OPINIO JURIS inComparatione

Studies in Comparative and National Law

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CONCLUDING REMARKS

Sabrina Ragone[*] and Graziella Romeo[*]

In the introduction, we assessed to what extent citizenship can be framed both as a tool for exclusion and as a tool for inclusion, restricting or expanding the enjoyment of rights and democratic instruments. The assessment provided within this special issue intersects these two views with one of the major challenges of current democracies, namely the impact of new technologies, trying to grasp how such frames play out in new environments characterized by digitalization.

Kochenov's contribution sets the foundations of the discussion, providing the theoretical basis to understand that citizenship can be used to undermine equality, build walls of segregation within borders, as well as construe the concept of the "other" who does not belong. Additionally, categories of citizens emerge from the comparative assessment, which enjoy an improved status vis-à-vis the rest, "super-citizens"[1] who do not suffer 'passport apartheid.'[2] The author delves as well into the cleavage between citizenship and human rights, claiming that the former is "designed to undermine human rights claims by the racialized barbarian (read 'foreign') others."

He challenges the actual performance of citizenship as a concept responding to the Enlightenment's belief that "the individual is in charge and the authority is able and willing to back its decisions with recourse to valid reasons and clear arguments." On

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[*] Sabina Ragone is Associate Professor of Comparative Public Law at is at the Department of Social and Political Sciences – University of Bologna. sabrina.ragone@unibo.it.

[*] Graziella Romeo is Associate Professor of Comparative Public Law at the Department of Legal Studies – Bocconi University. graziella.romeo@unibocconi.it.

[1] M. Boatcă, 'Unequal Institutions in the Longue-durée: Citizenship through a Southern Lens.' In D. Kochenov and K. Surak (eds), *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging* (Cambridge: Cambridge University Press, 2022).

[2] D. Kochenov, 'Ending the Passport Apartheid' (2020) *International Journal of Constitutional law* vol. 18, 1525.

the contrary, citizenship has been employed for the opposite purpose of caste-assignment and segregation.

In addition to such inherent contradiction, one must admit that modern democracies are under pressure due to global crises, migrations, distrust in politics, and other phenomena, among which the advent of digital tools must be accounted for.

Against this backdrop, Blokker's text provides an assessment of the participatory dimension of citizenship/belonging to a community, focusing particularly on constitutional amendment procedures and the Conference on the Future of Europe. From the abovementioned dichotomic perspective, this facet fills in the inclusive dimension of citizenship.

The requests of participation in decision-making made in numerous fora and contexts defend the need to complement representative democracy with further direct participatory instruments. If this is a spread practice in constitutional reforms[3], comparatively it still lacks legal instruments within other decision-making processes. Overall, in fact, domestic (and supranational) institutions do not have the imagination – and the political will – to regulate the structural inclusion of citizens' participation in the democratic toolkit[4]. Of course, the further the institution is from the affected community, the smaller the public pressure is to be involved in the decision, as a comparison between domestic amendments and the Conference on the Future of Europe proves.

According to the author, the current debate on democracy, triggered as well by the rise of populist movements[5] is shifting from a spread agreement on the value of the representative paradigm to the acknowledgement of the necessary recognition and regulation of bottom-up involvement. Therefore, the way in which participatory citizenship becomes institutionalized and regulated is a fundamental challenge of

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[3] S. Suteu, S. Tierney, 'Squaring the circle? Bringing deliberation and participation together in processes of constitution-making'. In *The Cambridge Handbook of Deliberative Constitutionalism* (Cambridge: Cambridge University Press, 2018), 282-294.

[4] A. Alemanno, J. Organ, Citizen Participation in Democratic Europe: What Next for the EU (Lanham: ECPR Press, 2021).

[5] See as well P. Gerbaudo, 'Social Media and Populism: An Elective Affinity?' *Media, Culture & Society* (2018) vol. 40, 745–53.

modern democracies, that need to insert it within the existing institutional and constitutional framework[6].

Now, one may wonder whether digital tools can be beneficial to this end. Tronconi's contribution analyses particularly digital parties' role within the experimentation of new forms of political participation. These parties are relatively young vis-à-vis the other forces: the first Pirate Party was founded in Sweden in 2006; the Five Star Movement in Italy in 2009; Podemos in Spain in 2014; France Insoumise in 2016. They all use social media and apps to foster people's involvement claiming that such instruments favor more direct and transparent participation increasing democracy[7].

Online parties' platforms serve different purposes, from the selection of candidates to run in elections to the collective decision on whether to enter into a governmental coalition and/or with which program. Several functions are connected to deliberation and decision-making, such as the discussion and amendment of legislative proposals that can be brought about by the MPs of the corresponding party.

Nevertheless, the data collected prove that these forces in the end only provide a plebiscitarian "reactive democracy," in which party affiliated members are basically ratifying decisions already taken by the leadership. There are, in fact, major legal and political issues attached to these instruments. Only to name a few: a) the proper identification of the voters; b) the actual number of people voting on each proposal (for instance, on the so-called "reddito di cittadinanza" – a social security benefit which is one of the most relevant initiatives of the Five Star Movement -, only 4.000 comments were included, and this was one of the most debated proposals on the Russeau Platform); c) the exclusion of groups who are either not familiar with these platforms and/or do not have access to them; d) the counting and checking of the votes. More in general, the question is what the true aim of these platforms consists in: restate the leaders' consensus or ensure true consultation? The answer to this question would truly make the difference in terms of participatory citizenship.

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[6] G. Smith, 'The European Citizens' Assembly.' In A. Alemanno and J. Organ, *Citizen Participation in Democratic Europe: What Next for the EU*, above n. 4, at 204.

[7] P. Gerbaudo, The Digital Party, Political Organization and Online Democracy (London: Pluto Press, 2018).

Tronconi's conclusions do not seem very optimistic in this respect. First, the "digital divide" reiterates the traditional unevenly distribution of participatory opportunities among citizens. In fact, as the author explains, "people located at the 'centre' of society (educated, wealthy, living in urban areas, belonging to ethnic majority, etc.) tend to be disproportionately active in politics." The only positive note could be the increasing involvement of younger generations who are more familiar with digital means. Nevertheless, the kind of activism which is triggered by such tools is in almost all cases a low-cost engagement, labelled as "clicktivism," which does not imply a committed engagement with politics. Again, a critical rethinking of digital technology's contribution to citizenship has become necessary.

Digital citizenship is the object of Costantino's text, meant as a set of rights and duties which add up to traditional citizenship as they have become possible thanks to novel information and communication technologies[8]. Of course, the potential is extremely appealing, but the risks are several as well. Therefore, the way in which the legislature regulates these tools will shape the actual content and performance of digital citizenship as a whole, according to the principles of legality, participation, transparency, proportionality, and access to justice. The interpretation of these principles requires a reconsideration of the current standards which do not apply to the digital world, as the relevance of the construction of the algorithm within the application of transparency exemplifies.

Digital tools can also serve citizenship's exclusionary purpose. Penasa's article explains this issue within immigration management, as autonomous systems and algorithms have been employed within the control of national borders, the management of the first interaction between migrants and national authorities, visa application procedures, and in general in the management of foreigners' applications, even for social assistance.[9] Also in this case, the use of digital tools offers undoubtful advantages while presenting criticalities due to the actual functioning of the tools themselves and the potential infringement on rights. This is why the author advocates

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[8] K. Mossberger, C. J. Tolbert, R. S. McNeal, *Digital Citizenship: The Internet, Society, and Participation*, (Cambridge US: MIT Press, 2007).

[9] P. Molnar, 'Technology on the margins: AI and global migration management from a human rights perspective' (2019) *Cambridge International Law Journal*, vol. 8, 310 ff.

for including at least a "human rights impact assessment" of the new tools, in order to check whether the implementation of digital means impacts on the rights of migrants and applicants for international protection.[10]

All papers collected here suggest at least three intertwined readings of citizenship in our times and just as many directions for further investigation. The first reading concerns the relationship between citizenship and rights in times of crises, such as the ones contemporary democracies are facing. Global crises reinforce the exclusionary frame of citizenship, on the one hand, while they emphasize the political significance of being a citizen on the other. The exclusionary frame plays out when we witness what Kochenov refers to as "super-citizenship" being the condition for the enjoyment of rights as well as security and welfare. In the wake of the current humanitarian crisis, following the Russian invasion of Ukraine in March 2022, the Ukrainian President has made a plea to the EU, later accompanied by a formal request of accession, to start procedures to grant admission to the state. The President interpreted what seems to be a general sentiment across the population. In particular, belonging to the EU and enjoying its citizenship is perceived as reducing chances of political instability, aggression, and major human rights violations. In contrast, being a citizen of a former Soviet republic is a heritage of liabilities and dangers rather than a status granting rights at the present historical moment. In that sense, citizenship does not convey the message of equality and liberation that liberal constitutionalism has attached to such a term.

At the same time, however, citizenship is a powerful unifying element welding together individual existences, especially in times of crisis. Again, the current war in Ukraine is the epitome of that, with citizens being called up to engage directly and defend state sovereignty, as the classical understanding of citizenship duties would require. In parallel, Ukrainian citizens abroad have spontaneously mobilized to contribute to the defense of their state of origin.

More generally, citizens' participation and engagement have been stimulated within the context of the ordinary functioning of democratic systems. As Blokker has demonstrated, this has also happened in an attempt to contrast populist backlashes in

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[10] See A. Beduschi, 'International migration management in the age of artificial intelligence' (2021) *Migration Studies*, vol. 9, 8.

recent years. The extent to which injecting direct participation elements into representative democracy models is the solution to populist drifts is still to be proven; what is essential to stress here is that participatory frame emphasizes the idea that citizenship is above all a device of empowerment, which can also expose the emptiness of certain forms of political rhetoric.

However, participation and engagement understood as elements of political action can also be disentangled from the formal possession of certain citizenship status. Studies on the interaction of technologies with political participation suggest that technological interactions often happen on the grounds of identity aggregation that do not consider legal categories such as the possession of citizenship, which in turn becomes irrelevant for partaking in online communities. In this context, citizenship describes mainly a form of participation or interest, albeit superficial and episodic, in the destiny of the political community. After all, online interactions on social media platforms that feed political parties' information gathering are not conditioned to the proof of formal citizenship.

The second reading of citizenship is precisely connected to the spread of technologies in all the interactions of public and political significance.[11] Technology escalates some of the challenges discussed here. First and foremost, digitalization raises the problem of protecting rights in contexts where their exercise is conditioned to being able to access digital technologies. Both Tronconi and Costantino contend that any digital transformation needs to address such a challenge before being put onto the table of political decisions. Tronconi suggests that there may not be much to gain in terms of political participation since technology-driven politics seems to be based on a shallow understanding of activism and social engagement. In contrast, the scenario is different if one looks at the relationship between citizens and public powers. Access to and knowledge of digital technologies can be crucial in allowing interactions and retrieving information concerning the use of technological devices in administrative procedures. On these assumptions, Costantino makes a case for digital citizenship. Secondly, technologies magnify inequalities and call us back to discuss to what extent citizenship conveys equality of chances in contexts of substantive disparities of resources and

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[11] D.F. Kettl, 'Making Data Speak: Lessons for Using Numbers for Solving Public Policy Puzzles' (2016) *Governance*, vol. 29, 573–79.

possibility to access them.[12] Thirdly, technologies can strengthen exclusionary mechanisms, as Penasa elucidates when discussing the legal status of those not members in a political community where they seek to be accepted. Once again, we are confronted with the limit of those accounts that describe citizenship as an empowering instrument, and we circle back to the universe of legal positions that one needs to take into consideration to grasp the substantive meaning of such a word.

The third reading of citizenship looks at what is required to make it a significant element in the life of contemporary democratic states. In that respect, this special issue suggests that administrators and decision-makers, particularly at the local level[13], need new skills to cope with the complex interaction between citizenship, rights, and technologies. In other words, political actors and the (future) public officers supporting them are required to cultivate novel educational patterns. Such educational patterns have something to do with developing a new 'cultural cognition' of citizenship in contemporary democracy.[14] By cultural cognition, we mean a shared frame of the world (or of a given portion of reality) among a specific group of people.[15] In this context, the new cultural cognition required frames citizenship as a

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[12] See the Report on " Extreme Poverty and Human Rights" released by the UN Special Rapporteur on extreme poverty and human rights in 2019. In particular, The Report expresses concerns regarding the application of algorithmic decision-making to welfare services for at least three separate ranges of reasons: (1) lack of privacy and data protection (especially in the phase of identity verification), even veering towards systemic surveillance (exploited on the pretext of preventing and detecting fraud); (2) system failures (while assessing receivers' eligibility, benefit calculations and payments); and (3) unfairness (from basing decisions affecting individual rights on group-based predictions), lack of transparency and the risk of reinforcing existing inequalities and discrimination, particularly in relation to risk scoring and need classification. See United Nations General Assembly, "Extreme Poverty and Human Rights", *Report of the Special Rapporteur on extreme poverty and human rights*, 11 October 2019.

[13] R. Brauneis, C.P. Goodman, 'Algorithmic Transparency of the Smart City' (2018) *Yale J.L. & Tech.* 103.

[14] See M. Hildebrandt, *Smart Technologies and the End(s) of Law: Novel Entanglements of Law and Technology* (Cheltenham: Edward Elgar Publishing, 2015) 100–03, discussing the use of algorithm-based technology that need to be coupled with the need to equip citizens with proper instruments by which to understand the AI ecosystem.

[15] The concept of "cultural cognition" is borrowed from J.K. Sax, 'The Problems with Decision-Making' (2020) *Tulsa Law Review,* vol. 56, 39.

status that denotes the individual commitment and willingness to be part of a certain community by participation and political action rather than by formal attribution.