

## SPECIAL ISSUE

# INTERCULTURALISM

## A COMPARATIVE LEXICON

Editor: Silvia Bagni

Jacopo Paffarini

### “No Taxation Without Representation”?

#### The enfranchisement of migrants in Europe as a matter of intercultural government

**Abstract.** Global migration has reshaped European societies, even if the change has never been symmetric and uniformly disseminated. Different legislative approaches combine with a uniform formal exclusion from national polity, despite migrants growing activism in social, religious and trade union movements. The comparative analysis of migrant enfranchisement at the local level and foreigners’ consultative bodies suggests a further question on how city polity can foster inclusion and promote an intercultural democracy.

**Keywords:** Political rights, Migration, Interculturality, Local government.

### 1. Introduction

This essay addresses some theoretical issues related to the topic of migrants’ political rights, even if to some it may seem to be a ‘residual matter’ when compared with the other well-known problems of our ‘complex societies’. For this reason, it is appropriate to be explicit from the beginning that this topic is not limited to the so-called ‘inclusion’ of minority groups but rather addresses the determination of the “correct spatial scale of intercultural politics.” More specifically, the comparative analysis that will be presented below helps raise further questions on the governance of ‘divided societies’, as the difficulties that traditional ‘centralized’ democracy encounters in responding to the cultural asymmetries inside national territories posed by global migrations is progressively evident.

The problem addressed in this text requires a clear distinction between the concepts of ‘multiculturalism’ and ‘interculturalism’<sup>1</sup>. The concept of multiculturalism emerged during the crisis of the Nation-State as a response aimed at ensuring the coexistence of diverse worldviews. However, it often draws problematic equivalences between categories and institutions of the ‘colonized’ and the ‘colonizing’ peoples, which should be avoided<sup>2</sup>. To overcome the ethnocentric matrix of this approach, interculturalism aims to bring cultures and values onto an equal plane, establishing a process of creative and equitable encounter, dialogue, and negotiation of values, with the aim of achieving “identity in diversity”<sup>3</sup>. These two approaches have produced two different systems of guaranteeing rights and institutional organisation. The first model is the ‘Multicultural State’, which aims to strengthen individual and collective rights – even through asymmetries between territorial powers – without seeking integration into a political community. In the second model, chthonic and historically subaltern cultures participate in the “refounding” of the State, which therefore becomes “Intercultural” as it presupposes that “cultures change” and undergo a process of “creolization”, whereby ‘consensual’ and ‘direct forms of democracy’ must prevail over the ‘majority principle’<sup>4</sup>.

The category of the Intercultural State allows for the inclusion of additional perspectives that enable a truly comparative analysis of the variable geographies of norms. For example, the Constitutions of the Global South provide us with an infinite variety of combinations. From these, the strong ambition to build a democratic government emerges, by declining national and subnational representative bodies with forms of territorial and cultural autonomy<sup>5</sup>.

In the following pages, we will explore the role of migrants as active citizens in the local sphere, both economically and politically. However, this contrasts with their exclusion from political rights guaranteed by national constitutions. From another perspective, this asymmetry suggests that it may be possible to return to a city-rooted concept of ‘polity’. Some local and sub-national administrations seem to be supporting this idea by accepting foreign consultative bodies, as do some national governments by allowing migrants to take part in municipal elections. Does the city have a more advanced position than the State in developing an intercultural public sphere?

## 2. The Nation-State as an emerging limit to democracy

The starting point should be the principle followed by national legislations to shape the boundaries of the polity both at the national and local level<sup>6</sup>. Specifically, an ‘ethnic-nationalist’ approach will allow non-resident citizens to vote, even if they have never touched the ‘homeland’, while it will exclude long term resident foreigners from electoral rights even at the local level. This is the case of Italian, French and German legislations which understand ‘Nation’ as a community of blood and destiny, and so the constituency does not have a territorial dimension since it follows the displacement of Nation

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<sup>1</sup> Although some legal systems have started to use interculturalism explicitly, sometimes even generously, in their constitutional texts (Bagni, 2017: 111-163), it is important to maintain objectivity and avoid subjective evaluations.

<sup>2</sup> Trujillo (2012:308).

<sup>3</sup> Bagni, (2017: 116-117).

<sup>4</sup> Bagni, (2017: 134).

<sup>5</sup> Palermo, Woelk (2021: 38).

<sup>6</sup> Bauböck (2005: 685-686).

members'. On the contrary, a 'republican model' of enfranchisement would privilege material ties (such as job and business) and set political and tax requirements to polity membership<sup>7</sup>.

Migration flows ask for a modernization of these two classic approaches, as they reveal the complexities and multiplicity behind personal status of migrants which cannot be understood as an 'in or out' situation. Thus, first of all, dual citizenship is not always allowed by leaving or receiving countries or, again, it may be limited to the sole circumstances in which there is an international agreement. Secondly, enfranchisement, differently from the access to civil and social rights, it is not an automatic recognition based on residence requirements since the final decision is reserved to the host State (as it is for the application for naturalization<sup>8</sup>). Lastly, but not least important, it must be remembered that the condition of the migrant - when not forced, as in the case of refugees - may not be definitive and does not exclude a return to the country of origin. Every rigid schema has been challenged by people's movements and their actual unfolding. At the same time, new proposals—such as the transformation of citizenship into a kind of “stakeholdership”—have been put forward in order to reshape politics on alternative bases that are not exclusively “national” or “territorial”<sup>9</sup>.

For that reason, it seems particularly urgent to reevaluate the consequences of migration flows on the regulation of political rights and, more broadly, the legitimation of power in the European countries, as the most exposed area to migration flows. The following results derive from research that has compared legal and judicial formants, as other political science scholars have done, but it is inspired by the growing perception of the uselessness of the concepts of 'Nation' and 'State'. The crisis of the latter, caused by the erosion of Sovereignty and the emergence of 'global powers', is the main factor of the social disintegration of the former. Similarly, on the institutional level, electoral abstentionism increases the relativity of the 'Majority' which expresses the 'Representatives of the Nation'<sup>10</sup>.

Three decades ago, in order to avoid this deadlock, the European countries proposed moving Sovereignty and Representation to a supranational context, which is still the main strategy to promote an inclusive citizenship in the region and beyond<sup>11</sup>. However, it should be noted that at the moment States do not seem fully capable of recognizing themselves in an effective 'transnational and intercultural sovereign order'. On the other hand, a return to Nation-States that involve the dismantling of existing supranational and international institutions and realities, does not seem plausible.

The dramatic rise of consensus on the populist narrative about migratory flows requires a 'new ethics' of political representation: a hope that is very often betrayed by the actions (and omissions) of governments, but that can be the consequence of a polity regenerated without regard to national citizenship.

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<sup>7</sup> “A republican polity will be open to newcomers but can freely determine through its own laws whom to admit”, R. Bauböck (2005: 685).

<sup>8</sup> Bauböck (2010: 281).

<sup>9</sup> Bauböck (2005: 686).

<sup>10</sup> Ciervo (2021: 58-59).

<sup>11</sup> Bauböck (2017).

### 3. The political participation of migrants between national and international law: a threefold normative development

Notwithstanding some differences and inevitable setbacks, established democracies tend to converge on multiple aspects of foreigners' treatment: thus, one of the main characteristics is the common adversity towards the recognition of full political rights. Some countries have 'softened' the exclusionary legislations, often derived from the literal meaning of the constitutional provisions, and have conferred local voting rights, and sometimes candidacy rights, to non-citizen residents. However, those changes rarely become consolidated laws which support an effective participation of migrants, as they are usually overthrown or canceled when 'anti-immigrant parties' gain more power<sup>12</sup>.

This comparative analysis aims, therefore, to draw a map of national experiences and classify legislation according to some distinctive criteria in order to examine the possibility of identifying 'models' for the solutions offered regarding the political participation of foreigners who are not citizens of the Union (the so called 'Third Country Nationals - TCNs'). Therefore, it is necessary to explain some methodological options and findings as a premise. First, in order to guarantee greater reliability of the results, the scope of observation has been delimited to some political freedoms closely linked to the circuit of electoral representation, leaving other undoubtedly important forms of participation in public life (such as trade unions or NGOs membership) out of the analysis<sup>13</sup>. Thus, considering the TCNs integration policies adopted by the European organizations (especially the Council of Europe) since the 1990s, the investigation focuses on three aspects: the right to join and found political parties, the right to stand and vote at election, and membership in national and local consultative bodies for the integration of migrants.

The regulations from the CoE and the Union have not produced uniform outcomes, so it is not possible to define an 'European model'. This shortage has undoubtedly been influenced by the governments and Commissioners' original decision not to give binding character to the common standards. So, for example, the main CoE agreement on this topic - the 1992 'Convention on the Participation of Foreigners in Public Life at Local Level' - only confers binding character on a restricted circle of provisions that guarantee freedom of association, assembly and freedom of expression (the 'Chapter A'), while it reserves the decision to sign those relating to the right to vote ('Chapter C') and consultation ('Chapter B') to the member States<sup>14</sup>. On the other hand, the European Union has adopted an even tighter 'self-restraint': the leading legal reference for member States are the 'Common Basic Principles for Immigrant Integration Policy', issued by the Council of Ministers in 2004, which recommends the participation of foreigners in decisions that affect them, at least at a local level, as an essential means to "increase the feeling of belonging" to the community of the receiving State<sup>15</sup>. The 'cautiousness' of the European institutions has confirmed the monopoly of the States on the regulation of political rights, which explains the existing polarization of normative approaches.

<sup>12</sup> Eisenberg (2015:135); Lenard (2015: 121).

<sup>13</sup> On this aspect of public life, Martiniello (2006) points out the frequent involvement of migrants in opinion movements (with the example of the French 'Sans-papier'), confessional organizations (especially among ethnic groups of Islamic faith), community organizations (especially among Africans in Europe) and unions (on which there is a transversal adhesion).

<sup>14</sup> See the details of the Convention at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=144>

<sup>15</sup> See the document at: [https://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/jha/82745.pdf](https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/82745.pdf)

Comparative examination has made this tension visible in the form of an ‘opposition between legal formants’<sup>16</sup>, which has been encountered in a large part of national experiences, albeit with different results and implications. Indeed, the question could arise from a geopolitical perspective, distinguishing, on the one hand, the situation of the countries of Central and Eastern Europe, in which national forces contradict the common principles of Brussels and the conventions of the Council of Europe and, on the other hand, the situation of Western and Northern countries, where the extension of political rights to foreigners have advanced through legislation which has reshaped the interpretation of the Constitutions.

In order to organize the presentation of the results clearly, the different disciplinary aspects investigated have been divided. The next paragraph will address the legislation on political party membership, in which restrictive approaches are relatively few even if each organization may introduce in its own charter discriminatory limits to membership. The fourth paragraph contains the comparison of national legislations on electoral rights, where results are divided between the exercise of voting rights and the right to stand as a candidate at the different levels and categories of government. The last aspect is dedicated to the figure of foreigners' consultative bodies, which has been reproduced in thirteen CoE countries.

#### 4. Freedom of political association and to join political parties

The first area of public life in which the participation of foreigners has historically been accepted is that of militancy in political parties, also by virtue of the internationalist opening promoted by the formations that in the second post-war period were inspired by the soviet model<sup>17</sup>. However, from a legal point of view, a restrictive policy has continued to prevail throughout the twentieth century, also due to a general preference for a literal interpretation of constitutional provisions<sup>18</sup>.

Another valuable explanation for this restrictive attitude can be traced back to the choice of the post-World War II Constituent Assemblies—in particular the Italian, French and German ones—to confirm a clear distinction between the ‘ownership’ of human rights and that of political rights<sup>19</sup>. This stance was shared by the legal doctrine of several European countries, although some scholars during the last century suggested that the exclusion of foreigners could be overcome through a legislative initiative, so with no need to amend the constitutional text<sup>20</sup>.

Recently, while the rulings of the French and German constitutional courts endorsed the legislators' initiatives aimed at revising the concept of ‘people’ in a ‘pluralistic view’, the political parties

<sup>16</sup> Scarciglia (2008: 57-58), who uses this expression to indicate the moment in which the legal comparatist comes into contact with two sources of law that conflict, so that “it is necessary to establish which of the two legal formants is prevalent, to resolve an antinomy that is only apparent”.

<sup>17</sup> Kelsen (2016: 61).

<sup>18</sup> Rubio Marín (2000) e M. Plutino, (2012: 2-3).

<sup>19</sup> Locchi (2011: 92-93).

<sup>20</sup> Algostino (2020: 453-457). “Per la dottrina assolutamente maggioritaria, l’adesione di stranieri o la fondazione da parte loro di partiti politici va qualificata in termini di illiceità, quantomeno nel senso che si ravvisa l’esistenza di un preciso limite (divieto) costituzionale che riguarda loro”. Plutino (2012: 9).

of various countries have progressively admitted foreigners with regular residence permits<sup>21</sup>. On the other hand, although it is not possible to hypothesize a ‘right to be admitted in political associations’<sup>22</sup>, Art. 3 of the “Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level” obliges the signatory countries to remove legal barriers to the right of association for “foreign residents”.

The evolution of the international standards on human rights has therefore favored the expansion of the ownership of political rights beyond the sphere of formal citizenship among Western European countries. Currently, the oldest democracies do not provide any legislative limitations on the membership of foreigners in political parties, which, like other associations, freely determine the qualities of those who can apply for membership. The more inclusive experiences are those of Ireland, Sweden, Germany and Spain, where normally the statute of political parties subordinate the membership to a minimum period of previous residence and same conditions are provided for accessing managerial positions<sup>23</sup>.

The situation is completely different in Eastern European countries, whose constitutional paths express a ‘divisive’ and ‘exclusive’ conception of national citizenship which found its most radical formulation in the guidelines on migration policies expressed in the ‘Visegrad pact’<sup>24</sup>. Hungary is among the few countries of the area that does not legislatively limit the registration of foreigners in political parties. However, the possibility of holding managerial positions is reserved for those who enjoy active and passive electoral legitimacy (from which migrants are excluded)<sup>25</sup>.

## 5. The right to vote and stand as a candidate

Migration flows, as well as the integration process, have pushed Europe to renovate the content of voting rights, at least concerning the local level. Urban space has been described as the field of a possible rise of the ‘political subjectivity’ of the migrant<sup>26</sup> and, more generally, of the reconfiguration of community ties in the sense of a “citizenship of residence” to be understood as “urbanite”<sup>27</sup>. However, while in the Northern countries this trend is almost fully established, in the Southern border countries the pressure of migratory flows provokes the most radical political reactions. As an example, it is worth remembering the short-lived Greek law that gave migrants the right to vote in the local election<sup>28</sup>, which

<sup>21</sup> For an analysis of the positions of the Italian doctrine accompanied by quantitative references on the membership of foreigners in parties, see M. Plutino, (2012: 13-15). About the interpretative changes of the German and French jurisprudence, see. Locchi (2011: 200-209), Horváth and Rubio Marin (2010).

<sup>22</sup> Barile (1984: 415).

<sup>23</sup> See DIVPOL (2014:6).

<sup>24</sup> Especially, Bulgaria, Czech Republic, Estonia, Croatia, Lithuania, Latvia, Poland, Romania, Slovenia and Slovakia, See the report of the European Union Agency for Fundamental Rights (2017: 50)

<sup>25</sup> European Union Agency for Fundamental Rights (2017: 56-57).

<sup>26</sup> Miller (1984).

<sup>27</sup> Wihtol De Wenden (1992: 137); Algostino (2020:460).

<sup>28</sup> The Greek Law n. 3838/2010 had introduced full local political rights for foreign residents who had lived in Greece legally for 5 years.

was withdrawn by a ruling of the Council of State three years after it came into force because it was deemed contrary to the principles of the national Constitution<sup>29</sup>.

In the European context three different regulatory solutions can be found regarding the access to electoral rights by TCNs: the recognition of active and passive suffrage rights; the ‘qualified recognition’ of only the right to vote; the total exclusion from the electoral system<sup>30</sup>.

The first typology includes nine European countries that grant foreigners the right to run and vote in municipal elections (and regional elections where applicable) after a relatively short period of residence. Ireland has certainly the most favorable legislation, as it requires only an application for registration at the municipal electoral office six months before the election day<sup>31</sup>. The active and passive suffrage is conditioned on a two-year period of previous residence in Finland, while three years are required in Denmark, Sweden and Norway, and five years in Luxembourg and the Netherlands. The most restrictive approach is adopted in Lithuania and Slovakia which, while prohibiting the registration of foreigners in political parties, recognize the right to vote and apply it locally to those who hold a permanent residence permit<sup>32</sup>. The regulation for the admission in the electoral register is another aspect which may influence foreigners’ participation in the countries where it is not automatic. Except for the Netherlands, Sweden, Norway, Finland, Lithuania and Slovakia, all the other national legislations require a formal application by the TCNs, as well as the documentation certifying lawful and continuous residence.

A second group of countries admit the local vote of foreigners (but not to stand as candidates), even if they provide more restrictive requirements compared to those of the first, in terms of residence length of time or additional obligations. Some of those national legal systems require a permanent residence permit (Hungary, Lithuania, Slovakia, Slovenia) or a long-term residence permit (Estonia), obtaining at least five years of previous legal residence in the national territory are necessary. More favorable to foreigner integration are the legislations of Belgium and of four Swiss Cantons<sup>33</sup> which do not ask for permanent or long-time residence for voting. However, it is worth highlighting a special condition provided by the former, which demands that the TCN who is applying for the right to vote take an oath of allegiance to the Constitution and the laws of Belgium, as well as to the European Convention on Human Rights.

The expansion of the local vote to foreigners involves a ‘selective’ (and not general) criterion in Portugal, Spain and the United Kingdom. The two Iberic legal systems grant suffrage rights at local elections to TCNs on the basis of reciprocity agreements with the country of origin<sup>34</sup>. In this case,

<sup>29</sup> It is worth underlining that the restrictive orientation of the Greek Council of State was not derived from the literal meaning of the constitutional text, which in fact does not mention the citizenship criterion in attributing voting rights in local elections. On the State Council ruling of 7 March 2013, see Triandafyllidou (2015: 49-50)

<sup>30</sup> The classification of national regulations regarding the electoral rights of TCNs described in the following pages finds support in the surveys developed by the EU - *Migrant Integration Policy Index* (MIPEX), available at: <https://www.mipex.eu/key-findings>

<sup>31</sup> However, it should be noted that the Immigrant Council of Ireland complains about the lack of participation of foreigners in local political life, as it can be deduced from the small number of registrations on the electoral lists: <https://www.immigrantcouncil.ie/news/go-vote>

<sup>32</sup> Zibas, (2014).

<sup>33</sup> Specifically: Fribourg, Geneva, Neuchâtel and Jura.

<sup>34</sup> See article 15, 4, of Portuguese Constitution, articles 2 and 5 of *Lei Organica* 1/2004 of Portugal. In Spain the enfranchisement of migrants at local level is provided by articles 176 and 177 of the *Ley Orgánica del Régimen Electoral General*, n. 5/85 (later amended by Ley n. 1/1997).

former colonial ties grant a special treatment to TCNs from Lusophone countries in Portugal (art. 15 (3) of the Constitution) and Commonwealth citizens in the United Kingdom (Sections 4(1)(c) and (3)(c) *Representation of the People Act -RPA*). Thus, bilateral international cooperation agreements have resulted in the full recognition of electoral rights for Brazilian citizens resident in Portugal for more than three years<sup>35</sup> and for Commonwealth citizens with permanent residence permit in the United Kingdom: in both cases the access to suffrage rights is conditioned by a specific application by the interested person.

## 6. The consultative bodies of foreigners at national and local levels of government

From a theoretical point of view, the proposal of foreigners' consultative bodies arises in the wake of the pluralist emphasis of European constitutionalism and presents common features with other 'multicultural' instruments for the protection of 'minorities' within national States. By arranging a separation between the participation circuits, the solution in question commits to a 'measured inclusion' of diversity (the 'foreigners') identified as opposed to a majority (the 'citizens'), who therefore remain the only subject legitimized to embody one of the constituent elements of the modern State (the 'People')<sup>36</sup>.

However, participatory democracy has been promoted for a long time as a device for protecting diversity and opening the public sphere to multi- and inter-cultural demands. It is considered appropriate to focus on some specific aspects, such as: the degree of autonomy from State political bodies especially in the choice of members, budget autonomy, the binding character of the advice procedure, the areas of their competencies, the provision of ethnic and gender quotas for a more equitable representation of immigrants.

The discipline of Chapter B of the *European Convention on the participation of foreigners in public life at local level* - dedicated to the "Consultative bodies to represent foreign residents at local level" - has been implemented in twelve national experiences<sup>37</sup>. Among the latter, however, there are important specificities in the reception path that make the identification of models more complex<sup>38</sup>.

The first detail to note is that most national regulations have gone beyond the objectives of the Convention, which limits the 'obligation to include' migrants to the level of the local political sphere. It should be noted, therefore, that 'national' consultative bodies have been established in nine countries with the explicit task of supporting the central government in the development, implementation and evaluation of integration policies<sup>39</sup>. Only in Belgium, Germany and Italy does the establishment of foreigners' consultative bodies take place on a territorial basis (respectively: in the region of Flanders, in almost all the *Lands* and in dozens of municipalities). In Belgium the only experience concerns the

<sup>35</sup> See Article 17 of the Treaty of Friendship, Cooperation and Consultation between the Federative Republic of Brazil and the Portuguese Republic. Available at: <https://consuladoporlugalsp.org.br/dados-sobre-portugal/tratados-e-acordos-entre-portugal-e-brasil/tratado-de-amizade-cooperacao-e-consulta-entre-a-republica-federativa-do-brasil-e-a-republica-portuguesa/>

<sup>36</sup> Locchi (2011: 77-78), Parolari (2016: 15).

<sup>37</sup> Holland, Norway, Finland, Ireland, Denmark, Luxembourg, Spain, Switzerland, Portugal, Italy, Germany, Belgium

<sup>38</sup> See the study *Economic and Social Committee of the European Union* (2010) which offers some ideas regarding the characteristics and prerogatives of the consultations of foreigners present in European territory. A further investigation was conducted by Gsir and Martiniello (2004).

<sup>39</sup> Specifically, in Holland, Norway, Finland, Ireland, Denmark, Luxembourg, Spain, Switzerland, Portugal.



Province of Flanders, where the opinion functions are entrusted to the *Center Flamand de Concertation*, whose composition and functions are regulated by decree of the Flemish government of 28 April 1998, which establishes a '*Politique flamande à l'encontre des minorités ethnoculturelles*'<sup>40</sup>. In Germany, foreigners' consultative bodies are established to cooperate with the executives in around 400 cities, governed by local regulations which provide for specific voting turnouts<sup>41</sup>. Even in Italy, the consultations were conceived as an institution for the participation of foreigners at the city level of government, although, at the moment only a small number of municipalities have continued the activities<sup>42</sup>.

A second relevant profile concerns the disciplinary regimes regarding the binding nature of the request for opinion and, more broadly, the matters on which the consultative bodies are authorized to intervene. Regarding the first aspect, seven of the twelve countries that have implemented Chapter B of the European Convention, political bodies are expressly bound to request the opinion of national councils when they intend to issue provisions regarding the legal status of foreigners<sup>43</sup>. Some disciplines have gone further, by giving to the councils the authority to issue advice on their own initiative as well as some additional functions. Thus, they can present integration plans (Spain), recommendations on specific issues (Switzerland) or solicit a meeting with the executive (Denmark)<sup>44</sup>. Finally on this topic, it is appropriate to point out the peculiarity of the Norwegian law, which obliges all public authorities to respond to the recommendations of the Contact Committee for Immigrants and Authorities (KIM) and its territorial branch<sup>45</sup>.

The competences of the foreigners' consultative bodies are variable: typically they express opinions on issues relating to the regulation of the status of migrants (from residence to the acquisition of citizenship), but they are also involved in the planning of intercultural integration and for the facilitation of worship practices. In Belgium, Denmark, Finland and the Netherlands they do not have delimited competences and are explicitly authorized to express themselves on all matters that they deem of interest. Even in Italy, the majority of municipal statutes recognize that councils have the power to request a meeting with the executive on matters of interest to the migrant community<sup>46</sup>.

The third area of the legislation on foreigners' councils which contributes to their differentiation concerns the criterion followed for their composition, with respect to which there are multiple arrangements. In Belgium and Denmark until the most recent period all members were elected by migrants, while now, as in other countries, there are *ex-officio* members or members appointed by local and national political bodies. In some cases, the non-elective members complete the staff of the council as experts on integration (Spain), spokespersons of the executive power (Ireland) and representatives of

<sup>40</sup> Available at: [https://etaamb.openjustice.be/fr/decret-du-28-avril-1998\\_n1998035668.html](https://etaamb.openjustice.be/fr/decret-du-28-avril-1998_n1998035668.html)

<sup>41</sup> A map of active "integration councils" is available on the German government website: <https://verwaltung.bund.de/leistungsverzeichnis/EN/leistung/99011007126000/herausgeber/HE-9938254/region/06>

<sup>42</sup> For a recent quantitative survey of the completed and active experiences of consulting foreigners in Italian municipalities and a qualitative analysis of the events in the Tuscan and Marche region, see Bertazzo (2021: 198-246)

<sup>43</sup> In Denmark, Ireland, Luxembourg, Norway, Holland, Spain and Switzerland.

<sup>44</sup> See the report of the Economic and Social Committee of the European Union (2010). On the functions of the Spanish consultative body, see article 3 of the *Real Decreto* n. 3, of January the 16<sup>th</sup>, 2006 "*por el que se regula la composición, competencias y régimen de funcionamiento del Foro para la Integración Social de los Inmigrantes - FISPI*". The Swiss Federal Commission on Migration found its discipline in article 100 of the Federal Law on Foreigners and their Integration, of 16 December 2005. See Grasso (2018).

<sup>45</sup> About the Norwegian experience, see European Commission (2011: 17-18).

<sup>46</sup> Bertazzo (2021: 214), which also reports the thirty-six different names that have been conferred on the consultative bodies established in ninety-nine Italian municipalities.

trade unions and business organizations (Spain and Portugal). Furthermore, the emphasis on public order contributes to the singularity of the Italian experience in terms of the composition of foreigners' consultative bodies. These are the only ones in Europe to include police officials<sup>47</sup> in that in most cases, the councilors are not elected by migrants<sup>48</sup>, but appointed by the local executive from a special list<sup>49</sup> or elected by the city council<sup>50</sup>.

In three countries there are quotas for balancing representation, which observe different criteria. The Scandinavian experiences, in particular, focus on demographic profiles: in Finland it is expected that at least 40% of the directors are women, while the Norwegian regulations prescribe equal representation of gender, age and ethnicity. In the case of the Netherlands, an even higher level of rationalization is found; the composition follows that of the Scandinavian countries, but a balanced presence is also required between the representatives of the first and second generations of migrants<sup>51</sup>.

Only in a few cases have the regulations of European countries on foreigners' consultations managed to give continuity to the representation of the interests of non-citizens. The growth of nationalist movements has produced a reduction in the margins of integration, progressively taking away space for policies aimed at enhancing social pluralism. Even in countries that in the past had been most committed to the participation of foreigners in public life, a series of setbacks (if not actual reversals) have occurred in terms of the autonomy of consultative bodies. For example, in Denmark the National Council for Ethnic Minorities was entirely elected until 2014, while now five of the fourteen councilors are appointed by the Minister for Social Integration<sup>52</sup>. On the other hand, in Belgium a rapid deterioration of relations between the Minority Forum (*Minderhedenforum*) and the government of Flanders has led to the end of a collaboration in the development of integration policies that began in 2002, followed by the announcement of the Flemish executive of the search for a "more responsible" interlocutor (who has been already found in the *Join.Vlaanderen* organization)<sup>53</sup>. The most complicated scenario, however, is in the Netherlands, where the central government has cut funding to consultative bodies, with expressed preference for "a holistic approach" towards integration, declaring its intention to interrupt inclusion policies "targeted" towards individual subjectivity<sup>54</sup>.

<sup>47</sup> Ferraiuolo (2012: 9), Cavaggion (2017: 13-14)

<sup>48</sup> As it is prescribed in Turin by the city council resolution n. 208, 14<sup>th</sup> December 1994.

<sup>49</sup> See "*Disciplinare di funzionamento della Consulta degli Immigrati del Comune di Napoli*", approved by the local executive ("Giunta comunale"), resolution n. 494, 30<sup>th</sup> October 2019.

<sup>50</sup> As in Trieste according with the municipal rule no. 28, approved on the 20<sup>th</sup> of April 2016.

<sup>51</sup> On these features of Scandinavian and Dutch experiences, see Economic and Social Committee of the European Union (2010).

<sup>52</sup> Of the remaining members, five are elected within the meeting of Representatives of the municipal councils for minorities (each municipal council has a spokesperson), while the councils of the four largest municipalities in Denmark express one member each (see the Council website for Danish ethnic minorities: <https://rem.dk/en/>).

<sup>53</sup> *Le gouvernement flamand change son organe consultatif sur les minorités, Minderhedenforum sera remplacé par Join.Vlaanderen*, in *RFTB.be*, 6<sup>th</sup> november 2020. Available at: [https://www.rtf.be/info/belgique/detail\\_le-gouvernement-flamand-change-son-organe-consultatif-sur-les-minorites-minderhedenforum-sera-remplace-par-join-vlaanderen?id=10628593](https://www.rtf.be/info/belgique/detail_le-gouvernement-flamand-change-son-organe-consultatif-sur-les-minorites-minderhedenforum-sera-remplace-par-join-vlaanderen?id=10628593)

<sup>54</sup> "*Painful Cuts to Integration Budgets - Even in Places Committed to Immigrant Integration*", in *Migration Policy Institute*, 2<sup>nd</sup> december 2010. Available at: <https://www.migrationpolicy.org/article/painful-cuts-integration-budgets-even-places-committed-immigrant-integration>.

## 7. Conclusions. A democracy beyond the Nation-State's political sphere?

The development of foreigners' enfranchisement at the local level, such as the experience of consultative bodies, highlights a sort of self-restraint of national legislatures, which have decided to extend the suffrage by an act of parliament without resorting to what would have probably been a difficult constitutional amendment process. Rather than building a path of stabilization, therefore, it was preferred to create a line of demarcation—that seems unsustainable in light of the principle of equality—between those who fully take part in the political community on the basis of a formal bond such as citizenship (even when residing abroad) and those who access “by request”. Furthermore, foreigners who want to vote or stand as candidates are subject to an evaluation of their moral qualities, as in Belgium, after having fulfilled the long-term requirements established by law. Beyond the risks of sudden ‘*dietro-front*’ based on electoral reasons (as demonstrated by the Greek case), the difference in rank between the regulation of the vote of migrants and that of citizens lacks a reasonable foundation in the face of the formal and substantive equality of tax contributions and economic freedoms and leaves the way open to possible ‘indirect discrimination’.

However, in addition to its weak legal recognition, the protection of cultural diversity suffers from the rigidity of the binary ‘majority/minority’ scheme, which is a legacy of what has been defined a “methodological nationalism”<sup>55</sup>, “according to which the nation, the State and society are the ‘natural’ social and political forms of the modern world”<sup>56</sup>.

Some scholars have used the term “legislative inflation”, to refer to the quantitative growth of legislation governing the permanence of the foreigners in the States’ territory<sup>57</sup>. Thus, the precariousness of migrant conditions is the result of the continuous changes of these rules, provoked by governments that seem to manage frontiers and ethnicity for electoral purposes rather than promoting the development of a stable approach to intercultural dialogue. As an example, it can be observed that the oldest democracies in Europe grant the right to vote to their citizens abroad (that may never have lived in their homeland), while they exclude long-time resident migrants from the suffrage. Furthermore, the cases of “selective enfranchisement of foreigners”, that is, the extension of political rights in favor of some TCNs, confirm the lack of an inclusive approach to diversity<sup>58</sup>. In this perspective, a “selective enfranchisement” has been practiced by the United Kingdom, which recognizes the right to vote for the citizens of the former colonies, and by Portugal, that confers electoral rights on the basis of international agreements with Portuguese speaking countries. These countries sustain a model of democracy based on an “ethnic-nationalist” idea of polity that seems unsustainable in light of current social dynamics.

Problems generated by the “Eurocentric” version of democracy are evident: the substantial failure of a ‘technical’ or ‘procedural’ solution to the problem of migrant representation demonstrates that the plurality and complexity triggered by migratory flows is pragmatically and theoretically unsolvable by the means of the hegemonic model of inclusion/exclusion in the Nation-State’s political sphere.

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<sup>55</sup> Wimmer and Schiller (2003)

<sup>56</sup> Beck (2006: 24)

<sup>57</sup> Locchi (2011: 127)

<sup>58</sup> Pegoraro (2020: 449-450), according to which overcoming “legal Westernism” (“*occidentalismo giuridico*”) necessarily involves a critique of the “internal point of view”, i.e. the false belief “that the fundamental rule is really one for all”.

This complexity calls not just for a new concept of democracy, but also for an idea of democracy as an emancipatory movement that starts from below. To this end, it may be helpful to reconsider the liberal roots of the equality principle, which in the past—even if no longer—justified the continuous admission of new classes and groups to the exercise of power. So, in the original conceptions of constitutional democracy, inclusion in decision-making processes had to take place on the basis of ‘material ties’ with the local community, as the principle of “no taxation without representation” suggests<sup>59</sup>.

There is something odd in the fact that international law sources are now rescuing the ‘local enfranchisement’ of the ‘first’ liberal ideas of democracy from the ‘contamination’ with the nationalist pattern which has spread during the last century. If we look overseas, for example, historical studies report that forty US member States admitted non-citizens to the local and federal vote, at least until the citizenship reform laws promulgated in the period between the two world wars<sup>60</sup>.

It is not only the legislation that limits the ‘*demos*’ within the boundaries of nationality, but, increasingly, it is the personal data registration which, in its apparent “neutrality”, can exclude certain categories of people from the public sphere. Although it may seem appropriate to confer some rights (such as local voting) to those who have established their residence in the territory in which they are requested to exercise them, it is worth noting that records in the register office do not always coincide with ‘habitual residence’, especially in the case of ‘economic migrants’<sup>61</sup>. The law can therefore be the cause of an asymmetry between the data in the possession of the public administration offices and the circumstances: material (such as an employment contract or enrollment in a course of study) and subjective (first of all, the desire to settle in a place).

The narrative of securitization that has long surrounded the debate on migration at a national level has sometimes been met with significant reactions at the local level, where the authorities have adopted positions in open disagreement with the orientation of the central government, with the aim of displacing migrant conditions from the debate on public order and bringing back the theme of reception and intercultural integration. Thus, if the sovereign bodies of the State are constrained by the propaganda of political parties, cities seem to be the best places for implementing policies to overcome administrative restrictions on political participation. Among many examples, one can cite the «*Padron Municipal*», which is a public register adopted in some cities of Spain with an aim to grant access to fundamental rights to all individuals that live in urban territory regardless of whether their resident status is regular or not<sup>62</sup>. Similarly, in the United States, Trump administration’s policies on migration have confronted a tenacious resistance by the local executives and officers who refused to share information with the federal administration on the identity of migrants in the city in order to obstruct their repatriation. The “*Padron Municipal*” and the “*Sanctuary Cities*” reveal the ‘polarization’ of migratory issues, which can alter the ‘normal’ dynamic of cooperation between different levels of government<sup>63</sup> and, from a legal point of view, show the possibility of “a broader goal, which is guaranteeing urban relations, promoting inclusion and participation”<sup>64</sup>.

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<sup>59</sup> Pegoraro (2020: 460)

<sup>60</sup> Raskin (1993).

<sup>61</sup> Or even in the case of students and homeless people, see Gargiulo (2022: 94).

<sup>62</sup> Gebhardt (2016: 854)

<sup>63</sup> J.L. Manfredi Sanchez (2021: 147-148); G. Caravale (2021: 27 and 35).

<sup>64</sup> A. Pin (2022: 125)

Different dynamics imply that a new inclusive polity could take place in cities. So, maybe a “Citification” of politics, as suggested by political ecology<sup>65</sup>, can reverse the exclusionary pattern designed by the nationalization of society and the ‘statalization of politics’ that has originated from western constitutionalism.

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<sup>65</sup> M. Bookchin (1992: 9 and 2021).

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[jacopo.paffarini1@unipg.it](mailto:jacopo.paffarini1@unipg.it)

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