

European Forum

Citizenship and Social Rights
A European Perspective

MASSIMO LA TORRE

EUF No. 98/2

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This Working Paper has been written in the context of the 1995/6 European Forum programme on 'Citizenship', directed by Professors Klaus Eder, Massimo La Torre and Steven Lukes.

EUROPEAN UNIVERSITY INSTITUTE, FLORENCE

EUROPEAN FORUM



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**Citizenship and Social Rights
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Printed in Italy in March 1998
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Citizenship has recently been the subject of several sociological studies.¹ Their interest, however, does not focus on the effectiveness of citizenship (political rights) mechanisms or on their impact on a wider range of social questions but rather on citizenship as a possible useful sociological concept behind which lurks the question and now the crisis of the Welfare State. Citizenship has been accordingly reinterpreted along lines not always parallel to the "traditional", legal and political use of this notion. *Sociological* citizenship seems to be nearly equivalent with *social* citizenship.

I will in the following try to summarize a sociological view on citizenship moving from ideas presented by T.H. Marshall, the author of a booklet *Citizenship and Social Class*, whose analysis has become the starting point of much of the sociological discussion on citizenship. I am going to present the sketch of one possible sociological point of view, which is not however meant to be attributable to a specific work or a particular author. It is rather assumed as a kind of "family likeness" conception. Nevertheless, that view is -- I think -- quite representative for widespread attitudes in contemporary sociology and social theory; it might even be labelled as the standard version of the "citizenship thesis" among social theorists. The sketch of this thesis is meant to be a fair one and not just a figurehead easy to be shot down.

I will then spell out a word of caution against the attempt of a too tight connection between social rights and citizenship, in particular as far as European citizenship is concerned. However, a *supportive* relationship between the two is accepted as both theoretically correct and practically useful. In the

¹ In the huge recent Anglo-american literature on the subject, we may recall D. HELD, "Citizenship and Autonomy", in D. HELD (ed.) *Political Theory and the Modern State*, Polity Press, London, 1984, pp. 189 ff.; B. S. TURNER, *Citizenship and Capitalism*, Allen and Unwin, London, 1986; J. M. BARBALET, *Citizenship*, University of Minnesota Press, Minneapolis, 1989; B. S. TURNER, "Outline of a Theory of Citizenship", *Sociology*, Vol. 24, 1990, pp. 189-217; G. ANDREWS (ed.) *Citizenship*, Lawrence and Wishart, London, 1991; T. BOTTOMORE, "Citizenship and Social Class, Forty Years On", in T. H. MARSHALL and T. BOTTOMORE, *Citizenship and Social Class*, Pluto, London, 1992; I. CULPITT, *Welfare and Citizenship. Beyond the Crisis of Welfare State?*, Sage, London, 1992; M. ROCHE, *Rethinking Citizenship*, Polity, Cambridge, 1992; F. TWINE, *Citizenship and Social Rights. The Interdependence of Self and Society*, Sage, London, 1994. In the Italian literature it is worth mentioning G. ZINCONI, *Da sudditi a cittadini. Le vie dello Stato e le vie della società civile*, Il Mulino, Bologna, 1992; P. DONATI, *La cittadinanza societaria*, Laterza, Bari, 1993; and D. ZOLO (ed.) *La cittadinanza. Appartenenza, identità, diritti*, Laterza, Bari, 1994. Cf. also P. ROSANVALLON, *Etat-providence et citoyenneté sociale*, Florence, EUI, RSC Jean Monnet Chair Papers, n° 96/37.

conclusion a different configuration of citizenship as a social right will be proposed.

I.

Citizenship -- it is contended -- is used to make sense of non-traditional and non-hierarchical communities, based on a principle of free and equal persons interacting and associating. It therefore corresponds with "contract" societies (to use Maine's famous partition) to take distance from their past of "status" association. We might also say that citizenship is an element of "organic" solidarity (in the sense of Durkheim's theory), contrasted with forms of "mechanical" integrity. Citizenship thus refers to social actors as *equals* (it is an equalizing device: cf. Marshall).² It bases on, or constitutes, a community made not of traditions, but of collective intentions (to a collective identity) and its boundaries. Citizens as social actors eventually are autonomous, that is, striving for social self-determination.

In a sociological perspective citizenship can be also considered a *symbolic* device, with integrating effects, more or less in a sense similar to the one pointed out by Rudolf Smend's *Integrationslehre*.³ In particular citizenship as such will be appropriate to deal with three sources of social conflict: (i) *justice*, especially as a rule for allocation of social goods; (ii) *community*, especially in so far this implies or requires a collective identity; (iii) *political institutions*, especially as procedural arrangements for the management of public affairs (in a way that could assume and develop members' participation). Justice issues can be reformulated as questions concerning *social* rights, community issues as questions about *civil* rights or legal membership, and issues on procedural arrangements as questions on *political* rights. As for the first type of rights, the "social" ones, the sociologist singles out three main models of ascription: the statist one (more or less Bismarck's solution in Germany at the end of 19th century); an integrationist or communitarian model (in the way of Durkheim's social theory); and economic democracy, that is enlarging the scope of civil and political rights, so that they can affect the spheres of production and distribution of goods (which is -- by the way -- Marshall's view). One should also remember that Marshall's is an evolutionist model: the British scholar conceives the progression from civil to political and finally to social rights not so much as a theoretical or institutional move based on normative

² See TH. MARSHALL, *Citizenship and Social Class*, now also in T. H. MARSHALL and T. BOTTOMORE, *Citizenship and Social Class*, Pluto, London, 1992, pp. 3 ff.

³ See R. SMEND, *Verfassung und Verfassungsrecht*, Berlin, 1928.

presuppositions as rather a kind of historical telos, inevitably charged with optimistic undertones.

As for the issue of community, formal or legal citizenship, one can identify again three possible solutions. We have first descent, *ius sanguinis*, connection through genealogy with previous, originary or primordial membership. Another criterion is territory, *ius soli*, the fact that one was born within the borders of the state. A third method of access to membership is sometimes seen in the reciprocity of legal provisions; yet this is not so much connected to citizenship in a political sense but rather to the access to civil rights or property.

Procedural arrangements (political rights) can only develop through measures for coordinating dissent and by having influence on the centres where political decisions are taken. This implies that citizenship, in so far as it needs citizens' self-determination in political matters, is connected with the idea of "modernity", of a dynamic society, building itself in the sense of Smend's *Selbstgestaltung*, and thus cutting all possible roots of the stable hierarchy of a natural order. This is why Tönnies, despite all his nostalgia for the *Gemeinschaft*, thought it impossible (non desirable) for the *Gesellschaft* to be able to have strong communitarian social relations.⁴

According to this view there is not only an evolutionary hierarchy between the three issues crystallizing around citizenship, but there exists a kind of axiological priority between them: the justice issue is seen as prior to those of community and of political procedure. The fundamental argument in favour of this view is that community and procedural matters are formalist or normative questions whose solution presupposes the implementation of certain material condition. These are only guaranteed by social rights. Without the latter civil and political rights are in danger to be, or actually are, nothing more than an ideological veil to cover a reality of exploitation and alienation. "Formal citizenship is neither 'sufficient' nor a 'necessary' condition for the practice of substantive citizenship".⁵

Therefore for the sociologist citizenship is on the one side based on, or better, fully identified with, material conditions and welfare redistribution, that is, it is translated in a non-normative status. On the other side, citizenship is

⁴ See F. TÖNNIES, *Gemeinschaft und Gesellschaft. Grundbegriffe der reinen Soziologie*, Wissenschaftliche Buchgesellschaft, Darmstadt, 1972.

⁵ S. GARCIA, "Cities and Citizenship", *International Journal of Urban and Regional Research*, 1996, Vol. 20, p. 8.

seen as a useful delusion, something "similar" to Sorel's "myth", or to Smend's "material integration", to mobilize forces which are appropriate to build up a new modern society and thus to make possible social rights. As a matter of fact, social rights are still "rights" and these are a product of "modernity" of conventional, dynamic, conflictual *Gesellschaften*. *Gemeinschaften* know but statuses and privileges, "reciprocity" (in Luhmann's terminology) of subjective normative positions, whereby rights -- so to say -- and duties were merged in one single status. This is not the case of modern rights, where the right-bearer as such has not to be at the same time subjected to a duty. "Complementarity" not "reciprocity" rules modern rights. This is the reason why the defender of social rights is bound to "modernity", and is deemed to be a defender, together with social rights, of rights in general and of modern citizenship.

Nevertheless, the sociologist is afraid that citizenship may have perverse effects, keeping unfulfilled its inner promises of equality, universality and democracy. Internal social inequalities are not canceled by the very fact of citizenship, even when it reaches its highest stage through the concession of social rights. "Aliens", those who are not accepted as citizens, remain such. Citizenship, even if it can be seen as anticipating the status of a world-citizen and having a cosmopolitan future, remains unavailable for those human beings who do not fulfill *ius sanguinis*, *ius soli*, or naturalization requirements. And last but not least, contemporary democracies develop along dynamics which lead to elitist processes of political deliberation. Citizens decide less and less, and political leaders, lobbies and bureaucracies more and more.

But we do not have only perverse or unfulfilled promises. We also face several paradoxes and tensions. Justice and community, redistribution and recognition, are often in conflict. People are ready to redistribute welfare only among equals, but redistribution is meaningful and has a point just in so far as it takes place in a situation where there is to overcome inequalities. The question of justice raises exactly when there is no recognition of an equal status or condition among people. On the other hand, justice conflicts with the principle of self-determination. Distributive justice in fact often requires top-down measures, and therefore some kind of authoritarian enforcement. Justice impinges upon the market allocation of goods and its self-regulation. Indeed, a market, if it does not have to lead to morally unbearable outcomes, needs to operate within a framework of normative rules.

Self-determination furthermore has a conflictual relationship with community. The former has an irremediably individualist basis: self-determination first and foremost is a matter of individuals. Community on the contrary sees as disruptive any individual decision which would not stop before

the borderline drawn by the integrative functioning of the whole. On the other hand individualism can easily develop as egoism or particularism, whereas community has, at least within the scope of the community itself, the tendency to generalize benefits and rights: it is "universalist", as dubious communitarians such as Othmar Spann and Julius Binder used to say. Self-determination procedures are paradoxical in themselves, in so far as they become the less effective the more they expand: the more people are entitled to decide, the less these people will be able to decide.

Let us now consider whether these paradoxes can be solved or avoided. There is first the evolutionist proposal, to put community procedure and justice along a progressive line, so that they do not immediately collide and that moreover the previous stage would only be absorbed or completed, *aufgehoben* -- Hegel and Marx would say --, by the later development. One could also consider a final and finalist solution, a kind of utopian society where the three principles, or social institutions do not collide with each other. Or one could turn from sociology to philosophy, to a strong normative commitment and work out principled rules of collision and compatibility.

The sociologist either inclines for the first solution, the evolutionist, and this is the case of T. H. Marshall, or she finds all three, the evolutionist, the utopian and the philosophical, more or less equally unsatisfactory. The evolutionist, when it is rejected (which is not so often the case), is considered too simple or -- let us say -- too overtly evolutionist, or, said with other words, too optimistic for a situation of crisis as ours. The utopian solution is judged as what it agrees to be, *utopian*, a fantasy deprived of any empirical support. And the philosophical point of view is deemed as unacceptable, exactly because it is *philosophical*, that is according to the sociologist either *ideological* (representative of unconfessed and unconfessable designs and bearer of crude interests of some social group, probably of a privileged class, race or gender) or merely *flatus vocis*, theory in its worst sense, empty speculation, intellectual vice. Against unjustified optimism, jolly utopianism, and empty intellectualism, the sociologist bases then on functional differentiation, that means: uncoupling first questions of justice and identity (community), and then disconnecting *participation*, from justice and identity. Said in different terms, here functional differentiation amounts on the one side to keeping redistributive mechanisms in force beyond the constraints imposed by communitarian boundaries, and on the other to giving access to political participation to people irrespectively of their formal status of citizen but without touching the very sensitive area of redistribution of welfare. This social move thus may favour the operation of a transnational market as an institution of justice and on the other hand national political institutions, open even to non-citizens but maintain a reduced area of

powers. Social rights in this picture are mainly market rights, just what they should not be and have not been so far, according to T. H. Marshall's reconstruction.

But functional differentiation can play a different role in re-shaping modern citizenship. There is a different proposal based on it: here functional differentiation is seen not as a destiny but as a risk of a danger against which we can insure ourselves. If we do not want to lose social rights, we cannot allow justice to be uncoupled from community. And if we do not want to make of political rights an empty category, we are obliged to counterpart a participation no longer connected with identity and justice.

II.

The sociological analysis of citizenship deserves a careful consideration. Most of that analysis gives an adequate picture of the development of modern liberal societies. It is a fact indeed that liberal citizenship has many features of Maine's "contractus" or -- if you like -- of Tönnies' *Gesellschaft*. It is right that its sense, its "Witz" -- Wittgenstein would say --, has been to offer an alternative to the feudal concept of "status", to the absolutist idea of a "subject", and to favour a mode of social intercourse based on "complementarity" on reciprocal, contractual rights. Though the notion of citizenship has its roots in the Ancient Greek *polis*, and has been maintained along all the story of Western political thought (as the republican *civis* versus the monarchical *subditus*), liberal citizenship was born during the French revolution and was promoted by the emergence of a new market society.

Nevertheless, one could object to the sociologist that a concept of citizenship referring on the one side to the entitlement of whatever rights, and on the other exclusively or fundamentally to social rights, adopts a concept which is at a same time too broad and too narrow. It is too broad since it comprises rights as such, and conceives of the citizen as whatever holder of rights, when on the contrary a fundamental move of modern liberal societies has been that of uncoupling citizenship (as membership to a polity) and legal personhood (the capacity of being bearer of rights, especially of civil rights). For the emerging liberal thought human beings as such have both fundamental human rights and civil rights, being the first a reformulation of the old natural rights and the latter the rights of human beings in so far as they *can be* (and not in so far as they actually are) members of a body politic. Civil rights thus are conceived as rights of the citizen, better, of someone who might belong to a city, independently from a concrete membership, from the actual position of a citizen. It is an achievement of the French revolution, for instance, the abolition of the so-called *droit d'aubain*, the right of the state to confiscate aliens' heritage, which meant *inter alia* for aliens (for non citizens) to a body politic the prohibition to make a valid will and leave their properties to some heir.

The sociological concept of citizenship is too narrow in so far as it insists on the centrality of social rights. Actually in several Western liberal states social rights (paradigmatically those connected with social security) are given as well to non-nationals, so that formal citizenship does not play a role in the ascription of those rights. The sociologist thus is obliged to offer a different concept from the usual one, to reinterpret or even to distort it. For her citizenship will permanently become a position of material equality with regard to other people within a given society, or a rich patrimony of economic or

welfare benefits secured by state agencies, even independently from their formulation and recognition as legal rights.

A further look is required into the sociological view. The solution given by the sociologist was either evolutionary or functional, and with regard to the latter either descriptive and approving or normative and, let us say, disapproving. It was the uncoupling of justice and community, and of disconnecting participation from both justice and community. Now, before the functionalist position the first question to raise is: "Who does the uncoupling?". Referring to social functions it can imply the belief in an inner dynamism of society which develops by differentiating and fragmenting more and more its own "functions". We should only wait and see. Or should we anticipate future developments? Or on the contrary are we called to contrast them? But why, and how, if they will be given by the intrinsic movements of society? Be this the case, however, the functionalist will meet the expectations raised by the evolutionist which believes in a historical telos expressed in social events.

Another objection is the following: economic inequality, injustice in short, cannot be considered a perverse effect of formal legal equalization, for the very simple reason that the former is not immediately implied or necessarily brought about by the latter. The real tension is not so much between justice in the material sense (as just distribution of *goods*) and membership (better legal citizenship), but between justice in the *formal sense* (as just redistribution of *rights*) and citizenship. Citizenship hardly tolerates formal inequalities among the people who are entitled to it since being citizen involves being legally equal to the other member), but it does not require to expand social justice beyond the limited and well protected precincts of the city, the commonwealth. Citizenship can thus easily go along with even extreme violations of the principle of formal legal equalization, as it is proved by the fact that equality before the law has been reserved in many constitutions only to citizens (see for instance the case of article 14 of the Spanish Constitution of 1978 or of article 2 of the French Constitution of 1958). Conversely justice as equality in rights can hardly accept to exclude aliens from the same rights as those enjoyed by citizens. But both these tensions take place at the same societal level or within a same social function -- if you like, that of *law* -- and not between a deeper and more fundamental sphere of society and some superstructure or superficial sphere. Another questionable point of the sociological reconstruction is that the three issues at stake with citizenship allow for competing theories and are in fact interpreted in competing ways: liberalism focusing on procedures, communitarianism centering around identity or membership, and socialism aiming at justice. Then to assess a perverse effect one should take one particular competing way of looking at either justice, community, or

participation. Moreover, functional differentiation can mean normative differentiation, that is justification of social difference, hence of *inequality*.

There is a methodological point which is not faced by the sociologist: is it not necessary to speak of “perverse” effects of citizenship to use or presuppose an ideal notion of citizenship and therefore some normative standpoint? If functional differentiation is only a “brute fact” without intrinsic value or without consequences which claim for an evaluation on one part, why should we follow and adhere to it? Or, conversely, why should we oppose to it? “Brute facts” are not to be approved or disapproved, if what we assume before them is a mere descriptive view.

How can a normative question -- such as the assessment of citizenship in terms of its good or bad consequences -- be solved on the basis of an event incapable of producing, showing, or claiming for, an evaluative standard? If, on the other hand, functional differentiation is not just a “brute fact”, but either a fact with intrinsic value, or a fact which is used as a normative criterion in a given normative context, does it not mean to take that philosophical stance whose reject however was one of the reason for justifying that sociological view? If values openly are declared such, we can enter in an argumentative normative practice which is philosophy’s main business. These are all objections and questions which the sociologist, i.e. “our” sociologist, adopting an evolutionary or a functionalist doctrine of society, can hardly cope with.

Paradoxically enough the sociologist does not see that, among the many tensions to which citizenship is submitted, universalism vs. particularism, equality vs. elitism, formal vs. material justice, there is another one which would confirm the relevance of a sociological point of view. This is the tension between two contrasting understandings of citizenship’s role with respect to state action. This tension somehow corresponds to the conflict, seen by the sociologist, between justice on the one side and self-determination on the other. There is, first, a *statist* understanding of citizenship which justifies the state’s will of intervention and its need of obedience. Citizen here is the benefited by state action and a law-abiding and loyal subject who promptly complies with the legal and political obligation imposed on her. She should punctually obey and will punctually receive protection and support. Citizenship is not “free”; it has a price. Civil disobedience is not contemplated as a civic right; the citizen will be entitled to claim to the state or to ask from it all those benefits which can render her life more secure in economic and social terms. This model can be more or less demanding in terms of obedience depending on whether the price of citizenship is seen in terms of active participation to the state enterprise, to its public life, or rather in terms of a passive loyalty.

However, there is a second societal understanding according to which citizenship's main purpose is to guarantee the individual not so much benefits or protection on the part of the state or security in the private sphere as rather the promotion of a rich autonomous participation to social life. The societal citizen may prima facie look like a bourgeois or a *Spießbürger*, concerned more with her own business or with her privacy than with political deliberation and social relations. But this prima facie judgment is not correct. The bourgeois mentality, shrinking away from positive freedom and from the public sphere can hardly be the picture of a person such as the societal citizen who is active in several social groups and rooting her identity not only into the family or into her economic or professional role. The societal citizen is rather the active member of a union or of some association concerned with civil rights or environmental issues or in general with political or social questions. A societal citizen is a person who prefers to develop her participation to political life from below (from "society") rather than from above (from State agencies).

These two different understandings of citizenship, the statist and the societal, are indeed a recurrent reason of tension and readjustment which can only be solved and carried on through a reconsideration of the modern and constitutional state. Now, the sociological understanding of citizenship reconstructing this through the notion of social rights and conceiving these rights mainly as the actual enjoyment of benefits brought by state intervention and protection falls entirely within the scope of the *statist* model of society. For "our" sociologist justice is only a question of redistribution of goods and resources that is -- to use Hannah Arendt's tripartition between "labour", "work" and "action"⁶ -- a question of "labour", of "appropriation", not of "property", of satisfying biological need, not of doing "deeds". Social rights thus, even if they refer to a state positive action, are equivalent to negative rights (rights of the bourgeois). In fact, what they institutionalize as a right is protection for "labour" processes, a fully unpolitical sphere, where the individual is but a job-holder, thus defined through her need of finding the resources necessary for keeping her vital functions alive. Although citizenship "defines people's standing independent of the relative value attached to their contribution to the economic process",⁷ a view which makes of social rights the fundamental content of citizenship runs the risk of transforming it indeed in an "economic" concept.

⁶ See H. ARENDT, *On Human Condition*, University of Chicago Press, Chicago, 1957.

⁷ R. DAHRENDORF, "The Changing Quality of Citizenship" in B. VAN STEENBERGEN (ed.) *The Condition of Citizenship*, Sage, London, 1994, p. 13.

Between the "bourgeois" and the "client" (the one benefited through statist social rights) the difference is not in the concept of society nor in that of state which they presuppose, but only in the different degree of their expectations. Their expectations are the same, that is, that their labour be protected by a superior agency or by a sovereign power. It is the quality of the expectation which differs. In one case, that of the bourgeois, this is still the owner of the goods she needs to be kept alive in her labouring: she asks only not to be hindered in her labour functions. In the case of the client this is not owner of the means of her own reproduction as a labouring subject. She relies on the state in various more or less intense degrees. Both, however, the bourgeois and the client, are concerned only with the reproduction of their life processes. Questions of justice and of normative rights here assume a clear instrumental character and a distinct economic undertone.

The sociological view I have presented above does not perceive the possible substantial identity between the two figures of the bourgeois, the holder of a mere civil rights, and the client, the holder of mere social rights. The sociologist is confident just of the opposite: a confidence -- I suspect -- which will not be of help to the future evolution of modern citizenship.

III.

Let us see, now, how what I have said and discussed so far applies to European citizenship. This as a legal notion and institution -- as is well known -- has been introduced by the Treaty on the European Union (signed in Maastricht in June 1992) in its article B and in articles 8 - 8e. Here, as a matter of fact, no mention is made of any social right. Whereby the worst suspicions raised by our sociologists seem to be confirmed.

European citizenship seems not to be at all concerned with the issue of justice as redistribution of resources. Its point is rather community of identity, in so far as it aims to define and draw the boundaries of an emerging political community. The issue of procedural arrangements, that is, of participation to political deliberation does not look so central in this new notion, given the limited range of powers and competences enjoyed by European parliament whose active and passive electorate is constituted by article 8b(1). What matters is rather a symbolic status designed in order to (moderately) mobilize citizens of member states for the legitimacy of the Union, to give them the sense of belonging to a common legal and political order, to build (though timidly) a sphere of common concern.

For our sociologist, however, the main, the crucial deficiency is the absence of social rights. It is as if we would be brought back to the first stage of Marshall's evolutionary cycle of rights: to a situation in which only civil rights are guaranteed. But civil rights, without the support of political and especially of social rights are -- this is the argument which we already know -- either futile or perverse. They are futile, because they offer only a formal, largely ineffective protection. They are perverse since they increase, instead of diminishing social inequalities. The fact that individuals are formally equals in a situation ruled by permanent still strong inequalities makes these inequalities even more disruptive, since it equalizes (in terms of legal protection) subjects who are and remain remarkably unequal in terms of material resources. It therefore makes the weak and the strong, the rich and the poor, equally protected, but this, being the material differences between them not abolished, makes the rich even richer and the poor poorer. Without social rights directed to reassess, correct, or cancel social inequalities, citizenship is just a word or a cunning means to defend and perpetuate injustice.

In particular, civil rights at a supranational level, in a European dimension, can be instrumentalized to favour globalization processes, rendering the social protection offered by nation states more and more ineffective. Since there is not a European Nation State, which could be the addressee of social rights, claims or demand for state intervention, civil rights as those protected by

European Union institutions through article 6 (the anti-discriminatory clause) and articles 8 - 8e of the Treaty, i.e. above all freedom of movement, expose workers and the weaker social classes to capitalist strategies aiming at circumventing the guarantees set by national welfare states. If, for instance, a Portuguese worker being employed by a Spanish firm can freely move to Germany to work there without being protected through strongly social rights (which remain a privilege of nationals, of Germans in this case, or of other permanent residents or of workers hired by national employers), she can be hired at a lower price than nationals and permanent residents and might in the end push nationals to accept poorer salaries to be able to compete with aliens in the labour market. Or if an Italian firm can freely settle itself in another member State where workers' salaries and employers obligations are lower, its own Italian workers may be induced not to make use of their rights and even to give up some(all?) of them lest their employers will dismantle their production in Italy and migrate into a different Member State. Civil rights (here freedom of movement) may thus be used as a weapon against social rights⁸. Weak supranational rights of (libertarian) European Union membership would weaken strong national right of (communitarian) industrial citizenship.

The preceding argument can be restated as follows. Rights, and particularly social rights which heavily impinge upon economic interests, to be effective need an agency capable to impose the obligations arising from the rights. Hence the latter immediately rely on coercive measures. In modern societies these measures can only be the business of a centralized and rationalized structure of sovereign decision endowed with the monopoly of violence: this is the State. In conclusion rights, if they have to be more than floating abstractions or more than empty promises and unfulfilled expectations, need a State,⁹ since "the nation-state has remained the basic political organization which is able to dispense security, freedom, and to a certain degree welfare"¹⁰. Moreover redistribution rights such as social rights can only

⁸ "Extensive social welfare rights, which are based on need as a distributive mechanism rather than work, seem to contradict one of the fundamental freedoms of Community law -- the free movement of the factors of production"(S. O'LEARY, "The Social Dimension of Community Citizenship" in A. ROSAS and E. ANTOLA (eds) *A Citizen's Europe. In Search of a New Order*, Sage, London, 1995, p. 180).

⁹ This "State centered" argument amounts more or less to that other more "nation oriented" according to which social rights can be granted and welfare policies implemented only within a homogeneous community, that is, a national or subnational integrated political area. Cf. G. MAJONE, *The European Community Between Social Policy and Social Regulation*, European University Institute, Florence, WP SPS, 1993, p. 31.

¹⁰ U. K. PREUSS, "Problems of a Concept of European Citizenship", *European Law Journal*, 1995, p. 279.

be justified by a democratic general will.¹¹ This however is only possible within a State dimension. Supranational organizations have not proved to be able to fill up their democratic gaps due to the fracture between internal and external self-determination, between a dimension where the subjects of the will-formation process still remain individuals or social groups and a dimension where the only actors are executive agencies, officials, governments. We are told that their scope of action is too wide to allow them a successful implementation of rights. Thus not only cannot European citizenship, but also ought not to, be successful, since "there are good reasons to argue that it should not be successful [...] because protection of fundamental rights on a national scale may indeed be more effective: not because of the "nationality" factor [...], but mainly because of the "scale" factor".¹²

Once civil rights are decoupled from membership to one national State and are connected to some form of "universal" citizenship, we seem to be confronted with a kind of market-based competition among legal orders, where the most efficient will be the less effective in the protection of social rights. Capitals, now free to move from one country to another, for their investment will choose that area, that State, where their costs will be lowest and their benefits higher, where their power will be less limited by workers' and consumers' rights and their management less constrained by state's and other independent agencies' monitoring activities. De-regulation, that is, reduction of social rights and dismantlement of public controls, a farewell to Welfare policies, seems to be a likely answer to this highly competitive scheme. Supranational citizenship separated from State power and State capacities will militate against those obligations which make citizenship relevant and effective.¹³

All those worries are fully justified. One might recall the ambiguity of social rights maintained in the Treaty on European Union and in the amended

¹¹ Cf. C. CLOSA, *A New Social Contract? EU Citizenship and the Institutional Basis of a New Social Contract: Some Sceptical Remarks*, Working paper RSC No. 96/48, European University Institute, Florence 1996, pp. 14-15.

¹² R. DE LANGE, "Paradoxes of European Citizenship", in P. FITZPATRICK, *Nationalism, Racism and the Rule of Law*, Dartmouth, Aldershot, 1995, p. 112.

¹³ Cf. W. STREECK, *Mobile Capital, Mobile Labour: Citizenship under Regime Competition*, Paper presented to the Conference on "Social and Political Citizenship in a World of Migration" (E. U. I., Florence, 22-24 February 1996), and W. STREECK, "Neo-Voluntarism: A New European Social Policy Regime", *European Law Journal*, 1995. Cf. also D. ZOLO, "Diritti di cittadinanza e processi di globalizzazione", in A. ANNINO and M. AYMARD, *Il mercato possibile. Sindacati, globalizzazione, Mercosur, e CEE.*, Rubbettino, Messina 1995, pp. 337 ss.

EC Treaty. Article F (2) of the Maastricht Treaty referred as general principles of Community law to the rights protected through the European Convention on Human Rights and to the fundamental rights "as they result from the constitutional traditions common to the Member States"; but it was controversial whether social rights would be one of such "results". Article 2(6) of the annexed Protocol on Social Policy did not include among the matters covered by community law rights as those related to workers' associations and strike, though we there find a kind of recognition of "information and consultation of workers". And article 118b of the Treaty spoke only of a "dialogue between management and labour at European level, which could, if the two sides consider it desirable, lead to relations based on agreement". The Treaty of Amsterdam has in the meantime changed that situation in so far as articles 111 and 118 have been deeply modified.

Unconvincing nevertheless is the attempt to make social rights equivalent with citizenship. This -- we have seen -- in the democratic tradition is defined as the power of self-determination within a political community. A citizen should be able to send inputs into the process of collective will formation. In order to do that, she should be granted some fundamental political and civil rights. Without these rights, without freedom of movement and the right to vote and to stand as a candidate in political election, there is of course no citizenship whatever.

Social rights, e. g., a right to health care or a right to some kind of social security, or a right to public education, obey-- so to say -- a different code. Sure, they are supportive of citizenship rights, and more generally of civil rights: for instance -- as it has been rightly remarked -- "workers' entitlement to states' legislative measures may be seen as a way to enforce fundamental rights at a decentralized level".¹⁴ But social rights can as well be disruptive of the concept of citizenship by transferring the latter from the sphere of "action", the sphere of public deliberation, into that of "labour", of economic production and distribution, constrained as this is by a cogent, instrumental, rationality. Much indeed depends on their not being too rightly connected with political rights on the one side, on their content and on the conceptual and institutional shape they will assume on the other. Thus, for instance, what has been called "industrial citizenship", that is, workers' rights to collective bargaining, to information and consultation, and to co-decision can be easily seen as a specific concrete derivation of citizenship rights in the proper sense (that is, political rights), since they enlarge the scope of political autonomy and make working places,

¹⁴S. SCIARRA, *How 'Global' is Labour Law? The Perspective of Social Rights in the European Union*, EUJ Working Papers in Law, Florence 1996, p. 32.

factories and firms no longer opaque to members' participation and self-determination (the core ideal of citizenship).

I would hesitate to give the "title" of social rights to whatever social benefits a state may decide to confer to nationals or to whatever social status it guarantees to them. Social rights are and remain *rights*, that is, legal claims which can be raised before a judicial court and therefore *powers* by which individual pursue their own concept of good. A social benefit without being upheld by this power of autonomy will never be a social right since it is not as yet a *right*. However, to implement a social value, full occupation for instance, there is no logical need of a correspondent right. Values can be protected and realized through laws and obligations, and laws and obligations do not refer logically to rights.¹⁵ Otherwise, the notion of right which was elaborated as alternative to that of obligation would be constructed as additional power of the powerful, of the agency which lays down and imposes the obligation, and thus, particularly of the state, which is that agency "par excellence". And more rights than any other would then have the tyrant, that is, that human being who more obligations and burdens than any other lays down on his fellow-men and that stronger interest (and a more compelling desire) has to have others complying with his commands.

As for the connections of social rights with political ones, if social rights were a matter of citizenship in the proper sense, they would be reserved exclusively to "proper" citizens, to nationals.¹⁶ If conceding rights would mean the same as granting citizenship, states would be very careful in enlarging the area of people entitled to them. This seems to have been clearly perceived during the recent work preparing the revision of the Treaty on the European Union. As a matter of fact, in the Presidency Introductory note on Citizenship at the Intergovernmental Conference (26 July 1996) we read that in addition to socioeconomic rights such as rights to a healthy environment, to equal

¹⁵ It is interesting to observe that, similarly to what has happened in the (positivist or not) legal theory, in sociology we are sometimes confronted with the temptation to reformulate citizenship from a set of rights into a particular context of laws and institutions. Cf. M.R. SOMERS, "Citizenship and the Place of the Public Sphere: Law, Community, and Political Culture in the Transition to Democracy", *American Sociological Review*, Vol. 58, 1993, p. 611: "The rights-based definition of citizenship can also be revised -- citizenship cannot be explained by looking for rights granted "ready-made" by States. Instead, the focus must be on the presence of national universal laws and legal institutions, which under certain condition of place, political culture, and participation could be transformed into rights".

¹⁶ Cf. L. FERRAJOLI, "Dai diritti del cittadino ai diritti della persona", in D. ZOLO, *La cittadinanza. Appartenenza, identità, diritti*, op. cit., pp. 263 ff.

opportunities, to health protection, "it would be necessary to avoid overlapping with universally applicable fundamental rights", since some or all of the rights listed would seem to be universally applicable and therefore not appropriate for consideration in the context of Union citizenship (although some of them could be considered in the context of fundamental rights¹⁷. In the Presidency note on Fundamental Rights (24 July) we read also that although the Conference had considered the possibility of moving the general rule on nondiscrimination on ground of nationality (art. 6 T. E. U.) into the Part of the Treaty dealing with citizenship, "it has been pointed out that such a transfer could result in the benefit of that provision being lost by some of its present beneficiaries, namely legal persons who are not citizens of the Union". In short, the point is made --as it is said in the Presidency note on Citizenship of July 24 -- that "fundamental human rights being of universal application should apply to all persons within the territory of the Union and should not be linked to citizenship of the Union".

The battle for social rights deserves to be fought, especially within the European Union where supranational rights challenge national Welfare protective measures. It is, however, a different battle as that for citizenship, though the war is the same: striving to make the city, the (European) *res publica*, not only endowed with stronger walls but also and above all imbued by principles of justice.

¹⁷For a separation of the two issues, fundamental rights and citizenship, also pleads J. H. WEILER, "European Citizenship and Human Rights", in J. A. WINTER et al. (eds) *Reforming the Treaty on European Union -- The Legal Debate*, Kluwer, The Hague, 1996, pp. 57 ff.

IV.

There is however a possible further way of conceptualizing a connection between citizenship and the notion of a social right. This is that of conceiving of the former, of citizenship, as a social right itself, that is of a right whose fundamental justification is derived from one's being a member of a "society". Social rights in fact can be distinguished from civil and political ones, not only because of their structure, being the first eminently claims and the second freedoms and powers, but also with respect to the kind of social context where they are situated and called to operate. Civil rights are *par excellence* rights emerging within a legal sphere, a domain of intersubjective relationships often guaranteed by private law regulations. Political rights are to be inserted in the political sphere as functional to a working political order, and have thus a strong character of public law institutions. Social rights finally can be seen as entitlements rooted in those spheres which are not still high formalized both through private and public law rules. They are supposed to work in a domain where the law plays a less fundamental role than, for instance, economic or social imperatives. Social rights, in this sense, are *societal* rights, independently from their requiring an active state intervention and explicit public policies.

Now -- here I refer also to the debate taking place within the European Forum on Citizenship at the E.U.I. in 1995-1996 -- in the current discussion on citizenship we are confronted with five main ideal types. There is first a "contractual" model, according to which a citizen is whoever has decided by contract to take part in that collective enterprise called political community under certain conditions and following given reflective and agreed-upon principles. Opposed to this we find an "organic" model, where citizens to be such are rooted in a pre-political community which is immune to reflective practices and to individual autonomy, and which consequently the body politic has only to reflect or -- so to say -- to represent, to make visible. In the first case all the burden of political action rests upon individual autonomy. In the second it is rather a matter of self-realization of a particular and given form of life supposedly constitutive even of individual selves. In the one case, the contractual or contractarian model, individual autonomy is overstrained and is obliged to reach and maintain an organizational mastering of social institutions in order to supplement its own principles with some sort of virtues or to indulge in the idea of a self-regulating market sphere which is then called on to take over several political functions. In the other the required strong collective ethos, founded on common myths and prejudices (Gadamer's *Vorurteile*) and past histories, in front of the impossibility of mobilizing individual self reflection, to be operative is likely to lead to an elitarian form of government, in which individuals who are supposed to be essentially an embodiment of the collective entity are declared fully independent of the usual communitarian

context of social action: they will be conceptualized and, what is worse, celebrated as "heroes". The first perspective thus moves from a radicalization of the conceptual scheme of the self to arrive at a moralist redefinition of the liberal person; the other view moves from a collective self and ends up in the reification of a ...unique, not universalized Ego.

Hence, in the contractual model, citizens are required to be fully reflective, but at the same time virtuous, so that citizenship, once based on the adhesion to certain principles, will be denied to whoever dissents from these.

Whereas in the organic model citizens are already such by destiny, by birth, but are nonetheless called on to mobilize around a fact which, not being subject to a justificatory discourse, seems to be trivial and not worth undertaking any purposive action. Of course, the first will be less exclusionary than the second; but both in the end remain badly in need of a principle which can make political action possible. The solution they give to this problem, however, is quite different: "virtue" for liberals; "historical-cosmic personalities", "prophets", for communitarians.

As a reaction against both these models, two further concepts are advanced. One denies the very idea of citizenship and makes it coextensive with humanity. Here the fact of being human will suffice to be a citizen. Human rights, that is, rights of human beings as such, already offer -- they say -- the core of this universal citizenship which makes traditional citizenship, a sum of rights, connected to a territorial political entity, fully obsolete. As a matter of fact -- they argue -- the protection offered by human rights is more pervasive and stronger than the one supposedly given through citizens' rights. Moreover -- they continue -- in the end political rights could not be denied without infringing the fundamental human right of equal dignity and equal worth for all. A trend in this direction, however, can be assessed in the developments and in the increasing impact of International Covenants and tribunals on human rights. Some empirical studies tend to see the lack of citizenship of immigrant workers in Western Europe as much less dramatic than is usually thought, since though they are not granted full political rights they nonetheless are protected through civil rights stemming both from a universalist legal colour embedded in Western constitutionalism and from an emerging supranational level of legal protection (see, for instance the outcomes brought about by the European Convention on Human Rights).¹⁸ This is the outcome of an ongoing process which has however already made citizenship porous: "The rights of legal aliens converged with those of citizens until there was little to separate them but

¹⁸ Cf. Y. SOYSAL, *Limits of Citizenship: Migrants, and Postnational Membership in Europe*, University of Chicago Press, Chicago, 1994, especially pp. 136 ff.

franchise and immigration sponsorship privileges".¹⁹ Why should we bother about citizenship, if most rights are given to us through the mere fact of being a person? From the perspective of municipal law it would thus seem that citizenship lose any real significance.²⁰ Why then citizenship?

4) On the other hand, citizenship is denied in the name of the crisis of the modern State, that is, of the increasing social complexity and of the failure of the myth of a unitary social actor and of the view of a unique self-centered and well-ordered and self-limited subject. As a matter of fact, citizenship is a unitary legal status, meaning and ascribing the membership to one political community conceived as a whole. Now, if this community starts, as they say is happening nowadays, to crumble and fall to pieces, because of several implosive forces, it does not make sense any longer to speak of *one* citizenship, and probably of citizenship *at all*. We should rather "deconstruct" this concept and make of it a patchwork of many different, even opposed legal and social positions. One can, for instance, be a "citizen" of a town, a region, or a school without having to find a common denominator for all these statuses. To this state of affairs, given by the increasing complexity of contemporary societies, one should add the crisis of the concept of a subject always identical to herself. In conclusion, to Descartes this kind of deconstructionist view opposes Pirandello: persons are seen rather as characters in search of a playwright and as citizens in their capacity of human beings looking around for local passport and jumping from one regional citizenship to another without ever reaching or needing the level of generality. The citizen, like the self, is and remains fragmented and rightly so.²¹

With all their radicality, these two last contrasting concepts of citizenship, let us call the former "cosmopolitan", and the latter the "deconstructionist", though stimulating, fail in assessing the real purport of

¹⁹ P. H. SCHUCK, *The Re-evaluation of American Citizenship*, EUI Working Paper RSC No. 96/26, European University Institute, Florence 1996, p. 17. This process is sometimes seen as a negative move towards a loss of a value, a devaluation, of the institution of citizenship with the consequence that the members of the political community have difficulty in understanding why they should develop civic virtues. Cf. P. H. SCHUCK, "Membership in the Liberal Polity: The Devaluation of American Citizenship", in R. BRUBAKER (ed.) *Immigration and the Politics of Citizenship in Europe and North America*, University Press of America, New York, 1989, pp. 51 ff..

²⁰ In this view citizenship becomes merely an international law status: cf. ST. E. LEGOMSKY, "Why Citizenship?", *Vancouver Journal of International Law*, 1994, pp. 279 ff.

²¹ For such kind of view, cf. D. A. GALLOWAY, "Citizenship: A Jurisprudential Paradox", in M. LA TORRE (ed.) *European Citizenship: An Institutional Challenge*, Kluwer, Dordrecht (forthcoming)

citizenship. This has to do mainly with political action, and this needs a sphere of common, even general if you like, "concern". Political action is a communicative enterprise, which presupposes mutual expectations and some degree of reciprocity. Individuals should somehow come to a performative situation in which to aim at a common understanding. To do that they will need a *context* and a *procedure*²², that is, they will have to refer to situations and rules which they share and agree upon, and to institutions with some degree of effectiveness. Unfortunately, until now at least, "humanity" as such fails to offer such a context and to provide such a procedure. I can have moral obligations towards a starving Chinese, but in order to have a meaningful political obligation to some kind of wealth redistribution before her, I need an institutional structure which could carry on the redistribution, and a form within which it is possible for the Chinese to assert her claim and for me to discuss with her and reach a deliberation. I would need, in short, a sphere which allows to find us in a performative attitude. That is, we would need a context of communication which is the very matter and the very presupposition of any real political action. So that we could risk to say that, in order to redistribute wealth, we should be backed by a "constitution". To this we should add that in the case of the cosmopolitan, there is moreover a lack of understanding of the motivating character of citizenship. "Voulons-nous que les peuples soient vertueux? commençons donc par leur faire aimer la patrie: mais comment l'aimeront-ils, si la patrie n'est rien de plus pour eux que pour des étrangers, et qu'elle ne leur accorde que ce qu'elle ne peut refuser à personne?"²³

As far as the deconstructionist is concerned, deconstruction, if taken seriously, would deconstruct whatever the outcome of the deconstruction. That is, here the same particular citizenship which has been saved from the decay and corruption of general citizenship will be exposed to further deconstructionist criticism. In the end, even being a "citizen" of a town, a school a cultural minority or a gender is a general position which implies the assumption or adoption of some unitary and more or less stable identity. Moreover, if the very idea of a subject is rejected, to "whom" could "one" ascribe even minimal local citizenship, and "who" would still be able to do this operation of ascription?

Nevertheless, cosmopolitan universalism and deconstructionist critique open new views on citizenship which contain promising elements. The former

²²Cf. J. L. AUSTIN, *How to Do Things with Words*, 2nd ed., Oxford University Press, Oxford, 1983.

²³ J. J. ROUSSEAU, *Discours sur l'économie politique*, in ID., *Oeuvres complètes*, Gallimard, Paris, 1964, p. 255.

tells us not to take too seriously and of being aware of its irremediably exclusionary character (which has therefore to be somehow compensated). The deconstructionist is right in pointing out the dangers of uniformity and colonization of the life world (to use an expression by Habermas) intrinsic to general and abstract legal concepts and in the machinery of law itself, moved as it is by a kind of normalizatory obsession (the absurdity of some E.C. Directives can only confirm this finding).

Now, once excluded both the contractual and the essentialist concept of citizenship, and the universalist overcoming of the concept and its deconstruction, what is then left? Well, there might be -- I think -- a fifth model, an interactionist one.

5) In this last model society is considered neither as a fully reflective enterprise nor as a fully unreflective one. Solidarity in this perspective is crystallized not only around explicit principles but also around facts, but facts which can at any moment become problematicized and be invested by discourses and critiques. Such facts in this view are not however "cultures", nor ethnical groups or compact customs, but rather social interactions. It is living side by side whereby a co-operation originates to make life possible and furthermore to give rise to a feeling or an idea of common concern and even of reciprocal belonging. Residing, for instance, in the same street for a sufficiently long period of time can suffice to produce a link of co-operation and even elements of a common identity among persons of different origin and culture. In this case political community rises both slowly by a process so-to-say of coming together and suddenly through a piece of legislation, and not fatally by destiny or by historical teleological laws. People come together and thereby start feeling the need for setting the rules of their being together in a common social space.

Before political community there is something more basic, civil society. But civil society is not pre-political, in the sense that it is not open to political assessment and deliberation. Just the opposite: civil society to exist need to be active, to institutionalize to a certain extent in reflective forms through the legitimacy of a political constitution.

Now, in this fifth model, citizenship is anchored to the social fact of living together exemplified by people residing in a certain place. Citizenship thus gets social roots, it emerges from shared habits, from "communality", and takes the shape of a social right. Here therefore we find the searched for link between social rights and citizenship. Sure, in this context "social right" means something different from a claim on State agencies or some State intervention

concerning public welfare. Nevertheless the one we are speaking about is a genuine social right, in the sense that it is a product of social formations, of social grouping of individuals and of the consideration that individuals who share common interests should also share a common public sphere. Also in case a social right is thought of as a provision safeguarding fundamental vital conditions of human beings, can the right to citizenship be considered as a social right, since it is instrumental to the full enjoyment of other rights which stem from one's being a factual member of a social group. And if the social right is otherwise seen as an entitlement to obtain services from public authorities in order to improve material and spiritual conditions of life, there cannot be any doubt about the relevance of citizenship as a precondition for having a more secure and intensive protection by state authorities and for the opening of more and richer opportunities of social and economic improvement. It is not so much the *intrinsic* connection between citizenship and social rights that should worry us, though social rights can be genuine rights and enrich the fundamental rights enjoyed by human beings and support a successful exercise of civil and political rights. Furthermore they certainly are a matter of consideration for the European political agenda, especially after the Treaty of Amsterdam. It is rather the *quality* of citizenship as a social right -- this was the point of my argument -- which deserves a more careful attention. Put in a different way, our concern should not be so much about social rights as a content of citizenship as rather citizenship as a content of social rights.

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