Susanna Cafaro

Supranationality in Practice: the European Citizenship

The European Union's founding Treaty (TEU) recalls and reaffirms the role of citizens in articles 9, 10 and 11 - provisions dedicated to its "democratic principles" - with the intent to establish a direct link between EU citizenship and democracy in the Union.

This need to look for (and find) legitimacy in citizenship - the dual legitimacy of the Union and of its member states – deserves to be analyzed as it is a peculiar expression of this supranational system. Although we find its most effective expression in the last edition of the EU Treaty, this quest for legitimacy is not new in the European integration process.

This is even more interesting as we consider that the lack of citizens' ownership is often considered a capital sin in the process of European integration, whose elitist nature is often blamed. We may find, instead, that citizens - as beneficiaries of rights as well as actors in democratic processes have always been important.

We can read in the article 2 of the Treaty establishing the European Union that:

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

Even if the significance of the word "democracy" remains unspecified, we could give a first and provisional definition referring to the values listed in art.2 itself, to the constitutional principles common to the member states and to the content of the European Charter of fundamental rights.

In terms of political participation, the European notion of democracy gained significance through the direct election of the European Parliament since 1979, then with the creation of a European citizenship by the Maastricht Treaty in 1992 and, eventually, thanks to the inclusion in the latest version of the Treaty of a title entitled to the Union's democratic principles: the

art. 9-11.

Even if the significance of the word "democracy" remains unspecified, we could give a first and provisional definition referring to the values listed in art.2 itself, to the constitutional principles common to the member states and to the content of the European Charter of fundamental rights.

In terms of political participation, the European notion of democracy gained significance through the direct election of the European Parliament since 1979. Then, with the creation of a European citizenship by the Maastricht Treaty in 1992 a nd, eventually, thanks to the inclusion in the latest version of the Treaty of a title entitled to the Union's democratic principles: the art. 9-11.

"*Article 9* In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

Article 10 (1) The functioning of the Union shall be founded on representative democracy.

(2) Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

(3) Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

(4) Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.

Article 11 (1) The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

(2) The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

(3) The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

(4) Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within

the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. (…)"

This trail was actually prepared by the ECJ case law. The starting point was the Van Gend en Loos case (1963). In it the European Courts defines - for the first time - the Community as "a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields and *the subjects of which comprise not only member states but also their nationals*". The Court quoted itself, using the same statement in other famous decisions such as Costa vs. ENEL (case 6/64), Simmenthal (case 106/77), Francovich (cases C-6/90 and C-9/90), opinions 1/91 (December 14th 1991) and 1/2009 (March 8th 2011).

After this first step came, one year later, the Costa vs ENEL case, where we read that "the member states have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves". In this case the Court clarifies two cardinal principles – the direct application and the prevalence of European law over national law – both are grounded on this direct relation between the European legal order and the citizens which are direct beneficiaries of its norms

This direct relationship between the citizens and the supranational organization is not immediately qualified as a supranational citizenship – which will appear only in 1992 – and it never became a "supranational nationality".

Since 1992, in fact, the European citizenship is nothing but a set of additional rights, a status added to national citizenships, barely visible if not in the passport format. Keystone of this status is the principle of non-discrimination, walkway between many European peoples and a common citizenship.

Splitting the two concepts of citizenship and nationality - the first existing at two different levels (national *and* European) the second limited to the national level - is therefore a basic element of a clear political project.

The strictly legal content of the European citizenship is indisputable, comparable to that which characterized the notion of the Roman civitas.

The abstractness of a citizenship that is pure legal concept becomes a strong choice where it appears to be an alternative to the notion of of nationality or people, terms which instead bring with them a rich substratum of history, culture, religion, language, identity and belonging.

And, in fact, the Union's objective is not to eliminate the nationality or the peoples of the member states. Article 1 TEU refers to an "ever closer union among the peoples of Europe", article 3 specifies that the Union's aim is promoting "peace, its values and the well-being of its peoples", the same provision recalls the richness of its cultural and linguistic diversity.

So, we have a clear separation between the two notions: a European politeia/citizenship and national demos/people, the first including a number of different national demoi living together in peace, under a roof of common values, principles and rules.

The same distinction is very clear in the preamble of the Charter of Fundamental Rights, where we read:

"Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on t he principles of democracy and the rule of law. It places *the individual at the heart of its activities, by establishing the citizenship of the Union* and by creating an area of freedom, security and justice."

And

"The Union contributes to the preservation and to the development of these common values while respecting the *diversity of the cultures and traditions of the peoples of Europe as well as the national identities* of the Member States". (Emphasis added)

Therefore, this European integration as a legal process – which coexists with strong national identities - is not necessarily a weakness of the system or the mark of an unfinished process, but it seems rather a choice.

Among the European countries there are strong elements of cultural commonality, especially when viewed in perspective, in the context of a globalized world. Europe's common "spiritual and moral heritage" is not a rhetoric invention, but it was a clear choice to ground its legal order on a "citizenship without a people."

This choice has some advantages: first, it does not conflict with the national identity recalled and guaranteed by the Treaty and it promotes an integration model based on the coexistence of diversities; second, it should respond better to the need to reassure the defenders of national sovereignty, reducing the risks of nationalist reactions or to the fear -even irrational- of losing national identities (even if, as Brexit is there to prove, it wasn't enough). Finally, it prevents a possible European nationalism, a typical degenerative disease of nationality. As we can see, it

88

is a quite different model from the American melting pot.

This belonging to a polity, expressed in purely legal terms, is the real novelty of the European model, replicable in other geographical areas or global organizations – which could generate - one day - their one partial citizenships - and it opens the door to multiple and cumulative citizenships, not conflicting among each other, to communities partially overlapping.

Alongside this European polity - that performs the dual function of building an area of justice and rights and to legitimize the EU supranational institutions, there is another peculiarity of the European democracy: the absence of an explicit reference to collective self-government.

"Sovereignty belongs to the people" is a recurring formula in the states' constitution and funding acts, so…how can possibly exist a democracy without a people? This requisite appears to be an essential and indispensable element of democracy - as also pointed out by the General Assembly of the United Nations (resolution no. 55/96 of 4 December 2000).

And here we see why this reference to the peoples of the Member States – alongside with national democracy – is also important: it becomes an implicit reference to national constitutions that recognize and codify these collective sovereignties.

The European polity thus integrates a second democratic level on top of the national one, the two being mutually invigorating. It's no accident that democracy is an essential requirement for the accession to the Union (art.49TUE).

And yet, some people and some political figures still blame the Union for the persistence of a democratic deficit. We believe that this deficit is not in the EU institutional system but in some essential transmission belts required for a genuine democracy: European parties, a European political debate and – even more – a press reporting to citizens what happens in the European Parliament and the other bodies at work over the national level.

Another real gap is in the absence of awareness of many European citizens about their rights and their status in Europe, even if, once the mentioned tools in place, that would be maybe filled up.

So far, in vain the European Commission launched communication campaigns designed to fill these gaps. The system is formally democratic, but essentially perceived as distant from its citizens.

Its democratic formula – being so disconnected from a sense of identity and belonging – is especially difficult to communicate. Even more difficult if press and political elites don't give it a try.