

Cuius Europa, Eius Civitas: Towards a Uniform European Law on Citizenship

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1. Why Is There a Single European Currency but not a Sole European Law on Citizenship?

This is a question I have frequently found myself asking during the current European Year of Citizens, when contemplating one of the many hurdles that the European Union has yet to overcome by reasoning not only according to the rules of one's head, the law and politics but, may I add, according to the rules of one's heart.

Immigration and citizenship are issues that challenge the political intelligence and the capacity for good governance of European Union institutions, as well as, of course, those of the governments of the member states. On this subject, which belongs ontically to the field of rights which inhere to the «equal dignity of all members of the human family», it is necessary to achieve a quantum leap in the way both EU citizenship and the institution of citizenship or nationality in general are conceived, so that the *ius humanae dignitatis* (right of human dignity) prevails over other parameters, especially over the discriminatory *ius sanguinis* (right of blood).

Current international human rights law, which includes values and principles of universal ethics to which European Union law conforms, requires that protection under the human rights paradigm must be valid not only for refugees, those requesting political asylum and migrant workers, particularly in exceptional and dramatic circumstances, but also for whosoever finds themselves residing in one geographical area or another of the Union. The considerations which follow move from the principle that citizenship, in addition to being a specific fundamental right, acknowledged as such by international law (Universal Declaration of Human Rights, Article 15: «1. Everyone has the right to a nationality. 2. No-one shall be arbitrarily deprived of

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his nationality nor denied the right to change his nationality»), is a civil and political status and the official certification of the whole series of innate rights of every human being; it is the officially recorded confirmation that the person as such is «subsistent human right» (Antonio Rosmini). This striking definition is perfectly in line with Article 1 of the Universal Declaration of Human Rights: «All human beings are *born* free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood» (my Italics).

It should be stressed that when a legal system recognises human rights, it enters the advanced stage of civilisation of law that we can define of fullness of law (*plenitudo iuris*). From the United Nations Charter (1945) and the Universal Declaration (1948) onwards, international law too has entered into this stage of human-centric maturity, where the civilisation of law is stimulated to meet the civilisation of brotherhood.

The fullness of law requires the fullness of citizenship (*plenitudo civitatis*), both legally and logically. By this I mean that the universality of the rights of the person postulates the universality of citizenship of those who, by *ius positum*, are recognised as original holders of them.

With the advent of the «new» international law – the Law of Human Dignity –, the institution of citizenship is called upon to diversify and to enrich itself, to pluralise, so to speak. Indeed, compared to historic national citizenships, «universal» citizenship acquires a primary visibility which corresponds to the legal statute of an internationally recognised human person and which is open to the grafting on of national and sub-national citizenships (e.g. regional or municipal). But in order for the graft to be successful, traditional citizenships, conceived with a view to exclusion (*ad alios excludendos*: foreigners, non-EU citizens...), must change so that they share the egalitarian and inclusive *ratio* of universal citizenship.

The current human condition, marked by interdependency at the planetary level and by the relative processes of globalisation and multiculturalisation, but also by the internationalisation of human rights and the spread of the relative culture, urge rapid progress along the road of pluralising citizenship as an answer to the twofold requirement for the respect of human dignity and for social cohesion within states.

2. Pluralising Citizenship

This operation must concern primarily the European Union, as the pioneer of pluralisation of citizenship. As the original experiment in multilevel and supranational *governance*, the EU is not only a *legal space* – with due consideration of the breadth of its rules, which in many vitally important areas bring direct obligations for its citizens –, but it is also a *territory* which can be used to exercise fundamental rights and freedoms, including the free circulation of people, as well as of goods, services and capital.

It should be noted that this territorial space is marked by a double borderline, of the Customs Union and the Schengen Rules, and that refugees and other migrants, whether they land in Lampedusa or in Greece or Spain, enter national territories from a formal and physical standpoint inasmuch as these are units of the Union territory.

Current «EU citizenship», introduced by the Maastricht Treaty which came into effect on 1 January 1993, is derived citizenship, in the sense that an essential pre-requisite is to hold national citizenship of one of the member states, hence a citizenship the roots of which lie not in the subject as a «person» but in the subject who is a «citizen» of any one of the twenty-eight member states. And so even in the broadened space of the EU, which is innovative in some ways, the primary citizenship remains the national one, usually conceived mainly by reference to *ius sanguinis*: as a consequence, EU citizenship, too, remains encapsulated within the common, traditional rationale of *ad alios excludendos*.

Note that in the EU Charter of Fundamental Rights itself, where the natural subject of reference cannot be anything but the human person in, as it were, the pure state of his onticity, without any kind of discrimination or distinction, blatant contradictions can be observed: the literal reference is sometimes to the «person» subject (see, for example, Article 2: «*Everyone* has the right to life», and Article 15.1: «*Everyone* has the right to engage in work and to pursue a freely chosen or accepted occupation»; elsewhere, when it is a question of citizenship in the registry-administrative sense, it refers to the «citizen» subject from one of the member states, see Article 15.2: «*Every citizen* of the Union has the freedom to seek employment, to work, to

exercise the right of establishment and to provide services in any Member State».

Faced with a situation which is unsustainable *de iure* and *de facto*, EU citizenship must be made to evolve rapidly in line with logical, legal and moral coherency, in other words, so that it respects the dignity of the person and his internationally recognised fundamental rights. It is a question of promoting EU citizenship from its subaltern role as a derived citizenship to that of primary citizenship: and as such, full and inclusive.

This operation, aiming to found EU citizenship directly on the *ius humanae dignitatis*, having as its administrative-type parameter of reference that of a «European» *ius soli*, clearly requires a reversal of the *ratio* which currently informs Union citizenship, and that the Union draw up uniform rules governing the issue.

In short, the new founding framework should produce the outcome that, being first and foremost a European citizen, one automatically becomes a citizen of the member state where one is resident. With the following clarification: citizenship of the Union, as a primary citizenship, in requiring that national and sub-national citizenships conform to the supranational parameters of the *ius humanae dignitatis* and of the European *ius soli*, would not eliminate the other citizenships, but rather, would emphasise their cultural value together with the principle of subsidiarity. The European Union, as the laboratory where a new harmonious plural citizenship is produced, would thus bring added value to the multiple identities of the person and would stimulate awareness of the advantages of reaching a further *transcendent civic identity*.

I am fully aware that this line of reasoning may appear to be a both pointless and gratuitous jumping of the gun, if one considers that no uniform electoral law has yet been agreed for the direct election of the European Parliament, while on the other hand, the single currency, deliberated on in 1999, has been circulating since 2002...

The thorny issues surrounding national(istic) rules governing immigration bear witness to the resistance that states, which hold the monopoly of the institute of citizenship, put up against the challenge of universal citizenship. Yet current historical circumstances are pressing for a start on innovation in this extremely sensitive area.

3. Immigrant Children, Pioneers of Plural Citizenship

In several EU countries, the status of children born of immigrant parents (who are not citizens of this or that EU member state), some of whom were born inside the EU but who in any case go to school and are developing their personality within the territory of the European Union, constitutes a sort of citizenship limbo.

The first step towards a Copernican revolution, or genetic mutation, of the institute of citizenship, requiring the rejection of old discriminatory parameters, should be taken – it is a duty and the right thing to do – especially when thinking of these children and respecting the best and higher interests of all children: it should be emphasised that precisely «*the best interests of the child*» is a principle enshrined in Article 3 of the international Convention on the Rights of the Child.

So the children of immigrants can be the trail-blazers and pioneers of primary EU citizenship, as well as promoters of the same statute of citizenship for their parents.

One could say, using evangelical language, that in virtue of this human promotion, which as previously mentioned, is fruit of the meeting between the civilisation of law and the civilisation of brotherhood (or of love, if you will), the most vulnerable and the least become the first on the European road of common good. «In the name of children – and in the name of the law», citizenship would start to be purified by the removal of the waste products of the *ius sanguinis* and a nationalistic *ius soli*, and there would be encouragement to put solidarity and equality into practice.

Contrarily to adults, children should not need to respect a minimum time (3 or 5 years, or more) of residence: citizens at once, *hic et nunc*.

This operation is of crucial political importance, because it necessitates the European Union providing itself with not only an excellent framework of norms specifically relating to citizenship for the children of immigrants, but also, as previously mentioned, a comprehensive general framework of rules on this subject, which would make the regime of citizenship uniform across all member states. Moving from this first great step, one could count on the *spill-over effect* that it would set in motion for successive broader and comprehensive developments in terms of political union, too: in short, *single currency, single citizenship*.

The states, currently floundering, to a greater or lesser degree, in a mire of legal provisions which, in addition to all being different from one another, are mostly discriminatory and offensive to human dignity, should be delighted at the European perspective outlined above: on one hand, they would be relieved of political-administrative duties which foment social conflict and threaten internal security; on the other, they would be contributing to speeding up the political unification of Europe to the benefit of social and territorial cohesion throughout the whole European space.

One may expect that the gratitude of immigrants would translate into behaviours showing sincere loyalty to and identification with the symbols and institutions of the Union, reinforcing its substantial legitimacy. The myth of the existence of a «European people» would cease to be a myth thanks to the formation of a nucleus of genuinely European people, made up precisely, *in primis*, of the children of immigrants, and which would act as a catalyst for an updated European identity, to the benefit of everyone: united in diversity!

The important lesson in humanity and solidarity which would follow, developing a healthy education based on the rights of the person, is patently obvious.

4. Conclusion: *Cuius Europa, Eius Civitas.*

The Role of Local Governments

The assumption on which the reflections in this essay are based is, as Jacques Maritain would say, a practical, self-evident truth: the human being who, for one reason or another, moves from one country to another and intends to live in one particular country, is a bearer of all the innate rights that current international law recognises, equally, to all members of the human family. States differ from one another as to attributes of position and legislation, but all human beings «are born free and equal in dignity and rights» and it is not states that can change their vital essence. This is the ontological truth upon which the «new» international law is constructed.

In this globalised and interconnected world, one can see, as if in a crystal ball, the inequalities and discriminations which produce generalised insecurity and precariousness.

At the start of the third millennium, it is no longer the time of *cuius State, eius civitas*. Paraphrasing, it is the time of *cuius Europa, eius civitas*.

Migrant flows need to be regulated, by assigning quotas, too, if necessary, at the international and global level, while always respecting the fundamental rights of the person and with this definitive specification: that for those who are fleeing war, violence and hunger there can be no quotas. All this costs money, of course, for the international community, but wars, extreme poverty and the lack of cooperation cost a great deal more.

One could seriously suggest that, as a follow-up of the proclaimed European Year of Citizens, it should be the Municipalities – territory, but not border – who promote the operation directed at a proper pluralisation of the institute of citizenship within the territorial space of the EU. Making a formal reference to the principle of the «best interests of the child» in accordance with the aforementioned Article 3 of the 1989 Convention and the principle of subsidiarity, they could endorse a formal instrument to give all children who are sons and daughters of immigrants, and together with them, all the other children in their respective territories, a certificate of *plural citizenship* (Universal, European, national and municipal), accompanied by the EU Charter of Fundamental Rights, the Universal Declaration of Human Rights, the national Constitution and the Municipal Statute.

I am thinking in particular of the Municipalities in those Regions of Lander which are members of the «European Groupings of Territorial Cooperation» (EGTC) established by the EU Regulation 1028 dating from 2006: for example, of «*Euregio without Borders*», made up of Veneto, Carinthia and Friuli Venezia Giulia, «*Hospital de la Cerdanya*», «*Novohrad Nògràd*», «*European Urban Knowledge Network*», «*Eurorégion Pyrénées Méditerranée*» and «*Pons Danubii*». As transnational territorial entities, made up principally of local government bodies from two or more different states, the EGTCs represent emblematic «European territorial nuclei» within the EU space, legitimated as such to contribute significantly and to give visibility to a specific «European» *ius soli*.

It should be observed that with the advent of this new territorial configuration, the political morphology of the EU territory has started to redefine itself according to the requirements of *good governance* stemming directly from the fundamental pole of the

dynamics of subsidiarity, precisely that of the local authority. And there is another significant consequence: the value of local autonomy at the European and international level, solemnly proclaimed by the specific Charter promoted by the Council of Europe in 1985 and also ratified by the EU member states, comes out stronger due to the fact that its supporters are transnational territorial aggregations. And since the EGCTs are by nature intercultural, and translate the aforementioned formula «united in diversity» into facts on the ground, local authorities which belong to them are formally legitimated, being plural citizenships themselves, to usher in the age of Sole European Citizenship.

Set out thus, the subject promises many macro political and economic consequences. Some fear that if it were to follow this path, the European Union would lend itself to mass invasion by migrants of various types, creating serious sustainability issues for the economy and domestic security. On the other hand, human rights, starting from the right to life and political asylum, are to be respected: it is a question of respecting the law, as well as ethics. How to work through it, within the cage of globalisation? Defending the *status quo*, from one situation to another, from one emergency to the next, is absolutely unsustainable. The answer must be found starting from the principle that the responsibility to protect and realise the human rights of all must be shared at the European and global level, first of all to ensure that everyone is better off in their own homeland, and that the choice to emigrate is a free choice, not one forced upon people by the suffering inflicted by dictatorships and by economic policies which deny life and equal opportunity. And so what is needed are timely and effective international social policies, but to define these it is necessary to make the multilateral institutions function properly. And since state governments, to a greater or lesser degree, are reluctant to commit themselves to this end, in particular to establishing an effective government of the world economy in line with the requirements of social justice and the principles of the United Nations Charter it will have to be the local authorities which mobilise directly within the international institutions. How? By practising *city diplomacy*, as theorised and supported by the authoritative NGO «United Cities and Local Governments» (UCLG), by penetrating and enlarging the «interstices» which do actually exist within the

sanctuaries of global governance: for example, the practice of consultative status and the «Habitat» strategy within the United Nations system, and of course the Committee of the Regions in that of the European Union.

Local Governments are fully entitled to claim and share the principle of the «*responsibility to protect*», launched by the United Nations at the start of the third Millennium, looking to states as the main subjects of reference. But people, families and groups have recourse to local government bodies, as the institutions closest to them, to ask for protection, security and social services. Human rights are indeed protected or violated in the places where people live their daily lives.

On this subject, a comment written by Eleanor Roosevelt concerning the Universal Declaration of Human Rights is still relevant today: «Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination».

Since the wars and the violence which come down on these small places are decided upon in extra-national and supra-national arenas, which are not under the control of the local authorities, it is in the decision-making processes which take place in these arenas that the local authorities must be able to participate in an appropriate manner.

An explicit legitimation for the *glocal* role of Local Governments comes from the United Nations Declaration on the «Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms», endorsed by the General Assembly of the United Nations in 1998 and known as the Magna Charta of Human Rights Defenders. Article 1 establishes that «Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms *at the national and international levels*» (my Italics). From this statement one may deduce that the territorial space for actions defending human rights has no borders and that the subjects who defend them are individuals,

groups and «organs of society». The latter certainly include local government bodies which, according for instance to the Italian Constitution, are part not of the State but of the Republic.