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Solidarity beyond the nation-state? Reflections on the European experience

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1. Introduction

Are social justice and solidarity possible beyond the nation state? This question has been and still is at the center of a long and articulated philosophical debate, which has highlighted the multi-faceted tension opposing the universalistic and “open” vocation of social justice, on the one hand, and the particularistic and “closed” vocation of the state, on the other (Cohen and Sabel 2006; Van Parijs 2006). While primarily and fundamentally interested in (and equipped for answering to) issues of “desirability”, the philosophical debate has often touched upon “feasibility” issues. From a normative standpoint it is hard to justify that the principles of justice should stop – as they typically tend to do in the real world – at the frontiers of the state. But even if it would be highly desirable that they didn’t, feasibility considerations allow us to relax our standards, aware that the nation state performs a host of other desirable functions.

The link between social justice, solidarity and state boundaries has been extensively examined also from a positive, rather than normative, perspective. Here the prevailing focus has been on the political and institutional preconditions of “sharing” practices, i.e. forms of interpersonal and inter-group transfers of resources based on predetermined equity criteria. Also this second perspective has posited a strong nexus between state-national boundaries, on the one hand, and redistributive arrangements on the other hand. Whichever the specific content of the equity criteria, in the real world a just social order requires institutions for the pooling of resources and their selective redistribution over time. Such institutions can only exist within a space of interaction characterised by mutual trust and reciprocity expectations. National boundaries are the most effective instrument for creating and stabilising such space of interaction, making sure that insiders cannot escape from it (except for lawful reasons) and that “undeserving” outsiders cannot intrude into it¹.

Positing a strong link between political and institutional phenomena does not rule out the possibility (theoretical and practical) that they may well stand alone and be decoupled under certain circumstances. We may thus legitimately raise the question: can we imagine forms of post-national solidarity, i.e. “sharing” spaces that stretch beyond the boundaries of the nation state?

This paper will explore such question in three subsequent steps. First, it will elaborate from a theoretical and historical perspective the link between boundaries and social solidarity. Next, it will offer a brief sketch of the process of “nationalization” of solidarity in Europe between the XIX and the XX century. Then it will show how the process of European integration has indeed opened a window of opportunity for the “un-bounding” of solidarity and the experimentation of novel forms of open social citizenship. In the conclusion, the paper will offer some speculative ideas on the relevance of the European experience for the development and promotion of some sort of global sharing space.

2. Solidarity as a form of social closure

Situated as it is at the crossroads between “liberty” and “equality”, between “self-interest” and “altruism”, solidarity is a somewhat elusive concept and a complex social good. On the one hand, it connotes a trait of whole social aggregates, that is, a high

¹ For a review of this literature see Ferrera (2005).

degree of “fusion” or internal union, cohesion, and commonality of purpose of a given group (the noun “solidarity” comes from the Latin *solidus*, a firm and compact body). On the other hand, it connotes a particular set of ties among the members of such group: *sharing ties*, that is, transactions aimed at pooling (a part of) each member’s resources for some common purpose. As is well known, modern welfare state programmes pool resources (primarily financial) with the aim of contrasting the typical risks and adversities of the life cycle: from sickness to old age, from work accidents to unemployment. Such risks are combated by redistributing pooled resources both horizontally (from the damaged to the non-damaged) and vertically (from the better-off to the worse-off). Looked at from this perspective, the welfare state can be considered as a highly articulated and specialized form of institutionalized solidarity, serving both efficiency and social justice objectives (Barr 1993).

Solidarity became slowly institutionalized during the last two centuries in the wider context of state- and nation-building. The establishment of redistributive arrangements based on “social rights” played a crucial role in stabilizing the new form of political organization (the nation-state) that gradually emerged in modern Europe. This stabilization occurred through the anchoring of people’s life chances to state-national organizations uniquely dedicated to social protection, reinforcing on the one hand those feelings of “we-ness” that are a crucial underpinning of the nation-state construct and offering on the other hand to national elites new tools for acquiring and maintaining legitimacy and internal order.

People’s life chances were “anchored” by weaving social rights into the fabric of citizenship. As masterfully argued by T.H. Marshall, the evolution of modern citizenship involved a double process: of fusion and of separation (Marshall 1992, 9). The fusion was geographical and entailed the dismantling of local privileges and immunities, the harmonization of rights and obligations throughout the national territory, and the establishment of a level playing field (the equal status of citizen) within state borders. The separation was functional and it entailed the creation of new sources of nationwide authority and jurisdiction as well as new specialized institutions for the implementation of that authority and that jurisdiction at a decentralized level. In most European countries this double process of fusion and separation started with the establishment of civil and political rights, that provided to the new “citizens” precious instruments for taking advantage of the opportunities that were available within state borders. But in a context of unfettered markets (and in particular of a purely “self-regulating” labour market—the destructive utopia described by Polanyi), civil and political rights were insufficient. Only the bestowal of certain material entitlements “not proportionate to the market value of the claimant” (Marshall 1992, 28) could keep ordinary citizens from falling into conditions of acute need, often jeopardizing their very survival.

The incorporation of social rights into the space of citizenship was no easy task. In the economic sphere, the expansion of market capitalism produced a class society inherently built on inequalities, differential rewards, and the “commodification” of workers (Polanyi 1957; Esping-Andersen 1990). Classes and nations arose together (Bendix 1964; Mann 1986): and even though the virtuous reconciliation between the meritocratic logic of the capitalist market and the egalitarian logic of national citizenship has been one of the greatest achievements of twentieth-century Europe, the itinerary towards this destination was punctuated by marked social and systemic strains and clashes.

Social rights had an enormous impact on social stratification and life chances. Marshall was certainly right when he pitted “citizenship vs. social class”, while the “Swedish School” is equally right in interpreting these rights as salient “power resources” for wage-earners and labour movements (Korpi 1983; Esping Andersen, 1990). But “de-commodification” was not the only issue that shaped the forms and content of social rights in the various countries. Another important front, more pertinent for our line of reasoning, was the issue of *closure*: how far-reaching ought the new redistributive schemes be? For which collectivities ought the new sharing ties to be defined and introduced? Such “who” questions were as important as the “what” questions emphasized by traditional debates about welfare state formation.

Social rights are more demanding political products than civil and political rights. All rights have costs: enablement costs, to create the conditions for their actual exercise (such as free legal counsel for those people who cannot afford it) and enforcement costs. But, resting as they do on material transfers and services, social rights give rise to “substance” costs as well. They require the availability of significant amounts of material resources that are not easy to extract from society, and of moral commitments to “sharing with others” that are not easy to activate at the individual and primary group levels (Offe 1993). The definition of boundaries plays a critical role in the production of these rights. In the first place, boundaries are essential for constructing new “special purpose communities” ready to pool certain risks. For welfare-state builders, boundary setting was a delicate balancing act between indulgence vis-à-vis the particularistic inclinations of pre-existing social categories and the self-defeating ambitions of redistributive “stretching”, that is, pushing the scope of solidarity beyond the limits which could be sustained by available material and moral resources. In the second place, boundaries are essential for enforcing affiliation to a sharing community. Now, compulsion is a prime component of citizenship in all its aspects, a fundamental instrument for assuring a correspondence between rights and duties. But in the sphere of social rights, which have precise, quantifiable costs, the matching of rights (entitlements) and duties (obligations to pay taxes and contributions) must be particularly accurate and stringent if fiscal bankruptcy is to be avoided. At least some civil and political rights can survive even without the full and constant exercise of the corresponding duties (contemporary democracy often functions with voting turnouts closer to 50 per cent than to 100 per cent). But social rights must be sustained by unrelenting sharing acts. This is why they rest on a specialized organizational form: that of compulsory social insurance. In most countries, the establishment of social rights meant the establishment of compulsory insurance schemes: against old age and disability, work injuries and sickness, maternity and unemployment. And, especially in the field of old age, the first implication for the members of such schemes was the payment of contributions (that is, the exercise of the duty), with benefits arriving only after long “vesting” periods.

Defining and enforcing closure (in the form of obligatory affiliation and compulsory payments) remained a balancing act politically, but it conferred several economic advantages: less costly protection per insured person (thanks to the large, predictable, and reliable size of the sharing pool), the possibility of charging “contributions” (flat-rate or proportional payments) rather than premiums (payments differentiated according to individual risk profiles, as in private insurance schemes) and the possibility of granting special treatment (such as lower or credited contributions, or minimum benefits) to categories of disadvantaged members. In contrast to private or voluntary

insurance, compulsory (and public) social insurance could thus cover “difficult” risks such as unemployment or family breakdown, and also produce not only horizontal redistributions (from the healthy to the sick, from the employed to the unemployed, and so on) but also vertical ones (from rich to poor). In this way, social citizenship could bring that “general enrichment of the concrete substance of civilized life” through an “equalization between the more and the less fortunate at all levels” that Marshall (1992, 33) saw as its fundamental mission.

Closure matters, then, for social rights (and thus for solidarity), and probably in a more direct and intense way than for the other rights of citizenship: “bonding” can only build on firm “bounding”. If observed from the angle of social citizenship, the European landscape appears today as a dense forest of compulsory spaces of “social sharing”, covering virtually 100 per cent of national populations, with very limited “exit” opportunities (such as in the form of exemption from insurance). We may thus wonder: after more than a century of continuous deepening and expansion, has social solidarity “grown to limits”, to use the title of a well known book of the 1980 (Flora, 1986/87)? Can scenarios of further deepening and expansion be imagined, in Europe and beyond? To address these questions a more precise understanding of the spatial nature of solidarity and of the historical process of “bounding for bonding” is required.

3. The nationalization of solidarity: a historical sketch

Solidarity is a “sharing space” based on entitlements and demarcated by *two* distinct boundaries: territorial boundaries and membership boundaries. The former define the geographical scope of solidarity and link the eligibility and fruition of entitlements to forms of “legitimate attachment” to a given territory on the side of claimants and beneficiaries. The latter define the scope of solidarity throughout the social structure based on various criteria (such as age, gender, employment status, need and so on). Welfare state formation can be seen as a lengthy historical process of boundary building, through which sharing collectivities were forged via territorial and membership demarcations.

In most European states, until the middle of the XIX century external territorial boundaries were essentially of a military nature and had only a vague administrative-regulatory component. The national territory was in its turn crossed by numerous internal barriers (e.g. in terms of labour and even physical mobility) as well as a high degree of legal differentiation. The very notion of a uniform legal code (in penal law, but especially in civic law) only made its appearance at the doctrinal level with the Enlightenment towards the end of the XVIII century and had a very slow take off in practical terms throughout the subsequent century (Tarello 1998). The right to engage in a work activity of one’s choosing only emerged with the dismantlement of the rigid guild systems and corporatist protections (Alber 1982) – the other side of the coin being of course the rapid “commodification” of workers in the capitalist labour market (Polanyi 1957; Esping Andersen 1990).

The removal of barriers to free circulation as well as regulatory standardization across the state territory proceeded at an increasingly rapid speed during the second half of the XIX century and the establishment of social insurance schemes with a national scope constituted a sort of quantum leap for certain countries in this respect. As is well known, the first country to ever introduce compulsory insurance was Germany: in 1883 against

sickness, in 1884 against work injuries and in 1889 against old age. All industrial blue-collar workers were covered, regardless of where they worked within the *Reich*. The German reforms had a vast international echo. Austria-Hungary was the first country to follow suit (in 1887 as regards work injuries and in 1888 as regards sickness). Prior to the turn of the century came Denmark (means-tested national pensions in 1891), Norway (work injuries, in 1894), Finland (work injuries in 1895), France and Italy (work injuries in 1898). The other countries took off with subsidised voluntary insurance, but shifted to compulsory schemes in the first two decades of the new century. At the outbreak of World War I, only Belgium was missing from the list (compulsory pension insurance arrived in this country in 1924). Even Switzerland – where cantons strenuously opposed federal interference in this field – succeeded in introducing compulsory insurance against work injuries in 1911².

The alignment of redistributive boundaries with the territorial boundaries of the state added one extra spur for the adoption of those strategies of territorial closure and external boundary defence that gained priority in the political agenda of many European countries in the wake of “nationalization” processes. The definition of “citizenship” and “nationality” (i.e. who belongs to the national community) and the issue of how to treat “aliens” became a prime object of public policy and debates at the turn of the century, especially in the larger countries aspiring to consolidate or assert their status of great powers and experiencing at the same time significant immigration flows. France introduced a comprehensive law on citizenship (essentially based on the *jus soli* principle) in 1889³. After two decades of discussions and campaigns, the UK passed the first Aliens Act in 1905, and amended it in 1914⁴. The German Reich standardized rules on *Staatsangehoerigkeit* in 1913, establishing the *jus sanguinis* as fundamental criterion for the acquisition of German nationality⁵.

Some time elapsed, however, before these new legislative instruments became fully operative. In the two decades prior to World War I, the European state system witnessed a period of increasing mutual interpenetration through international trade, foreign investment and labour migration. The new citizenship or alienship codes were not immediately and systematically employed as “filtering” devices for inclusion/exclusion. The main goal of early citizenship policies was more the identification of nationals *per se* (citizenship as an object of closure) than the gating of access into domestic membership spaces (citizenship as instrument of closure). Even the British Aliens Acts of 1905 and 1914 were essentially aimed at empowering state authorities to deport “undesirable aliens” for public order or national safety reasons rather than at discriminating against foreign workers. As noted by Carl Strikwerda (1987), at the turn of the century workers could move freely across borders, passports were almost unknown, residence and work permits were not required and it was perfectly legitimate to own property and do business in other countries. Each nation was creating distinct arrangements for social sharing that were territorially coterminous with state boundaries: but the latter were easily permeable. In Strikwerda’s reconstruction, such context opened a window of opportunity for “social internationalism”, i.e. forms of trans-national mobilisation for the

² See Alber (1982) for a full picture and discussion of the sequence of introduction of compulsory schemes. Alber’s analysis does not include Spain, Portugal and Greece, which also made their first steps in social insurance after World War I.

³ On the French case see Weil (1996) and Brubaker (1992).

⁴ On the British case, see Cesarani (1996).

⁵ On the German case, see Brubaker (1992), Breuilly (1998), Lemke (1997).

production of basic rights of protection through a virtuous collaboration between national governments and international organizations.

At the beginning of the XX century the trans-national links between national unions were surprisingly intense. A sort of advocacy coalition formed within this network to promote international agreements on many delicate issues concerning workers' rights: from hours of work to women's employment, from judicial disputes to child labor and safety regulations. Frequent conferences on such themes were organised in Berlin, Brussels, Paris. In 1900 the International Association for Labour Legislation was created, which subsequently instituted the International Labour Organisation (ILO) in Geneva. Between 1900 and 1914 more than two hundreds new international bodies were founded. A few conventions were signed on minimum labour standard and national governments agreed to stipulate bilateral agreements guaranteeing reciprocity in the new branch of social insurance that was emerging everywhere, i.e. work injuries insurance. Even without reciprocity agreements, the prevailing legal tradition on labour disputes applied "customary international law", so that workers operated de facto within a relatively homogeneous legal framework. In Strikwerda's words, in the early XX century "social citizenship was still being defined, and it could either national or international or both".

This period came suddenly to an end during the Great War. The window of opportunity for any form of social internationalism closed off, and liberal nationalism (i.e. the readiness and willingness of European nation-states to entangle themselves in a web of mutual socio-economic relations) was replaced by nationalistic protectionism and in some cases outright chauvinist aggressiveness. It was during the War that the institution of citizenship and the new rules introduced in the previous decades started to be used as an instrument of territorial defence. Passports and entry visa became necessary for travel, residence and work permits were introduced almost everywhere and the circulation of workers and capitals became the object of restrictive regulation. For those who had no right to belong, options were drastically narrowed and could be suddenly withdrawn. During the great depression, the expulsion of foreign workers became a common practice in many receiving countries, e.g. France and Belgium (Cross 1983). In the UK, interwar legislation temporarily abrogated the *jus soli* principle and explicitly limited the social entitlements of aliens (Cesarani 1996). Originally involving cross-local regulatory standardization and nation-wide pooling of certain risks, during the interwar period mass social insurance planted deeper territorial roots, increasingly solid external boundaries were built around it and accurate filtering mechanisms were deployed in order to sort insiders from outsiders. A clear path had been chosen: social protection would be part and parcel of the "bundle of territoriality"⁶ – a territoriality bounded and controlled by the authority of the nation state.

The definition of membership boundaries ("who shares what with whom", within each nation state) was much more controversial and required much heavier political investment than the definition of territorial boundaries. The internal design of European welfare state was significantly shaped by pre-existing or co-evolving structural constellations, in particular cleavage constellations (center-periphery conflicts, state-church conflicts, ethno-cultural conflicts and ideological – primarily left-right – conflicts).

⁶ Originally suggested by Ruggie (1993), this metaphor refers to the close association between territory and various forms of authority structures (including social rights) that emerged with the consolidation of the modern state system. The latter is characterized by "territorially defined, fixed and mutually exclusive enclaves of legitimate domination" (Ruggie 1993, 47).

However problematic and contentious, the drawing of internal membership boundaries gave rise to a web of redistributive collectivities and arrangements which became gradually “crystallized” through dynamics of institutionalization. The *Trente Glorieuses* (1945–1975) were the apex of the *national* welfare state. The coverage of its schemes reached its “natural” limits (that is, the whole citizenry, at least *de jure*) or got very close to it. The more localized systems of protection were progressively marginalized in their financial size and functional scope. Sophisticated techniques were invented and deployed in order to improve and rationalize the extraction of taxes and contributions, govern redistributive flows from the center, and deliver benefits and services to the various clienteles. Finally, alongside the various insurance schemes for the standard risks, new non-contributory programmes of general social assistance were created, as well as increasingly complex health-care systems providing a wide array of medical services. The new programmes of social assistance differed from traditional public charity to the extent that they were based on rights rather than bureaucratic discretion. Health-care systems shifted in their turn the emphasis of social sharing from the provision of cash transfers to the provision of benefits in kind (pharmaceuticals, medical treatments, and so on). This shift made the institutional profile of the welfare state more complex because it bestowed a new role on service providers as relevant actors. It also made the welfare state more popular in general, and the European welfare state more distinct from its US counterpart, which remained much leaner in terms of public health cover.

Thus, in the first post-war decades the “social citizenship” attached to state-national institutions achieved full flower and also its greatest degree of both external and internal closure. For non-nationals, it was rather difficult to enter the solidarity spaces of other states, especially when it came to deriving benefits from them. Under certain conditions, foreign workers were admitted into the national labour markets and social insurance schemes. Bilateral treaties were agreed between various European countries concerning both the circulation of workers and their social rights.⁷ But such treaties were typically designed to favour the labour-importing countries (Romero 1993). Imported workers were granted only temporary residence and work permits; the presence of “vesting” rules concerning minimum contributory qualifications often barred them from the actual enjoyment of benefits (typically pensions). Moreover, a number of bilateral treaties maintained direct and indirect obstacles to equal treatment, such as residence clauses (which prevented benefits from being exported) and also displayed gaps in so-called “material scope”, that is, the range of accessible benefits (such as unemployment benefits). Legal migrant workers were thus always obliged to pay contributions; but their chance of actually receiving benefits was far from guaranteed. The “principle of territoriality” – a central tenet of international labour law (Pennings 2001) – retained control over the most relevant aspects of social security strictly in the hands of national governments, putting non-nationals in conditions of systematic disadvantage in dealing with issues of contribution cumulation, transferability, and the like (Cornelissen 1996; Holloway 1981). More importantly, as a rule non-nationals were excluded from social and medical assistance benefits, either directly through explicit nationality requirements

⁷ The first bilateral treaties were already signed prior to the First World War (for example, between France and Italy in 1904). The number of such treaties grew rapidly during the 1920s and 1930s. At the end of the Second World War, 133 bilateral agreements were in place, also thanks to the activism and expertise of the ILO. This net of bilateral agreements, however, had some significant gaps: for example in the late 1940s no treaty existed between Germany and Luxembourg or between Germany and Belgium. For a detailed reconstruction, see Holloway (1981).

or indirectly via “gainful residence” requirements (that is, the possession of legal work permits).

Nationals, on the other hand, were virtually “locked in”, obliged to be members of public schemes. Internally, the level of “voice”, i.e. political conflict, around welfare policies tended to increase, but the expansion of these programmes contributed substantially to enhancing citizens’ “loyalty” towards their national variant of welfare state. The availability of need-based benefits and “social minima” linked to citizenship contributed to strengthening such loyalty and enhancing general feelings of collective solidarity. Welfare rights, legitimized through the electoral channel, made a fundamental contribution to nation-building, accentuating citizens’ territorial identities.

4. Enter European integration: is post-national solidarity possible?

The process of European integration has gradually but irreversibly altered the compact national configurations which had consolidated during the *Trentes Glorieuses*. When it was launched, the integration process was not meant to challenge the “bounded” character of domestic social protection systems. Quite to the contrary, the project was meant to support the virtuous circle of economic modernization and growth, political legitimation and stability, social cohesion and solidarity that started to operate in the early 1950s in each nation state (a virtuous circle that Scharpf has aptly dubbed “democratic civilization of capitalism”) (Scharpf, 2000). European integration was intended to sustain the functioning of European style “welfare capitalism” by taking care of economic interdependence and by facilitating trade flows among the members of the EEC, thus securing higher rates of growth and higher fiscal dividends. And in its initial phase, the establishment of a common market did not endanger the autonomy of domestic authorities in setting the level and type of taxes and hence the level and type of social protection: national tax bases (including capital) and national consumers were largely “captive” and thus the distributive and regulatory costs of the welfare state could be easily reflected in prices without jeopardizing the profitability of capitalist production (Scharpf 1999; 2000).

With the passing of time, however, – and especially since the mid 1970s – European integration started to gradually erode the “boundary configuration” which served as a basis for national welfare regimes. The general story is well known and does not need to be recounted in detail (Ferrera 2005). Cross system boundaries have been extensively redefined, differentiated, reduced, or altogether cancelled. An internal market has been established, resting on the free circulation of goods, persons, capital, and services. A common currency has been introduced, accompanied by rather rigid constraints on domestic fiscal policies. A tightly monitored competition regime has started to forbid national closure practices that are judged to be “market distortions” by supranational authorities. Firms, capital, and, more generally, “tax bases” are no longer captive of the nation state, thus weakening the traditional economic foundations of redistributive arrangements.

For our reasoning, the important part of the story is the specific impact of European integration on the boundaries of national citizenship spaces and of the institutional core of the welfare state, namely, compulsory social insurance. Through a series of binding regulations and court rulings, social rights (and the corresponding obligations) have been de-coupled from national citizenship within the EU and linked merely to work or

residence status. The traditional link between rights and territory has become much looser: for most civic and social rights, the filtering role of nationality has been neutralized. A new political figure has emerged on the stage: the *denizen*, an outsider (in respect of the national space) who can enter (and of course re-exit), stay inside, voice, and even “share” under certain conditions. While residence is still partly a matter of national sovereignty, the freedom to work anywhere in the territory of the Union is protected by the treaties and attentively policed by supranational authorities. On this front, it is clear that European integration has promoted an almost complete cross-local “fusion” of what Marshall considered the basic civil right in the economic sphere: “the right to follow the occupation of one’s choice in the place of one’s choice, subject only to legitimate demands for preliminary technical training” (Marshall 1992, 10). To be sure, the member states still retain very substantial prerogatives over the definition and operation of social rights within their borders. But the underlying and ultimate filtering function performed by national citizenship qua overall and solid container of rights and basic instrument of closure is no longer there.

In the field of social protection proper, coordination rules on the one hand (essentially, Regulation 1408/71) and competition rules on the other hand have severely restricted the exclusionary or discriminatory prerogatives of national governments vis-à-vis outsiders and have even launched an attack on the very “sovereignty to bound” of the nation state in the social sphere. Thanks to the principles of benefit cumulability and exportability, national welfare states now must let in and out of their borders entire “bundles of entitlements”: import of entitlements matured under foreign schemes (as in the case of claims for the recognition of contributions paid abroad) or exports of entitlements to be redeemed in foreign territories (as in the case of claims to payments abroad). Although – as mentioned above – work-related insurance schemes had always envisaged the possibility of non-nationals participating as long as they enjoyed the status of legal immigrants, the institutional framework put in place by the 1971 Regulation represents a quantum leap in terms of “opening”, not only in its extremely wide personal and material scope but also in its degree of juridification, emblematically represented by the powers of a supranational court enjoying supremacy over domestic courts. The sovereign “right to bound” is still there, but it is no longer an absolute right, subject as it is to the limits imposed by the EU competition and coordination regimes—which specify the conditions under which it can be legitimately exercised—and by the judicial review of the ECJ.

The development of the EU regime on social security coordination can be read as a new chapter in the long-term process of the expansion of social rights: referring back to Peter Flora’s metaphor, it can be read as a new phase of “growth beyond limits”, that is, of coverage and eligibility extensions beyond the limits of the domestic territory and beyond the reach of the nation-state. But does this also mean that Europe has unproblematically entered a new phase of post-national forms of social solidarity – a phase in which “sharing ties” can stretch beyond state borders and reach out towards non nationals? Is a new boundary configuration emerging in the EU, capable of re-shaping the territorial and membership basis of redistributive communities? The short answer is: we are not there yet, and precisely as a consequence of boundary re-configurations, many national welfare states have re-opened the classic debate about “who can share what with whom” and have even taken some concrete steps of defensive “re-bounding” against non nationals. But the seeds for a new phase of post-national

solidarity have been planted and – if appropriately “gardened” – in due course they may well reach full maturation. Let us articulate in more detail this diagnosis.

Slowly, but inexorably, during the last couple of decades the dismantlement of national boundaries around sharing spaces has been eliciting a growing politicization of the “opening” issue, and especially of the “immigration” issue: questions of reciprocity and fairness regarding the access of “foreigners” into national social protection schemes have emerged as increasingly prominent and contested topics in the political arena. Intra-EU cross border flows remained relatively contained until the early 2000s, but have been rapidly increasing after the Eastern enlargement of 2004-2007. It must also be noted that even if not wholly assimilated to EU citizens, third country nationals have come to enjoy virtually full access to social benefits in the member states where they legally reside: EU coordination rules apply to third country nationals once they have legally entered the EU territory. In many EU countries the immigration issue has gained the potential of transforming itself into a basis for cleavage formation: an insider-outsider cleavage or even a fully-fledged pro-integration/anti-integration cleavage, in parallel with the surge of “ethno-regionalist” or “right wing populist” mobilizations. The negative results of the French and Dutch referendums on the Constitutional Treaty in 2005 have already proven that the emergence of such dynamics is not a purely academic speculation: a scenario of defensive re-bounding of national sharing spaces cannot be ruled out in the post-enlargement EU.

We can however envisage an alternative scenario, which may be dubbed “incremental social trans-nationalism and supra-nationalism”. This scenario rests on three dynamics that are clearly at work in the current European social scene:

1) the gradual institutionalization of a common membership space (in principle coterminous with the territory of the Union) by virtue of which all EU citizens and legal denizens have “the right to have rights”, including rights to “share”. For the time being, the substantive contents of these rights vary according to the norms and rules which are in force in the portion of territory (national or even sub-national) in which EU citizens freely choose to work and/or reside. But it is plausible to expect that the institutionalization of such space will generate pressures for some form of standardization, especially in the wake of supranational initiatives of monitoring and surveillance (including “hard” surveillance through the European Court of Justice). In the fields of gender equality and fundamental rights, for example, cross-national “fusion” has already produced (in Marshall’s words) “institutional separation”, that is the emergence of new institutional structures at the EU level (the *Institute for Gender Equality* and the *EU Agency for Fundamental Rights*) dedicated to the monitoring and assessment of national legal orders and social situations. The ECJ has in its turn already shown that it intends to seriously enforce the principle that EU citizens have “the right to have rights” and has even started to rule (and formulate doctrine) about the specific content of the rights (in the plural, including social rights) (De Schoutter and Deakin 2005);

2) the gradual articulation and strengthening of the so-called EU social dimension, i.e. a set of schemes and programmes directly anchored at the supranational level, of a regulative and distributive nature, based on a variety of “hard law” and “soft law” instruments, including the Open Method of Coordination (Zeitlin and Pochet 2005). The strengthening of the social dimension of the EU is an important development not only *per*

se, but also for the politics that accompanies it: a politics that has revived, in updated and amplified forms, those dynamics of trans-national mobilization and advocacy for “solidarity across borders” which had made an early and unsuccessful appearance at the beginning of the XX century;

3) the emergence (and in some sectors, the actual flourishing) of trans-national schemes and collaborative partnerships, in the wake of closer cross-border contacts and the specific regulative and financial incentives made available by the EU itself. Also this front witnesses a host of new political activities and the formation of new collective actors mobilizing in the pursuit of “sharing” objectives⁸.

Developments along these three fronts are less visible and certainly less discussed than developments along the “defensive re-bounding” front. Although still rather scant, empirical research does indicate, however, that the seeds are there and that the process of political and institutional maturation has started: the scenario of an incremental social transnationalism and supranationalism does not appear beyond reach in XXI century Europe. To paraphrase Strickwerda’s expression, within the EU social rights are now rapidly becoming “national and supranational”.

Speculating about the future is always risky and we should not indulge in superficial forms of optimism. Reconciling “solidarity” and “Europe”, the logic of closure which underpins national dispositions and practices of social sharing, and the logic of opening which typically inspires the European integration project is a daunting challenge and it is certainly not easy for the European Union to find a balance between these two opposite logics: a balance capable of sustaining under changed boundary conditions the political production of social solidarity. But if our diagnosis is correct, then finding this balance is not impossible and the search for it is already underway. Institutional forms and options are emerging, reforms proposals are being elaborated, and seeds of change are visible at the grass roots of key social and political processes. The nation-state still is, and probably will remain for a long time, the ultimate guarantor of entitlements and the prime legitimate space for the exercise of social citizenship and for the delicate balancing of rights and obligations. But in the wider space of the EU some institutional elements are emerging—citizenship rights, regulatory instruments, seeds of a core of shared values and even identity traits—which if carefully cultivated may provide a fertile ground for the “nesting” of national sharing traditions within wider membership spaces, thus containing “re-bounding” pressures and possibly activating cross-national bonding dynamics.

5. Conclusion

The unbundling of rights and territory, of citizenship and nationality, of political authority and state structures is not an exclusively European phenomenon. According to some authors (e.g. Sassen 2006), the whole world is now witnessing a deconstruction of “the national” and the experimentation of a wide range of spatial re-assemblages of various national functions and capabilities (including citizenship rights). Some global or regional economic regimes (such as the WTO or NAFTA) already foresee rules for the

⁸ For a bibliography on trans-national and in particular cross-border cooperations, see the website of URGE at <http://www.urge.it/cooperation.html#focus>

cross-border portability of rights and entitlements for certain occupational groups (e.g. managers) that already resemble those of the EU. And even within the US there seems to be a shift from the traditional doctrine of “rights to individuals as nationals” to “rights to individuals as individuals” (Sassen 2007). A new window of opportunity for “social internationalism” has opened again in the course of the last decade, as witnessed by the policy debates, the increasingly intense diplomacy, the trans-national mobilization dynamics and the (small) institutional advancements around the so-called “social clause” within the WTO and the whole issue of the “core labour standards” (Alston 2004; Hansson 2008).

Within this wider context of (partial) de-nationalization trends, the European experience stands out, however, as particularly significant for at least three reasons. The first reason is straightforward: historically, it was in Europe that the “bundle of territoriality”, i.e. the link between territory, rights and authority, made its first appearance during the modern era and reached its most intense and sophisticated institutional manifestation during the *Trente Glorieuses*. The fact that Europe is now clearly witnessing not only a reversal of the process (the “unbundling”), but also that it is forging novel institutional architectures which promise to generate a viable and balanced “re-assemblage” must be welcomed as good news by all those who subscribe to a “universalistic” and open vision of social justice but are worried about its political and institutional feasibility.

The second reason is that the novel spatial architecture of solidarity which is gradually emerging in the EU and the “incremental social transnationalism/supranationalism” scenario that we have outlined above can set a benchmark for other regions of the world and in particular other experiences of regional integration – e.g. in North America, Latin America, South East Asia or even Africa. There is already a very articulated academic and policy debate which recognizes the potential and promises of EU social developments and discusses possible emulations and institutional transfers (Novitz 2005; Zeitlin and Sabel 2007; Walker and Wiseman 2006).

Finally, in due course the EU itself can become an agent of change at the global level, by promoting its own “model” in a host of direct and indirect ways. To some extent this has already happened during the last enlargement process and continues to happen through the so-called “neighbourhood policy” and the EU external relations policy more generally (Clapham and Martignoni 2006; Tulmets 2005). The EU is often referred to as a “civilian superpower” – a notion which many dislike for its rhetoric and elusiveness. Being a pioneer of the new path towards post-national solidarity, developing and promoting a novel notion of *civitas universalis* (and not only *Europaea*) could be a concrete goal for such a superpower – one that should be supported and actively pursued by all progressives.

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