 

From the point of view of the State, on the contrary, taking is the most expensive instrument, followed by regulation, while taxation should be positive in balance. Thus, the question is why does government enter costly negotiation in order to use its legitimate power of eminent domain, when it could, through functionally equivalent legitimate powers, such as property regulation and taxation, simply impose its will. State could, for instance, decide that landowners of alpine passes bear an “easement of way by necessity” in case of large infrastructural projects or pay an extra tax whether they do not want to be object of taking.

One should consider, conversely, that governmental decisions cause also non monetary effects, that are political effects. Generally, regulation and taxation have little or no monetary costs for the State, but high political costs, and little benefits of the same nature, leaving private owners discontent, damaged and uncompensated. In case of takings, on the contrary, while monetary costs are higher, political costs are usually low because they are not uniformly distributed, but fall on few individuals. Thus, in general, when high monetary costs correspond to low political costs, both private owners and the state will prefer the instrument of physical taking.

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10 By zoning, government plans the social and physical architecture of cities by defining building structure, height and colors, architectural style, construction materials, their number of inhabitants or residents, whether and which commercial services may be offered. “The political practice of zoning, for example, has its origins in the non-legal mentality of "social engineering," cultivated by planners, architects, engineers, and politicians. Nevertheless, some continental lawyers tried to integrate this practice of zoning into the body of legal dogmatic. They qualified zoning as the imposition of collective easements, of which the property owners were holders and subjects at the same time.” Bouckaert, 1990, p.3.

11 Lemley, 1999, Depoorter, 2004, p. 16, states that the overall evolution of intellectual property law can be explained as a cyclical back and forth between litigation and lobbying by copyright owners, from one side, and free use supporters from the other.

12 Bell and Parchomovsky, 2006, p. 1426.

13 Bell and Parchomovsky, 2006, p.1442.
Therefore, by seeking consensus and providing procedure of participation, government might lower political costs of a large infrastructure project, but increase its monetary costs.

**Consultation and participation procedures in Italy and in France**

To understand why consensus seeking is fundamental in today’s democracy, one should refer to the way political power is distributed among the principal institutional actors and their mutual relationships. The last decades of the XX century have seen a considerable development of social complexity, as the result of pluralistic society where divisions based on social class or political ideologies are difficult to draft. In this context, parties have lost their capacity of collecting the interests of a class of citizen (workers, factory owners, Catholics, communists, etc.) into a collective identity which they could represent in the political decision process. Since political synthesis of pluralistic interests is not possible, today constitutional choices are the result of a compromise, which abandons the once objective notion of the common good, and rather constitutionalize the principle of mutual tolerance. Following this interpretation, the only constitutional rule which take over among conflicting interests is the one which guarantees equal participation of every particular interest in the public debate. State does not distribute wealth, but rather redistribute resources under the pressure of transitory interests group.

If political parties do not completely represent society’s interests they, more importantly, cannot synthesize them into a political identity, whose consensus legitimate the deliberative process. If one considers that to implement public policies is costly, every government action, or inaction, is the result of a choice among multiple costly policies and limited public resources. However, this choice must represent the majority (or most) society’s pluralist interests, in order to gain their consensus in the political decision making process – if not for preserving popular sovereignty, just to prevail in next electoral turns. However, social complexity and parties fragmentation does not allow for direct political representation. As a consequence, government looks for consensus by bargaining the main political decision with most representative

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15 The traditional distinction between liberal negative rights (or freedoms), which do not require state intervention, if not in the measure of its abstention, and “costly” positive rights, typical of the welfare state, which on the contrary need state action are today lacking foundations. If one consider the most classical freedoms, such as personal freedom and private property, it is easy to see how they need state intervention and are costly too. Property rights could not be easily exercised without a system of public security and a judiciary or civil protection against natural disasters, water systems. As a result, all rights need public intervention and thus are costly.
intermediary institutions (workers associations, employers association, local organizations, regional bodies, environmental groups, etc.). In Italy, the institutional instrument for direct participation of citizens, associations and organizations in the public decision making process regarding environmental matters is “procedural participation.” In particular, when a large infrastructure project might have strong impact on local environment (as is the case of TGV), participation occurs through the proceeding of VIA (valuation of environmental impact). From July 31st, 2007, the Via procedure is regulated by the Code of Environment (D.lgs. 152/2006), which provides the right of all private parties involved to submit to competent authorities written observations regarding the effects the project in question might have on environment. A commission of public inquiry is established with the task of analyzing the observations submitted together with a government study of environmental impact. After the commission’s assessment, the decision on the project’s environmental compatibility is taken by competent ministers (above all, the minister of environment), while the final act is adopted by Cipe (inter-ministerial committee for economic planning), which must also approve the preliminary project. In case of enduring disagreement, the very final choice has to be made by the Council of ministers (art. 182 and ff. D.lgs. 163/2006, “Code of Public Bids”). The new law regulating VIA, thus, provides for strong information rights, by which everyone may ask public authorities (and private authorities exercising public functions) environmental information he is concerned about. In addition, art. 8 of D.lgs. 195/2005 provides for the duty of public administrations to make environmental information available for the public by establishing open access electronic data bank on the web. On the contrary, voice rights are weaker. The public commission must conclude its inquiry by 60 days, wherever the state of advancement of works is. Furthermore, the competent administration must evaluate the commission’s observations but has no duties of conformation to them. However, in case the administration decide to include in the project the conclusions emerged during the public inquiry, the process must start from its beginning, thus new observations may be submitted and the commission have to decide on them. In theory, thus, public actors, and finally government, may disregard the conclusions emerged during the public participation procedure. It could be no differently, since otherwise, local interest groups would have the institutional power to block the entire proceeding. However, as the TGV case demonstrates, when choice must be taken given multiple and conflicting interests (which includes scientific and

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16 Before July 31st, the law regulating VIA provided for the establishment of a commission to be only eventual. In alternative, involved administrations might have organized a short public debate among private participants and the public and private bodies uncharged of running the project in question.
technical aspects and social and economic matters), once the decision is
brought in the political arena, negotiation may prove very long and
costly. In addition, in order to seek consensus from local parties, it is
common in Italy that central government trade off prejudices suffered by
local communities with the concession of further public commodities
such as public financing of highways, roads, schools, fountains. This
partly explains another matter which negatively influences the provision
of large infrastructure project in Italy, which is the dramatic increase of
costs during works.17

In France, the first TGV (Train Grand Vitesse) has been unveiled in1980,
that is, almost 30 years ago. Today, the TAV network develops over
1,500 kilometers, connecting one hundred train stations across France. In
Italy, TGV is still a work in progress, which counts very few lines, most
of them still waiting to be finished.

On the paper, both countries have participation procedures which are
meant to include directly interested communities into the decision
making of the process. In France, administrative courts exercise strict
proportionality control on takings in the sense that declaration of public
use may not be issued when the prejudice suffered by private owners is
excessive in proportion to the general interest pursued by the
government. The risk of judicial censure have strongly influenced legal
evolution of regulation of takings of large infrastructure projects which
may affect local environment, as provided by environmental and takings
codes (from art. L11-1 to art. 4 and from art. R11-4 to art. R11-14-14
Code of Takings and from art. L123-1 to art. L123-16 Code of
Environment).18 The first step is the establishment of a public inquiry, i.e.
a formal consultation process, where individuals may express their
concerns and observations, under the direction of a commissioner. The
public inquiry must precede the public use declaration, with the aim of
providing information and associating citizens. Impact studies on
feasibility and alternatives to the project are published in the regional
prefecture at least 15 days prior to the opening of the public inquiry so
that people may submit written opinions and suggestion (art L122-1 c.
and ff. environmental code). The administrative authority chooses a
commissioner or a commission which is uncharged of conducting the
public inquiry and ensures the respect of people participation and
information by project works managers. In any case, public inquiry must
not exceed the duration of 2 months and, in 6 months from the opening of
the inquiry, the president of the commission or the commissioner
publishes a final motivated relation on the results of the public inquiry

17 In the case of the highway connecting Turin – Milan, for instance, the initial projects
required a whole budget of 2 billions of Liras, which today have quadruplicated (4
million of Euros, that is 8 billions of Liras).
18 When the infrastructure projects are modest, but may, anyway, because of their
impact on environment, because controversy and conflict a procedure of public debate
is established (articles L.121-2 c. and ff. environmental code).
including its conclusions. The final relation and conclusions have to be posted at public disposal for a period of one year in the relevant prefecture and town councils. This procedure is preliminary to the declaration of public use, which is to be pronounced in a period of 18 months starting from the public inquiry conclusion, by the *Conseil d’État*. This jurisdictional body may approve or reject the project or also ask, once, for modifications. In the last two cases, further studies are required, but in the first case no further procedure is required and the project may proceed. Additional variations to the original project may be made if their necessity appears only once works have started, but they must be of minimum relevance and impact on the budget.

**Multiplicity of decisional levels and multiplication of transaction costs**

Taking and voluntary purchase may prove a costly option for government budget if negotiations are particularly difficult and political accountability is not clearly defined. Excessive fragmentation of decisional rights, to which corresponds the so called “tragedy of the anticommons” causes a permanent increase in transaction costs, which could become prohibitive to the point of blocking the entire process.\(^{19}\) Such costs may be divided into costs of individual actions coordination (private collective action costs), and costs of political decision making (political externalities).\(^{20}\)

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20 The origins of the concept of externality can be traced back in Pigou’s work, although he never used the term as it is known today (Pigou, 1932). According to Baumol and Oates, externalities can occur when either some cost in monetary or non-monetary terms are not taken into account in the decision making-process (Baumol and Oates, 1975). In a classic economics world, prices alone are sufficient to direct property rights over resources into their most efficient allocation. On the contrary, in the real world, external effects generated by individual actions cause a permanent departure from the efficient equilibrium, as described in the Walrasian model. Those external effects, “which generate a wedge between the private and the social costs of the individual action” are called externalities (Epstein, 1993). Externalities can be either positive or negative. Negative externalities represent occur when the action of one individual produces a loss of utility or wealth to another individual. The consequence is that the first individual, bearing only part of the cost of his actions, will tend to produce more of those goods that he would, if he were to bear the entire costs. In the case of positive externalities, on the contrary, an individual action causes some benefits to individuals other than its author. This is the case, for instance, with information goods: too little quantity of the goods in question will be produced.

What converts a harmful or beneficial effect into an externality is that the cost of transacting such external harm or benefit is higher than the gains of its internalization (Demsetz, 1967). In a Robinson Crusoe world, transaction costs would not matter. This would be the case if the world consisted of only a single owner, who perfectly knew his preferences and whose sole task was to order them and maximize his resources (Epstein, 1993). Scarcity of resources and multiplicity of people (that is, real world)
In the decision making process, collective action costs represent the costs of organize and coordinate private action among self-interested individuals. Such costs also include the costs of negotiation among the private parties which have interests or complaints on the state sponsored project, the costs of acquiring information about the existence and amount of such interests and complaints, and the costs of enforcement and monitoring free riding behavior.

Collective action costs can vary much depending on institutional settings. For instance, greater heterogeneity among participants increases the range of pursued interests and the cost of decision making. In a homogeneous group, interests are on average better aligned than among unrelated parties, monitoring opportunities are greater, and sharing rules may be easier established.21

The definition of participation rules and monitoring of norm compliance are substitute methods for abating collective action costs and thus strategic behavior by those with access to the decision making process. The definition of formal participation mechanisms in the decision making process, by reducing the individual freedom of action, reduce the value of participation and therefore the possibility to obtain gains from lobbying in the process.22 Importantly, it is exactly the problem of the cost of reaching collective agreements which generates incentives for strategic behavior. Also an increase in the value of the pursued interests may raise returns to political lobbying.

Collective action dynamics do not only characterize private decision making process but are the premises of “political externalities” in the decision making of political actors.23 In public choice theory, this term has been mostly used to refer to the ability of a minority to use power of political actors government to benefit local interests by imposing costs to the majority.

The main focus is on critical situations, like crisis management, where there could be asymmetry in political accountability, in the sense of overlapping responsibilities of political actions, as reflected in election results or approval ratings. There exists asymmetry in political

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<td>21</td>
<td>Also frequency and reciprocity of mutual relationships matter, as repeated interactions create incentives to invest on good reputation and the possibility to retaliate against wrong behaviors. Ostrom, 1990.</td>
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<td>22</td>
<td>Mainly, economists who are unfavorable toward restrictions refer to a Walrasian model where prices alone are sufficient to direct resources into their most efficient allocation, and where restrictions therefore are at best useless, if not harmful (in the sense they cause lower profits). For a critique of this approach see Barzel, 1989, p. 96.</td>
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<td>23</td>
<td>Depoorter (2006) relates the shortcoming of disaster preparedness and management in USA to the asymmetry of political accountability costs among various government actors (federal, executive, state and local officials) in ex-ante versus ex-post investments.</td>
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accountability when the benefits of the decision of one political actor influences the political standing of other actors, that is to say, the actor who bears the political costs of an action is not the one (or the only one) who benefits from it. That could be easily the case with the political accountability different levels of government get by supporting large infrastructure projects. As a consequence, because political actors lack incentives in conferring benefits on other actors, such as the opposition party or local organizations, they will under invest in such projects, causing delays, when not tragedies, as is the case with disaster management.

Overlapping political accountability may derive from both institutional and subjective factors. With respect to the institutional factors, the large scale of public sponsored projects, such as is the case of managing TGV or organizing Olympic games, involves a high degree of overlapping in the allocation of management tasks across different levels of government. The Italian case is a typical example, where government is not centralized but acts through several levels, mainly central, regional and local. It could be the case that the actor who bears monetary cost of an action is not the same who has the power to decide on it (generally on the basis of possible political benefits). The probability of strategic behaviors is even higher when one takes into account the multiple decisional bodies at the same level and extra procedures of popular participation.

Secondly, overlapping political accountability also depends on public perception of government’s responsibility. When government coalition lacks cohesion, it needs to find a compromise for every decision, misleading popular perception of government’s accountability. Transaction costs increase with the number of political actors that share decision making power and are higher when party coalitions vary among local and central levels of government. Shared political accountability creates common pool problem (i.e. tragedies of the commons) where everyone tries to benefit from a public project but no one wants to invest on it. Shared accountability allows different parties and governmental bodies to engage in a blame game that blurs the public perception of political accountability. That is, shared responsibility and finger pointing among political actors confuses voters, thereby reducing the overall

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24 Italian political system as resulting from the last electoral reform in 2005, which turned back to a proportional system, works following a multi-polar model, where citizens do not directly chose the first minister nor the government, as is the case, for instance, in the UK. Rather, it is the parties, which, after the elections negotiate and form a coalition which constitute the majority. Decisions, therefore, are the result of a political compromise between parties which have to coexists but are divided by intense ideological differences and do not trust each other. Therefore, government stability depends on the ability of keeping the agreements among the parties which form the majority, or loose the trust from parliament. The compromising nature of political decision making process might undermine the optimal provision of public goods and services.
accountability of a political system.\textsuperscript{25} On the contrary, the supply of large public sponsored projects in critical areas requires coordination among the various levels and parties of government’s coalition. It could be easily the case that this political game will simply increase transaction costs which could be prohibitive to the point of blocking the entire project. The increase in the relative prices will increase rents that interests groups may derive from lobbying and bargaining further benefits in exchange for giving up their property rights. In order to make negotiation proceed, indeed, it will be mandatory to excessively increase the measure of indemnity, or trade-off other benefits to local communities in exchange for their consensus, like schools, fountains, public parks. However, if government is to be held liable for any loss (not only patrimonial, but also aesthetical, psychological, etc.) private owners claim to have suffered, compensation will widely exceed market price. As a result, state would under invest in large infrastructure project and owners would make inefficient use of property, for instance by over investing in it. A third solution is to impose external costs of over compensation on other national taxpayers, which represent the demand side of the public good in question, with obvious consequences. The TAV case, therefore, should induce a general and non polemical reexamining of the model of supply of large state sponsored project in Italy.

**Political takings**

The point to recognize is that external costs imposed by collective action are inherent in every political process which adopts a decision-making rule that is not the rule of unanimity.\textsuperscript{26} Because there are almost infinite claims for potential public goods, the production of many goods is fundamentally incompatible with others. The choice on the public policies to implement - entrusted to the government – is brought back to the people, by political parties who seek consensus by negotiating its content with local organizations and interests groups. These intermediary bodies, whose interests cannot be synthesized by political parties, address their requests directly to the constitutional institutions. A majoritarian system, by definition, presents the opportunity for certain groups, which have the ability of acquiring political power, to subsidize their particular interests and to redistribute wealth and power to themselves, at the expenses of the minorities, which bear some or all of the costs. Majority rule works by externalizing the costs of the action on a minority, which accept it as the rule of the game and because it hope to be, in the next

\textsuperscript{25} Depoorter, p.25  
\textsuperscript{26} Buchanan, 1973.
game (given that rules of democracy are respected), the majoritarian party itself.27

However, the necessity of guaranteeing voice and decisional rights to citizens should not result in overstating local and minoritarian interests. The influence some interest groups may have on public decision making process should not be underestimated. Indeed, the process by which interests groups intervene, whether not regulated, may bring to inefficient, even non-rational results. In particular, procedural participation in Italy showed two main failures: from one side, it could not contain a large enough part of citizens and groups opinions, which found expression out of procedures; secondly, it allowed for ideologically contrary subjects to take over other citizens’ opinions. Importantly, adopting inefficient public policies impose external costs on citizens influencing a country’s economic development, and limiting its ability, in the future, to pursue other public policies. The problem is that the supply of large infrastructure project is either completely irreversible or irreversible only at large cost.

That interests groups’ power may alter the deliberative process is not something new. Levmore believes that the measure of taking compensation depends on the existence of “identifiable non-majoritarian, or special interest, beneficiaries.” Fischel examines various typologies of political actions which pursue private property protection at the level of central government and, among them, interests groups policy is the one which offer most security to owners whose offer is inelastic.28

However, sometimes, opposition is ideological, whether not irrational, rather than based on concrete interests. Caplan demonstrated that, where an individual gains utility from holding a particular non-rational belief (such as about environment, religion, or football) and the personal costs that result from holding such a belief are negligible, then it can be predicted that individuals will over consume a greater amount of the belief.29 In other words, for “NO TGV” activists, and their sponsors, the personal cost of being misinformed about, say, environmental effects of high-speed, is essentially zero. Moreover, this particular individual will gain the social and psychological benefits deriving from belonging to a group and endorsing a belief. As Caplan predicts, therefore, where there are no incentives in place for correcting errors of conventional wisdom,
individuals will rationally act by believing “non-rational” beliefs which give them utility.\textsuperscript{30}

These considerations may have consequences on public choice models, as noted by Zywicki with particular regard to environmental non-profit organizations.\textsuperscript{31} First, non-rational activists do not seek to base their policy claims on the best available science. On the contrary, a tendency has been shown to dramatically and consistently misrepresent scientific and economic evidence so as to mislead and “scare” the public.\textsuperscript{32} Secondly, when participating in democratic deliberative processes, non-rational activists are not willing to trade off their particular interests for other social, economic, health and safety goals, even when evidently more pressing. For instance, an ideological “NO TGV” activist would sustain against scientific evidence the importance of very low risk of asbestos-connected cancer despite the concrete fact that dismissal of TGV project would lead to further increase of on road transportation pollution, which causes cancer.\textsuperscript{33}

Lastly, this particular category of interests groups may be much more powerful in influencing public opinion as compared to those who seek other public goods - better schools, more security, lower taxes - both because their popular orientation enables them to reach many more people and also because of the emotional nature of their message. One suspects for instance, that people may be more receptive to the question of cancer caused by asbestos than to the one caused by car pollution, as the first comes packaged with the real experience of a class of poor factory workers, whereas pollution-caused cancer hammers randomly.

\textsuperscript{30} Caplan (2001) studies the phenomenon through surveys of economic opinion. He finds that while most people do not understand the economic effects of minimum wage or free trade, economists uniformly understand the effects of these policies. The difference, Caplan argues, is that economists have strong incentives to correctly understand the effects of these policies.

\textsuperscript{31} Zywicki (2002) defines environmental organizations’ activity as that of any other interest group - namely, acquiring political power in order to subsidize their personal interests (i.e. greater environmental protection) and to redistribute wealth and power to themselves. It seems thus possible to extend Zywicki’s argument to other interest groups.

\textsuperscript{32} Zywicki (2002) reports some examples as have been described by Lomborg in The Skeptical Environmentalist, where environmental interest groups have proven dramatically wrong on predicting important environmental and economic trend. Lomborg reports that, in 1997, WWF issued a press release which reported that “new research by WWF shows that almost two-thirds of the world’s original forest cover has been lost.” However, most scientific sources at that time estimated about 20 percent deforestation. In addition, whatever the real percentage is, the figure of two-thirds is not even plausible, nonetheless WWF loudly proclaimed it. Greenpeace asserted that “half the Earth’s species are likely to disappear within the next seventy- five years.” Given that the actual species extinction rate is expected to be 0.7 percent during the next fifty years, this figure is not only wrong but almost ridiculous.

\textsuperscript{33} In Peru, authorities refrained from chlorinating the drinking water because they were afraid of the risk of cancer. Today, that decision is considered to have been a major reason for the cholera epidemic that broke out in 1991 (Zywicki, 2002).
As a result, giving voice and decisional rights to a larger share of citizens could evidence, and give power, to other pressing social priorities which have been dismissed in favor of single-minded pursuit of local objectives. In this light, further analysis of the opportunity to adopting systems of measuring people demand for semi-public goods, by enlarging the consultation procedure would reduce the rents local interests groups derive from hold-outs behavior. As government legitimate power of force a sale at market price aims at eliminating rents private owners may derive by holding out, well defined and inclusive procedures of consultation and participation may reduce rents local interests groups derive by “politically” holding out. As a result, VIA, contingent valuation and revealed preferences techniques may be called “political taking”, justified as far as they are needed in order to optimize government’s ability to perform its legitimate functions, such as providing public goods.

Widening the investigation picture about the demand for large infrastructure project

Organizations consisting of a small minority of citizens may influence government ability to perform public functions, or other decision making bodies, imposing great costs on society and impoverishing a country economy. One solution to this problem of externalities has been the suggestion that those who benefit from government interventions should be made to pay those who are burdened. In theory, such a requirement would encourage the supply of desirable projects and discourage inefficient interests groups interventions. In practice, it would be very difficult to measure the desirability of such kind of public projects, and to identify those who would be willing to pay for it. Mass railway systems might be financed by charging those who would regularly use the train or whose property values will increase when the new railway will be functioning, but many other interests are not so easily translated into monetary gains. Indeed, this is nothing new but the Coase theorem: when external effects matter, the property right can reside with the citizen, so that he is compensated for what is taken; or the property right can reside with the state, so the citizen pays for the privilege of enjoying her private benefit. However, these considerations goes beyond the Coase theorem, because they require to identify not only who is to pay compensation (i.e. who has the property right), but also how compensation is to be paid. The second issue under scrutiny, therefore, tests the possibility of measuring the desirability of large infrastructure projects using the

“contingent valuation” method.\textsuperscript{37} CV investigation is empirical and basically conducted through the compilation and analysis of a survey questionnaire which tries to assess how much citizens appreciate the realization of the infrastructure project at issue. The aim is to provide a measure of how much are Italian (and European) citizens demanding a large state sponsored project like TGV by asking how much are they willing to invest on it, given a fixed amount of resources and projects. First, the public good (High Speed Trains) under evaluation will be defined. The survey questionnaires are to be prepared according to such definition, which has to be explained through the construction of a credible picture simulating the effects of the introduction or dismissal of the project in question and possible alternatives. Secondly, the value of the good in question is to be measured in terms of individual willingness to pay for (WTP) or willingness to accept (WTA). The chosen sample will be asked – given a fix basket of monetary assets and government’s project – to choose the good they prefer to buy and the amount of money they are willing to spend for it. One of the good offered will be TGV, another a TGV-free valley; alternative means of transportations should be provided (the possibility of using alternative railways; on road trucks transportation; airlines). In addition to procedural participation provided by VIA, contingent valuation would provide data about the general demand for such project and allow enlarging the population sample interested in this particular good. It could be possible to register idiosyncratic differences of valuation of the same good, for instance, in France and in Italy. It may results, indeed, that citizens prefer investing public resources differently or that preferences of strong interest groups have been overestimated. Differently from VIA procedures, a larger sample of possible consumers of the TGV or TGV-free scenarios can be tested – whereas the total value of the public good in question is going to be defined as the sum of two components, active users and passive users’ value. Therefore, such method of enquiry would measure citizens’ satisfaction with TGV including not only the community of owners whose property is going to be taken and other local neighboring parties, but all subjects which may benefit, also indirectly, from the accomplishment or defection of the project (comprehensive, for instance of the entire population of northern Italy and western France). In brief, it could give voice and decisional rights to citizens who have not the possibility of participating in local VIA procedures, or whose interests are not large enough to justify costly and time consuming active participation, in VIA, or who are psychologically contrary to political marches and picketing. That could be the case, for instance with citizens located in the geographical area which correspond to the non-alpine tracts of the railway.

\textsuperscript{37} Carson, Wright, Alberini, Flores, 1995; Hanemann, 1994; Santagata e Signorello, 2000.
Conclusions

Approaching the high speed trains case (TGV) from a law and economics perspective addresses the question of models of realization of large infrastructure projects most efficient for the citizens and communities involved.

While the most efficient model for the point of view of the expropriated owner is taking, government’s shared accountability and private collective action costs alter the costs-benefits balance. Even tough transaction costs caused by Not In My Back Yard (NIMBY) effects may hinder the performance of such projects, consensus seeking is necessary in pluralistic democracies where infinite potential public policies clash with limited public resources. Due to the impossibility of political parties to represent pluralistic societies, citizens express their claims directly to the institutional actors.

Starting from these considerations, the present research project tries to offer some analysis of the opportunity of adopting parallel systems of measuring people demand for semi-public goods. The aim is to avoid problems generated by VIA by enlarging citizens’ participation and reducing hold-outs behavior by interest groups.

As government legitimate power of taking may reduce holdout behaviors by private owners, well-defined procedural participation may reduce rents interests groups derive by political holdouts. As a result, VIA, CV and participation procedures may be defined “political taking”, justified as far as they are needed in order to optimize the government’s ability to perform its legitimate functions, such as providing public goods.
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