

*European Citizenship through  
Participation and Subsidiarity?*

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## Abstract

### European Citizenship through Participation and Subsidiarity?

What is European citizenship? Neither Treaty provisions, nor the complex theoretical discussions behind the concept provide a comprehensive answer. I shall suggest that any possible understanding of European citizenship must imply the notion of *participation*, and that ‘participatory’ and ‘deliberative’ democracy are useful theoretical frameworks to overcome the (apparent) *conflict between ‘ethnic’ and ‘civic’ citizenship*. I will also argue that the (alleged) absence of a European *demos* is not an objection to the development of a democratic system, because of the presence of a European *civil society* which, through deliberation and participation, can be the foundation of European democracy. The important condition is that a real ‘horizontal’ subsidiarity be introduced in the EU system. A wide concept of subsidiarity can allow a better understanding of the idea of “European citizenship”: this would involve not only some (few) rights, but also duties and, above all, citizens’ participation beyond the traditional nation-state boundaries. Subsidiarity is no longer a division of power among public spheres, but also as a theoretical framework to enhance civil society participation. The Treaties associate both: *subsidiarity* is a means “to bring decision as closely as possible to *citizen*”. The EU is a complex, multi-level and ‘multi-actors’ system, which cannot be reduced to a simple relationship between EU and states. In fact the EU’s policy making process already involves public and private actors. Thus, the ‘horizontal’ dimension of the principle of subsidiarity paves the way to a more adequate idea of participation and citizenship.

This paper sums up and updates much of my previous essay (2004). I am extremely grateful to Martino Mazzoleni, PhD in Political Science at University of Siena and junior researcher at the Lombardy Regional Institute for Research. The paper owes a lot to Martino’s competence and help. Any errors are obviously mine.

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## Contents

1. European Citizenship: What Is It?	7
2. Participation in the EU: Forms and Challenges	10
3. Subsidiarity, Citizenship, and Participation in the EU <i>Horizontal Subsidiarity: the Original Meaning - Horizontal Subsidiarity in the EU - Subsidiarity in the Present and Future of EU</i>	15
4. Conclusions: Some Critical Issues to Address	24
Bibliography	27

## 1. European Citizenship: What Is It?

The insertion of the European citizenship in the Maastricht treaty (1992) was in large part symbolic of the wish to create a European Union more concerned with ultimate political objectives rather than mere economic targets, to transform it from “a system essentially concerned with the administration of things to one concerned with governance of people”<sup>1</sup>. Specifically, European citizenship confers four specific rights: the right to move freely and to stay in the territory of member states (art. 18); the right to vote and stand for local and EP elections in the state of residence (art. 19); the right of protection by diplomatic authorities of other Member states in a non-EU country where a citizen’s own state is not represented (art. 20); the right of petition to EP and to apply to the Ombudsman (art. 21). To many, however, the scope of European citizenship remains undetermined and vague. According to Jessurum d’Oliveira the idea of European citizenship still seems a “vague and merely symbolic concept ... without substantive content” apart from freedom of movement.

The Treaty of Amsterdam completed these articles adding that: “*citizenship of the Union shall complement and not replace national citizenship*”. It means that the EU does not confer any citizenship, it simply recognizes the legal status of the citizens, as it is granted by their state. Thus, EU citizenship is not exclusive, but rather complementary to national citizenship.

European citizens are and will remain citizens of their own states. But they de facto take part in creating a European “common good” not only *through*, but also *beyond* their belongingness to the state. What are the theoretical foundations of EU citizenship? We can distinguish two extreme positions. Citizenship may be considered either in ‘ethno-cultural terms’, or in ‘civic’ terms<sup>2</sup>.

In fact, the advocates of the former position have expressed a great deal of scepticism about the prospect of a European citizenship. This could not exist because there is no European demos. As Closa underlines, “there is no Europeanised party system, nor European

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<sup>1</sup> Shackleton M., *The Internal Legitimacy Crisis of the European Union*, in Cafruny A.W. and Lankowski C. (eds), *Europe’s Ambiguous Unity*, Boulder, CO and London: Lynne Rienner, 1997, p.70.

<sup>2</sup> Choudhry S., *Citizenship and Federation: Some Preliminary Reflections*, in Nicolaidis K. and Howse R. (eds.), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, Oxford University Press, 2001, pp. 377-402.

associations or citizens' movements, nor European media. The biggest obstacles, though, seems to be the absence of a common language<sup>3</sup>.

In the model of "civic citizenship", on the contrary, the political community is founded less in pre-political bonds than in an allegiance to shared principles of political justice. The Union can thus be democratic even in the absence of an ethnic demos<sup>4</sup>.

Føllesdal<sup>5</sup> insists on the notion of trust as being central to European citizenship. This was introduced "to foster trust among citizens of the Union" and is "central to ensuring a stable political order over time". Trust within the EU context is based on the appropriateness and correctness of community institutions and procedures, and the belief on a diffuse compliance with them. Therefore, according to this view, EU citizenship is more 'impersonal' than the traditional notion of citizenship as expression of nationality, since it is addressed to institutions and norms rather than a community of people.

In broader terms, "European community" is not an original ('ontological') unity, but rather something built upon common choices: it is the result of a commitment among different peoples to some shared values. In this perspective, because values and norms are 'chosen' by citizens, they are entitled to change and find further and may be different agreements. Weiler defines the second perspective "civilization": the ability to overcome differences, to meet other perspectives, even different from their own<sup>6</sup>.

One of the most prominent exponents of the deliberative democracy model, Jürgen Habermas, imagines a European political community "liberated" from the ties of ethno-cultural identity, and united instead by a shared commitment to liberal democracy. As he writes: "The notion of citizens finds its identities not in ethnical and cultural commonalities but in the practice of citizens who actively exercise their rights to participation and communication"<sup>7</sup>. In the "civic" paradigm, citizenship is less a matter of formal right or entitlement, rather a practice of active participation. Different levels of citizenship depend on the varying degree of individuals' commitment to the public sphere: "the strength of citizenship is provided by a strong civil society, by public debates, and by social movements which

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<sup>3</sup> Closa C., *Supranational Citizenship and Democracy: Normative and Empirical Decisions*, in La Torre M.(ed.), *European Citizenship: an International Challenge*, Deventer: Kluwer Law International, 1998b, p. 423.

<sup>4</sup> McCormick N. (1997), *Democracy, Subsidiarity, and Citizenship in the «European Commonwealth»*, *Law and Philosophy*, 16, pp. 331-356.

<sup>5</sup> Føllesdal A., *Citizenship: European and global*, Arena Working Papers, 2001, p. 22.

<sup>6</sup> See Weiler J.H.H., *The Constitution of Europe*, Cambridge University Press, 1999, pp.324 ff.

<sup>7</sup> Habermas J., *Between Facts and Norms. Contribution to a Discourse Theory of Law and Democracy*, Cambridge MIT Polity Press, 1996, p. 495.

mobilize supporters, address the government, and intervene in political decisions”<sup>8</sup>.

In Weiler’s opinion, the ethnic dimension (i.e. nationalities, different belongingness and originalities) is far from being an alternative or an objection to European citizenship. In fact, national and European citizenship are not only compatible, but fundamental conditions to achieve a “trans-national democracy”, which invites “to embrace the national [citizenship] in the in-reaching strong sense and organic-cultural identification and belongingness and to embrace the European in terms of European trans-national affinities to shared values which transcend the ethno-national diversity”. In this perspective, the Treaties are seen less as an agreement among states (a union of states) than a “social contract among the nationals of the states”<sup>9</sup>.

To recap, trans-national and participative democracy better correspond to the European Union reality because they go beyond national categories, and this make it possible to conceive European democracy without a European *demos*, but founded instead upon a European civil society<sup>10</sup>. The increasing number of social organisations at European level demonstrates indeed that an “embryonic” European civil society is emerging beyond national boundaries. Europeans are sharing interests and initiatives with other peoples of different nationalities. Almost 700 organisations are listed only in the Commission database of civil society organisations<sup>11</sup>. Although their make up and representativeness vary significantly, it is an initial civil society, notwithstanding it could appear weak and fragile.

To sum up, European citizenship cannot be conceived primarily on grounds of cultural identity, ethnic bonds and territorial sovereignty granting rights. Rather it is the consequence of a deliberative, participatory democracy exercised by people who, though belonging to distinct national traditions, share, exchange and shape common values, interests, trust in common norms and institutions, and projects.

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<sup>8</sup> Giesen B., Eder K. (eds.), *European Citizenship Between National Legacies and Postnational Projects*. Oxford: Oxford University Press, 2001, p. 5.

<sup>9</sup> Weiler J.H.H., *The Constitution of Europe*, Cambridge University Press, 1999, p. 346 (emphasis in original).

<sup>10</sup> John Keane defines civil society as «an aggregation of institutions whose members are engaged primarily in a complex non state activities ... and who in this way preserve and transform their identity by exercising all sorts of pressures or controls upon state institutions». Keane J., *Democracy and Civil Society*, London-New York, Verso, 1998, p. 14.

<sup>11</sup> [http://europa.eu.int/comm/civil\\_society/coneccc](http://europa.eu.int/comm/civil_society/coneccc)

## 2. Participation in the EU: Forms and Challenges

For all we have said so far, European citizenship cannot be considered as being merely based on a list of rights (starting from the 4 fundamental freedoms and including the rights granted to EU citizens by the Maastricht treaty). It means democratic participation and active deliberation.

The possibility for those who are ‘citizens’ to participate actively, to be directly involved, to express their own opinions in the playground of the building of a common good, regardless of how it is defined. More to the point: the “common good” itself is conceived as the result of this dialogue. Democratic improvement rests on the possibility of a wider and more informed debate among those who are affected by the decisions.

It is possible to conceive a direct participation at European level, relatively independent on national identities and belongingness. Europeans *de facto* participate (or might participate) in a European “political system”<sup>12</sup>; and often they do so through other means of representation (organisations, associations, etc.) which not always belong to the nation state. There have been various theoretical and operational attempts to frame and develop a real trans-national democracy in Europe.

Weiler<sup>13</sup> suggests four mechanisms focused on this purpose. One of them consists in the creation of a “European public square”, based on the systematic use of Internet to allow “widespread participation in policy-making processes so that European democracy becomes altogether more accessible through the posting of comment and the opening of a dialogue between the Community institutions and interested private actors”. It is worth noting that Weiler’s trans-national democracy and the deliberative and participatory democracy shares an emphasis on participation, that is participation and dialogue as conditions for good governance. In Habermas<sup>14</sup> words,

deliberations within the decision-making bodies need to be open for and sensitive to the influx of issues, value orientations, contributions and programmes from their informal environments. Only if such an interplay between institutionalised processes of opinion and will formation and those informal networks of public communication

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<sup>12</sup> Hix S., *The Political System of the European Union*, New York, Palgrave, 1999.

<sup>13</sup> Weiler J.H.H., *The Constitution of Europe*, Cambridge University Press, 1999, pp. 350ff.

<sup>14</sup> Habermas J., *Citizenship and National Identity*, in Bart van Steenberghe (ed.), *The Condition of Citizenship*, London, Sage, 1994, p. 32.

occurs can citizenship today mean anything more than an aggregation of pre-political individual interests and the passive enjoyment of rights bestowed upon the individual by the paternalistic authority of the state.

An even stronger idea of participation has been proposed by *Active Citizenship Network* (ACN)<sup>15</sup>: horizontal subsidiarity has to do with the *general* interest; it means that citizens seize the initiative in order to contribute to the *common good*. Horizontal subsidiarity is thus quite different from freedom of association, which is exclusively related to *private* objectives. ACN has stressed this concept up to affirm a significant difference even between horizontal subsidiarity and participatory democracy:

in regards to participation and participatory democracy, they are both very important principles but do not express as clearly as the horizontal subsidiarity that citizens have to be not only consulted and / or involved *by institutions* in the policy making process, but that they are entitled to take *autonomous initiatives*, without necessarily waiting for the institutions to take the first step. Moreover, the horizontal subsidiarity principle is the extension of an already recognized and fundamental principle in the Treaties of the European Community<sup>16</sup>.

Involving citizens in consultation is not enough, because people could either *be* or *be not* asked for an opinion by the public authority, only depending on its own will and at its own discretion. It would not be the acknowledgment of a public role and contribution, but just a ‘gentle concession’<sup>17</sup>. Horizontal subsidiarity would instead include the acknowledgement that citizens can directly and autonomously contribute to the public and common interest. It is necessary to conceive a citizenship in which “sovereignty is no more exercised only through the vote, but rather through a daily undertaking towards general (and not private) interest”<sup>18</sup>.

Active Citizenship has suggested the following operational principles aimed at involving citizens in policy-making:

- the continuous exchange of information between citizens and institutions in the definition of the agenda;

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<sup>15</sup> See [www.activecitizenhip.net](http://www.activecitizenhip.net)

<sup>16</sup> ACN, Active Citizenship Network, *Rethinking the Principle of Subsidiarity*, Brussels Report, March 2003.

<sup>17</sup> Interview with Giovanni Moro, Rome 30 April 2003.

<sup>18</sup> Moro G., *Sussidiarietà Orizzontale e Riforma dell’Unione Europea*, paper, April 2003.

- the consultation in both phases of policy-making *and decision-making* (...);
- the partnership in the course of *implementation*, which means that all partners (citizens and institutions) shall be *fully responsible and equal*;
- the *joint evaluation*, which involves regarding the results of citizens' organisations activity as tools for the evaluation of public policies<sup>19</sup>.

Paul Hirst advocates the adoption of the *associative democratic model*, which consists in devolving as many of the functions of the state as possible to society (whilst retaining public funding) and democratising as a many as possible of the organisations in civil society.

The aim is to restore limited government and to politicise civil society, to run its organisations from top-down bureaucracies into constitutionally ordered democratically self-governing associations. The aim would be to try to separate service provision from supervision at all the principle levels of government within the nation state<sup>20</sup>.

Yet the reality of today's EU is very different. After the unsuccessful referenda on the Constitutional treaty held in France and the Netherlands in 2005, the need to foster citizens' participation in European affairs has become a priority of all EU institutions. The aim is to strengthen among the population the knowledge of institutions and policies of the European level so that these become more widely accepted and supported.

Thus, some extensive "top-down" programmes for spreading information and enhancing participation have been conducted and realized by the Commission ("Active European Citizenship" and "Citizens for Europe"), aiming to fill up the traditional democratic deficit whose negative effects have manifested on the occasion of the referenda, while declarations of political leaders on the need to strengthen communication and transparency have mushroomed<sup>21</sup>. However, these initiatives seem yet far away from attaining a full participative democracy. In the EU, participation has so far been limited to consultation. It has tended to mean inviting the public to

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<sup>19</sup> ACN, Active Citizenship Network, *Horizontal Subsidiarity, Democratic Governance and Referendum: ACN's Proposals for the Future Constitution of the European Union*, Rome, 2002 (emphases added).

<sup>20</sup> Hirst P., *Democracy and Governance*, in Jon Pierre (ed.) *Debating Governance*, Oxford University Press, 2000, p. 28. The logic of such devolution to self-governing associations as a solution to problems of democracy in modern organizational societies is explained more fully in Hirst P., *Associative Democracy: New Forms of Economic and Social Governance*, Cambridge, Polity Press, 1994.

<sup>21</sup> See for example Barroso's speech «A Citizens' Agenda: delivering Results for Europe», 10 May 2006.

“respond to pre-established policy agendas”, mobilizing them on the institutions’ objectives rather than “engaging in a two-way conversation” in which the public and institutions “steer the content between them.”<sup>22</sup>

It is important to underline that in their daily activity, European citizens do not perceive any trade-off between national and supranational belongings, they seek just to find the easiest and more effective way to accomplish their interests. It is also worth noting that interests pursued by civil society organizations are not necessarily partial or conflicting with the general European interest. On the contrary, one could reasonably wonder whether a fundamental part of such a general European interest consists in this combination of societal interests. The dialectical relationship between participation and representative democracy is one of the key points in the future development of European citizenship. Pier Virgilio Dastoli, former spokesman of the European Forum of Civil Society, made it clear that

the fundamental question is not the replacement of representative democracy, rather to complete it. European society, as we know it and as we are living in nowadays, the XXI century’s democracy, require new form of democracy which must complete the democracy we have known for two centuries, the representative democracy<sup>23</sup>.

This assertion well fits the EU context where representative democracy is not yet fulfilled and where this may not be the most suitable model of democratic participation. It is widely acknowledged that the EU is a political system, yet not a democracy in the way Europeans have come to know in the last 60 years, and this for several reasons.

First of all, because of the institutional mechanisms: the main representative body of the Union, the European Parliament, has really little impact on EU policies and long-term strategies, although its powers have been expanding in the last fifteen years. The other democratic representatives of people, that are ministers sitting in the Council, are often indirectly chosen – as opposite to MEPs – and they pursue national-interest goals on which frequently they do not have to be backed by their legislatures and therefore electorates.

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<sup>22</sup> Coleman S., *Direct Representation. Towards a Conversational Democracy*, London: IPPR, 2005, p.11.

<sup>23</sup> Dastoli Pier Virgilio, «L’Europe, avec les citoyennes et les citoyens?», colloque des Réalités Européennes du Présent: 28-29/6/2002)

[www.europa.eu.int/futurum/documents/other/ oth/280602\\_2\\_fr.pdf](http://www.europa.eu.int/futurum/documents/other/oth/280602_2_fr.pdf). My translation from French.

More generally, EU policy making is not based on competition among different projects: there is no Europe-wide election played among leaders for the political power, and choices in the Council, which remains the main decision-making body, mostly emerge as compromise between national interests.

In fact, there is no concept of 'general interest' or 'common good' as it may be within nation-states, where exists a sounder and more rooted sense of identity and community. As seen above, democracy in the EU has instead been thought and experienced in procedural terms<sup>24</sup>. Decision-making occurs after a (often harsh) mediation of interests, which is very much different from what happens within countries, where a competition of different projects aims to identify and serve the general interest of all citizens.

This implies serious risks for European citizenship. In the lack of an unambiguous general interest, only those individuals and agencies possessing a strong private interest, which may be of either economic or other nature – cultural, ideological, or else – have incentives to seek participation in EU decision making.

Thus, only well-structured and financed NGOs and big private companies have the need and resources to make their voice heard in Brussels. While, for the general public, it is an established fact that EU affairs are of little appeal and interest. Turnout at the elections for the European Parliament is systematically lower than those for national ballots. Moreover, European elections are usually referred to as "second-order national elections"<sup>25</sup> insofar as the overwhelming majority of voters tend to express their preference on the basis of their evaluation of the performance of their national government, and not on parties' projects for Europe or on EU policies objectives and results. The absence of a Europe-wide public arena for the debate and competition of ideas and projects is well known, and is indeed according to many commentators one of the main reasons for which a European *demos* could hardly emerge<sup>26</sup>.

The main consequence of this is that the EU risks continuing to deal with only juridical subjects (such as companies and governments) and remain far distant from European individuals and their spontaneous associations. When only those that have an interest and, therefore, competence on issues intervene in the policy process, the

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<sup>24</sup> Donati P., ed., *Sociologia. Una introduzione allo studio della società*. Padova, Cedam, 2006.

<sup>25</sup> Reif K.H., Schmitt H., *Nine Second Order National Elections. A Conceptual Framework for the Analysis of European Election Results*, *European Journal of Political Research* 8, 1980, pp. 3-44.

<sup>26</sup> Jolly M., *A Demos for the European Union?*, *Politics* 25, 2005, pp. 12-18.

risk of a political system run by technocracy increases. Allegations of technocratic government have indeed become common for the EU.

One way to solve this challenge may be the introduction of horizontal subsidiarity. Subsidiarity involves social units and groups, that are inter-personal relations and initiatives. It may offer more solid bases to EU citizenship which, to stress again, cannot merely consist of rights, but needs to involve the dimension of people's participation.

### **3. Subsidiarity, Citizenship, and Participation in the EU**

The principle of subsidiarity was first included and explicitly established by the Maastricht Treaty in art. 5.2 (former 3B).

The Community shall act within the limit of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not follow within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

This definition, though, left unresolved many issues concerning the application of the principle, notably because no explicit distinction is drawn anywhere in the Treaties between exclusive and non-exclusive competence<sup>27</sup>.

The *Treaty of Amsterdam* (1997) produced a *Protocol on the application of the principle of subsidiarity and proportionality*. The Protocol set out a detailed procedure aiming to ensure that the principle would be practised by the Community institutions; in particular it requires the Community to give prior justification of its exclusive competence in the matters in which it takes action. Paragraph 3 of the Protocol defines subsidiarity as a dynamic concept and confirms the need to blur the division of competences:

The principle of subsidiarity provides a guide as to how those powers are to be exercised at the Community level. Subsidiarity is a dynamic concept and should be applied in the light of the objectives set out in the Treaty. It allows Community action within the limits of its powers

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<sup>27</sup> See Colombo A., *The Principle of Subsidiarity and European Citizenship*, Milan: Vita e Pensiero, 2004, pp. 10-11.

to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified.

Paragraph 9 identifies Commission duties, among those, the duty of wide consultation. Some federalists and states' sovereignty advocates found the Amsterdam Treaty still insufficient a safeguard against over-centralisation and proposed that the treaty should list competences reserved to member states. The Laeken Declaration on December 2001 set up the European Convention and put the question of powers (competences) and subsidiarity high on the panel's agenda. Interestingly, a clear division of competences was primarily seen as a means to bring citizens closer to the Union institutions because they "often hold expectations of the EU that are not always fulfilled. And vice-versa – they sometimes have the impression that the Union takes on too much in areas where its involvement is not always essential". Subsidiarity is deemed as a specific tool in this sense. *There is broad consensus on the diagnosis: there is a gap between citizens and institutions, and this gap can be overcome through a better division of competences, therefore the principle of subsidiarity is the instrument to achieve this aim.*

The idea has been adopted by the *European Convention*. The Draft constitution inserts subsidiarity among the 'fundamental principles' of the EU (along with the principle of conferral, and proportionality) and states in art. 9.3 that:

Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the member states, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The Union institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principle of subsidiarity and proportionality, annexed to the Constitution. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.

The text adds two important modifications to the Maastricht provision: a reference to the regional and local governments and the monitoring role given to national parliaments.

The "Protocol on the Principle of Subsidiarity and Proportionality" annexed to the Draft Treaty incorporated the proposal of the Declaration of Nice as developed by the Convention Working Group I on Subsidiarity about an "early warning system" which provides

national parliaments with the power to review Community's proposals *before* they came into force<sup>28</sup>. Furthermore, the Draft constitution (6 February 2003), for the first time proposes a formal explicit list of "exclusive" (art. 11) and "shared" (art. 12) competences.

A separation of power between the EU institutions and also vertically between the EU, its member states, and their sub-national authorities may certainly enhance citizens participation. It would be clearer for them who is responsible for what and they would be able to develop "a sense of multiple loyalties and responsibilities in a transparent way: they must be able to know how and when it is necessary to mobilise at any given level of governance without confusion or conflict"<sup>29</sup>.

Yet if we want to enhance citizenship, and citizen participation, we must explore the principle of subsidiarity further, to include not only a division of powers among public authorities, but also the recognition of the *public* role of private actors: citizens and civil society organisations. This "horizontal" subsidiarity was in fact the original meaning of the principle. As we have seen, in the EU discourse subsidiarity has always been conceived as a political/legal instrument

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<sup>28</sup> Draft Treaty of the European Constitution, 12 June 2003. Annex II: 'Protocol on the Application of the Principle of Subsidiarity and Proportionality'. The proposal was formulated by the Working Group I, dedicated to the principle of subsidiarity. See European Convention, Conclusion of Working Group I on the Principle of Subsidiarity, 23 September 2002. [www.europa.eu.int](http://www.europa.eu.int)

<sup>29</sup> Bellamy, *European Citizenship and the Social and Political Integration of the European Union*, TSER EURCIT Project Final Report, co-ordinated by Richard Bellamy, March 2001, <http://www.rdg.ac.uk/AcaDepts/lp/PolIR/EURCITFINAL.pdf>.

Drawing from Mény and Dahl, Jan Zielonka asserts that European transparency, accountability and citizens' participation "may well be enhanced by spelling out better the roles and functions of various European centres of government, and by forcing European decision makers to publicly explain and defend their decisions. At the same time, it is important to keep certain domains of public life at the national and local levels (and outside EU competencies)" for citizens "would feel less powerless if they could exercise significant control over decisions on the smaller scale of matters important to their daily lives: education, public health, and social security." Zielonka (2005) *The quality of democracy after joining the European Union*, paper prepared for the 4th General Assembly of the Club de Madrid in Prague, University of Oxford, p.21.

In broader terms, according to a widely-backed argument (see Weiler J.H.H., *The Constitution of Europe*, Cambridge University Press, 1999), a clearer constitutional reorganization of the Union on the model of national systems – with a coherent executive derived from and accountable to a double legislative body, able to lead the policy process and personalised – would bring about a politicisation of the EU leadership. Hence choosing the leader of the executive would become a crucial issue that would stimulate both the organisation of political parties and the media at European level. Citizens would feel that they are able to select their leaders and thus participate more extensively. See Magnette P., *European governance and civic participation: can the European Union be politicised?*, in Mény Y., Joerges Ch. and Weiler J.H.H. (eds), *Mountain or molehill? A critical appraisal of the commission White Paper on Governance*, «Jean Monnet Working papers», n.6, European University Institute, 2001, pp. 27ff.

to define competences between the EU and member states only. Even when the concept is extended to include sub-national public entities (as in the “Declaration on Subsidiarity” mentioned above), subsidiarity remains a division of competences within the public sphere. We can define it as “vertical” subsidiarity, the best known meaning<sup>30</sup> of the concept. However, the concept of horizontal subsidiarity appears much more relevant and stimulating for the current need of the EU political leadership to enhance citizens’ participation and consciousness in European matters.

### *Horizontal Subsidiarity: the Original Meaning*

While ‘vertical’ subsidiarity concerns the distribution of powers among different layers of public sphere, “horizontal” subsidiarity relates to the sharing of competences and initiatives between public and private actors. In the ‘horizontal’ sense, subsidiarity could be conceived like a sort of ‘division of labour’ between public sector and civil society (person, family, no-profit organization, market).

Subsidiarity requires the existence of hierarchical set of intermediary bodies between individuals and the State (person, family, civil society associations, state). Each higher level must bring help to the lowers. Family helps the person, society helps the family, state helps society. The state exists to assist the persons who live within the society to achieve their own perfection. There are, thus, two aspects of horizontal subsidiarity: the state *should not* intervene unless it is necessary, but equally it *should* intervene when it is necessary.

Subsidiarity is a concept that has been long rooted in cultural, philosophical, theological, and political tradition<sup>31</sup> Classical political theorists from Althusius, to Alexis de Toqueville<sup>32</sup>, to John Stuart Mill expressed an analogue thesis: democracy itself depends on active engagement by citizens in community affairs. A common denominator

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<sup>30</sup> Rinella A., *Il principio di sussidiarietà: definizioni, comparazioni e modello d’analisi*, in Rinella A., Coen L., Scarmiglia R. (eds.) *Sussidiarietà e Ordinamenti Costituzionali. Esperienze a Confronto*, Padova, 1999, pp. 3 and ff.

<sup>31</sup> See: Rinella, 1999; Hoffmann R., *Il principio di sussidiarietà. L’attuale significato nel diritto costituzionale Tedesco ed il possibile ruolo nell’ordinamento dell’Unione Europea*, in «Rivista Italiana di Diritto Pubblico Comunitario», 1993; Duret P. (2000), *La sussidiarietà “orizzontale”: le radici e le suggestioni di un concetto*, JUS, 2000; Føllesdal A., *Subsidiarity and democratic deliberation*, in Eriksen E.O. and Fossum J.E. (eds.), *Democracy and the European Union: Integration Through Deliberation*, London, Routledge, 2000.

<sup>32</sup> According to Tocqueville private associations form the fabric of social integration and the means whereby individual inequalities of resources can be counterbalanced by collective resources. Collective organization of interest is also an important counterweight to the centralized power of the State. Toqueville de A., *Democracy in America*, ed. by J.P. Mayer, London, Fontana, 1994.

of these theories is that the welfare of the political system stems from the free, responsible and cooperative action of the individuals (single or associated), and not vice versa: it is not the political system which gives individuals their dignity and capability to contribute to the welfare. Political authority has the duty and the right to respect this priority, and therefore to intervene in helping autonomous initiative of the society members and, of course, it has the responsibility to guarantee equal opportunities, and respect of the rules.

The State is conceived as a mere regulatory *instrument*, not the *actor* of the social action, let alone of the well being of its citizens. Governance means less taking direct initiative than controlling and helping those who originally are endorsed to take action.

In this perspective the typically modern division line between public sphere (as the State remit) and private sphere (as the society's remit) tends to be blurred. Civic initiatives have already significantly developed in many European countries: voluntarism, rights advocacy movements, civic associations and social cooperation, education. These initiatives

demonstrate that private actors can pursue general goals, even directly, without privileging their private, particular interests. Groups of active citizens can in fact realize common goods. They can thus improve the quality of our society, helping to constitute a wider and more welcoming public sphere than the statist system has so far produced<sup>33</sup>

### *Horizontal Subsidiarity in the EU*

Within the EU, decision-making involves the Community, Member States<sup>34</sup>, and/or sub-national levels of public authority<sup>35</sup>. Crucially, however, many others non-public actors, such as civil society organisations at both national and European level, networks of interests and pressure groups<sup>36</sup> play an important role<sup>37</sup>. As a complex, multi-

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<sup>33</sup> Cotturri G., *Proposal for Including the Principle of Horizontal Subsidiarity in the European Constitution*. Annexe I in *Rethinking the Principle of Subsidiarity*, Brussels Report, 2002.

<sup>34</sup> Vergés Bausili A., *Rethinking the Methods of Dividing and Exercising Powers in the EU: Reforming Subsidiarity and National Parliaments*, «Jean Monnet Working Paper» 9/02, 2002. <http://www.jeanmonnetprogram.org/papers/02/020901.pdf>.

<sup>35</sup> Jeffery C., *Regional Information Offices and the Politics of the 'Third Level' Lobbying in Brussels*, paper, 1995.

<sup>36</sup> Mazey S., Richardson J., *Lobbying in the European Community*, Oxford University Press, 1993 (eds).

<sup>37</sup> “The result is a complex and messy policy and law making process with a good degree of random, irrational and unintended effect” Vergés Bausili; cfr. also Marks G., Hooghe L., Blank K., *Integration Theory, Subsidiarity and the Internationalisation of*

level and “multi-actors” system, the EU’s policy making process, especially at the sub-systemic level of the so-called ‘policy-shaping’ process<sup>38</sup>, already involves public and private actors. The very existence of the EU and its policy-making process show that the distinction between public and private actors is *de facto* to some extent blurred, give the close cooperation among them in shaping and implementing a wide range of public policies. As de Burca points out:

Even if the primary legal discourse of subsidiarity is focused on the issue of resolving questions of Community-Member State action, it is also clear that within the EU, law-making power is exercised and decisions are taken by an array of actors and institutions, both public and private, across the range of policy areas covered by EC and EU law. Bodies such as the standardization committees, the social partners, the national central banks, association councils, to name but a few, all play a relatively institutionalised role in the process of EU law- and policy-making<sup>39</sup>.

The 12<sup>th</sup> recital of the Preamble to the TEU itself seems to corroborate this wider conception of subsidiarity when it **ties up together “subsidiarity” and “citizenship”**: “resolved to continue the process of creating an ever closer union among the peoples of Europe, in which decision are taken as closest as possible to the *citizen* in accordance with the principle of *subsidiarity*” [emphases added].

Do existing theoretical approaches to the concept of European citizenship reflect such connection with subsidiarity?

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*Issues: The Implication for Legitimacy*, European University Institute Working Paper RSC No. 95/7, 1995. [www.jeanmonnetprogram.org/paper](http://www.jeanmonnetprogram.org/paper).

<sup>38</sup> Peterson and Bomberg distinguish between three types of decision in EU governance: “History-Making”, “Policy-Setting”, and ‘Policy-shaping’. Policy-shaping are decisions taken at sub-systemic level, within the Commission services, “at the level of discussions between Commissioners and their Cabinets, in various types of committee and Working Group, and in deliberations between interest groups on one hand and the Commission and Member States on the other. Most policy-shaping decisions are outcomes of bargaining between different types of actor within what we call policy networks. Policy networks are clusters of actors with different institutional affiliations who come together repeatedly to bargain with each other – often informally – to shape policies. We see these networks emerge when effective policy decisions can only be taken if a range of different kinds of actor exchange and share their resources (such as information, expertise, money or legitimacy). All members of a policy network will command some type of resource that acts as their ‘membership card’ and allows them access to a policy network. Those actors who lack valued resources are excluded”. Peterson J., Bomberg E. (1996), ‘Decision Making in the European Union: Reflections on EU Governance’, *CEPS Working Document* n. 98, February, pp. 5-6.

<sup>39</sup> De Búrca G., *Reappraising Subsidiarity’s Significance after Amsterdam*, Harvard «Jean Monnet Working Paper» 7/99, 2000. [www.jeanmonnetprogramme.org](http://www.jeanmonnetprogramme.org).

Reinicke<sup>40</sup> has proposed horizontal subsidiarity as a means to adequately respond to the challenge of globalisation. He distinguishes between “legal” and “operational” sovereignty. The former is the government and the formal territorial foundation of sovereignty; the latter is the governance, that is “a social function crucial for the operation of any market economy – national, regional, or global”. The challenge of globalisation compels to adopt a global public policy; therefore governance should go beyond national territory.

To implement such a strategy, policymakers would invoke the principle of subsidiarity but use the concept in a much broader sense than we know from the EU, the Tenth Amendment to the U.S. Constitution, or other federalist structures. The ‘sub’ in subsidiarity is used in a functional sense and refers to any actor or institution that is well positioned to support the operationalization of internal sovereignty in the global context.

In these respects, horizontal subsidiarity could be defined as a delegation of aspects of public policy making to non-state actors such as business, non-governmental organisations, foundation, and other interested participant of civil society.

In reality, things occur differently. According to Paolo Ponzano<sup>41</sup>, as long as the initiatives are consistent with the EU policies and respond to EU general interest, they are funded. But it is just a matter of funding; no legislative activity is given up.

For us, subsidiarity has always to do with *making a law* either because member states do not have capability in doing so, or because the EU can achieve the result more efficiently (the so-called *efficiency-test*). The only meaning of *horizontal* subsidiarity occurs when the EU does not draw a law and leaves to the representative organizations of stakeholders the responsibility to reach an agreement<sup>42</sup>.

Therefore, horizontal subsidiarity would mean that the EU, in performing its duties and regulatory role, restrains itself from directly legislating on a specific issue, leaving room to agreements between interested parties. In doing so, the EU would recognize the public role of the social actors and grants them regulatory powers. It is a matter of mechanism of *soft-law*, alternative to traditional legislative processes.

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<sup>40</sup> Reinicke W.H., *Global Public Policy: Governing without Government?*, Brooking Institution Press, 1998.

<sup>41</sup> Interview with Paolo Ponzano, 30 June 2003.

<sup>42</sup> Interview with Paolo Ponzano, 30 June 2003.

It is the so-called mechanism of *self-regulation*. This perspective is feasible under the condition that those organizations are effectively representative at European level and the agreement might be thus binding. Once again a decisive point is the representativeness of these social bodies. According to Ponzano,

when we decide for a mechanism of self-regulation, we must make sure that the organizations (for instance of producers and consumers) are representative of all the stakeholders all over the 15 countries. This is a major issue. We perform research and we check whether they satisfy these conditions. One must remember two points: the first is that the EU does not chose the contracting parts: representative organizations come to the Commission presenting an already written agreement that it is up to us verify; however, the responsibility for a 'self regulation' initiative remains within the stakeholders / organizations concerned; secondly, it is a matter of an 'ad hoc' recognition which can be annulled in case it does not satisfy anymore the necessary conditions.

The original meaning of horizontal subsidiarity implies full acknowledgement of the *public* contributions of *private* actors. If the public role were simply bestowed by the state upon social organisations' activities, it would mean that once again the state (or whatever else public power) arrogates to itself the monopoly of the public functions.

On the other side, we could argue that individuals and civic society as a whole can no longer maintain a concept of citizenship, even in the EU context, conceived merely in terms of rights – as it seems to be today. Citizens also have duties and responsibilities, in particular the one to fully contribute to the development of society for as much and best as they can. Citizens are not simply *individuals*, they originally belong to a community<sup>43</sup>. Institutionalizing horizontal subsidiarity could therefore be the suitable way to put this principle into practice.

### *Subsidiarity in the Present and Future of EU*

During the first phase of its activity, the European Convention set up auditions with civil society organisations. Some of the reporting documents mention horizontal subsidiarity and participation. From the analysis of these opinions, the following points emerge:

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<sup>43</sup> For an interesting illustration of the alternative between a "relational" and an "atomistic" view of citizenship, and for a perspective of a "citizenship beyond the state", see Hoffman J., *Citizenship beyond the State*, London, Sage, 2005.

- horizontal subsidiarity is already a widely accepted concept. The expression is implied univocally; many advocate for its insertion in the Treaty because its explicit recognition is deemed as a mean to enhance citizens participation;
- the ‘social dialogue’ is conceived as an example of horizontal subsidiarity; it must not be confused with the ‘civic dialogue’;
- a rather clear distinction between those supporting a ‘participative’ model of democracy, and those who prefer a softer ‘deliberative’ democracy;
- the educational system as a promising field for the application of horizontal subsidiarity;
- a rather “revolutionary” proposal for a “civic citizenship”.

During the Convention workings, several members and observers pointed out the need to recognize the historical role and the present importance of intermediary bodies in the Europe, mentioned the ‘horizontal subsidiarity’ and complained about the absence in the preparatory documents of any reference to the powers conferred to the social partners.

In September 2002 the ESC (European Economic and Social Council) approved a resolution to the Convention in which clearly defined the horizontal subsidiarity as a principle supporting the civil dialogue.

The subsidiarity principle not only concerns the distribution of powers between the various territorial levels, but is also the expression of a participatory conception of relations between public authorities and society and of the freedoms and responsibilities of citizens. When deciding who is to be involved in the preparation of decisions, account should thus be taken not only of territorial (vertical) subsidiarity but also functional (horizontal) subsidiarity, which is a major factor in good governance.

One of the contact groups set up by the Convention, called ‘Citizens and Institutions’, asked for the principle of horizontal subsidiarity being incorporated in the Treaty<sup>44</sup>.

In reality, there already exist examples of horizontal subsidiarity in the Union, whereby this in some cases recognizes the autonomy of social organisations and empowers them to undertake public functions. For instance the social dialogue, which is a structured (art. 137-139

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<sup>44</sup> Contact Groups, *Information note of reports from the meeting of contact groups on Civil Society*, Brussels, 19 June 2002, CONV 120/02. <http://register.consilium.eu.int/pdf/en/02/cv00/00120en2.pdf>.

TEC) and autonomous process of dialogue among social partners (entrepreneurs and employees) at European level, whereby binding agreements on working conditions can be reached. The practice started in the 1980s and the Treaties have formally required the Commission to develop it. This may be described as:

functional subsidiarity means that when an action is justified at EU level, there is a need to assess whether the objectives of the proposed EU action cannot be achieved by other actors than the EU institutions (e.g. agencies, social partners and other representative actors of the civil society agreeing among themselves how best to reach a given objective). These two levels of subsidiarity (territorial and functional) should function in tandem complementing each other, and monitoring processes should be put in place to ensure their respect<sup>45</sup>.

#### **4. Conclusions: Some Critical Issues to Address**

To summarize my main argument, a resolute and concrete application of the principle of subsidiarity, particularly in its horizontal dimension, may be regarded as a way to finally bring the EU closer to its citizens. Subsidiarity involves that the EU recognizes a reality of inter-personal initiatives flourishing across Europe, respecting them as agents producing the public interest, rather than seeking to mobilize it on its projects. Subsidiarity might hence stimulate the blossoming and full appreciation of the concept of citizenship related to participation: citizenship no longer should be seen as a set of rights, but as an opportunity for individuals and associations – fully seconded by EU institutions – to autonomously pursue the general interest, make their voice heard, participate in the making of decisions that affect them and in the evaluation of policies.

Therefore, the new conception of citizenship to build should be no longer restricted to its traditional application only to individual persons, yet also include inter-personal relations and associations. In other terms, passing from the concept of citizenship linked to rights to a concept of citizenship related to civic participation and social activity.

At this regard, three critical issues still remain unresolved, and could be usefully investigate in future research.

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<sup>45</sup> Jacobs G., *The missions of the European Union*, Contribution to the Convention, 21 June 2002, CONV 127/02 CONTRIB 53. <http://register.consilium.eu.int/pdf/en/02/cv00/00323en2.pdf>.

The first concerns representativeness, that is to say the criteria of eligibility to the process of participative democracy. Nowadays, the EU grants equality of access to processes of consultation, more seldom participation, to a heterogeneous variety of actors: individuals, local authorities, professional unions, NGOs, private companies. The more the consultation process is enhanced by the Commission reforms and by the Internet tools, the more the representativeness criteria become important. In their daily activity, Commission officials have no time, nor interest in reaching a satisfactory definition of representativeness of civil society organisations. Although all of those interviewed agreed that this is one of the most important issues, none of them provided a clear definition. Given Commission's preference for a policy of inclusion instead of exclusion, the criteria still remain rather wide and vague.

A second point is the identifications of the appropriate venues for civil society participation. In spite of its potential deliberative role, the ESC (European Economic and Social Council) has had so far a marginal impact, made even more apparent by the diffusion of new processes and technologies of consultation. It does not represent civil society, let alone (because of its composition on national grounds) social organisations at European level. The CONECCS ("Consultation, the European Commission and Civil Society") and IPM (interactive policy making) initiatives provide the Commission with a far wider range of well-established and representative interlocutors; many of those are members of the ESC itself. Some of the most interesting initiatives, such as the social dialogue, take place outside the ESC. The future of ESC is in question. Its significant experience in producing readable and relevant reports represents a good premise that its functions and role can be adapted to the new context.

The third set of problems concerns the juridical foundations of subsidiarity, participation and citizenship. The final Draft of the Constitutional Treaty was disappointing. Apart from a significant formal recognition of the social dialogue (art. 47) and the insertion of an article called "participative democracy" (art. 46), none of the amendments proposed to article 43.2 has been accepted. Citizens' participation is only moderately enhanced through the extension of the consultation procedure, but no substantial changes occur in citizenship. The inclusion of the Charter of Fundamental Rights strengthens the individualistic rights-oriented dimension of citizenship as opposed to its participatory dimension. The proposal of the ESC for a "civic citizenship" has been ignored. However, with the rejection of the Treaty by French and Dutch voters, the whole issue has been frozen.

In conclusion, a new, strong recognition of civil society is needed to enhance EU citizenship concretely. The EU now seems no longer

based on a clear and unequivocal notion of interest, it has a major problem of identifying its usefulness, its value-added. The recent troubles with enhancing the draft Constitutional treaty through popular approval witness this fact. Only acknowledging – through subsidiary arrangements – that civic associations and private initiatives are fundamental in shaping and pursuing the general interest may provide the EU with a new political perspective and eventually enable it to get in touch with its own citizens.

It is in this respect that new models of governance, both at national and sub-national level, inspired by (and developing) the concept of “horizontal” subsidiarity, should be further studied.

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