BEYOND THE MUNICIPALITY:
THE CITY, ITS RIGHTS AND ITS RITES*

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1. The book by Jean-Bernard is very fine. In common with every fine book that is destined to become a classic, it sparks off innovatory thinking, which I have attempted to summarise in seven theories and in reflection on method.

First theory. Everyone has stressed the need for a legal space for the city. The city may be regarded as an autonomous subject of legal discipline. The city[1] and the *comune* (municipality) may be seen as two different legal realities, and we should echo Santi Romano[2] in saying that the city is "*Oltre il comune*" ("Beyond the municipality").

This may explain why in treatises on municipalities nobody has taken a serious look at the city. A new viewpoint is now emerging[3], which should not make us criticise the past. The

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[1] M. Ascheri, *Le Città-Stato*, (2006); L. Benevolo, *La città nella storia d'Europa*, (2001); Sir P. Hall, *Cities in civilization*, (1998); Id., *Cities in civilization*, (1998); R. Ruffilli, *Istituzioni, Società, Stato. Il ruolo delle istituzioni amministrative nella formazione dello Stato in Italia*, (1989); J. Rikwert, *The Idea of a Town: The Anthropology of Urban Form in Rome, Italy and the Ancient World*, (1988); A. Briggs, *Victorian cities,* (1963); L. Mumford, *The City in History*, (1961); L. Mumford, *The culture of the cities*, (London), 1938.

[2] S(anti) Romano, *Oltre lo Stato,* in Id., *Scritti minori,* (1950) vol. I, 419 s.; see also Santi Romano, *Lo Stato moderno e la sua crisi, Discorso per l'inaugurazione dell'anno accademico nella R. Università di Pisa letto il 4 novembre 1909*, (1909).

[3] S. Cattaneo, *Città*, in *Enc. dir.*, VII, 125; J. Kotkin, *The city. A global history,* (2006); G. Pavani, L. Pegoraro, *Municipi d'Occidente*, Il governo locale in Europa e nelle Americhe, (2006); P. Le Galès, *European Cities: Social Conflict and Governance*, (2002); S. Vicari Haddock, *La città contemporanea*, (2004); Max Weber, *Die Stadt, erstabdruck imn Archiv für Sozialwissenschaft und Sozialpolitik*, (1921), 621-772, tr. en. *The city,* (1958) tr. it. *La città*, (2003); A. Bagnasco, P. Le Galès (eds) *Cities in*

geopolitical reason is topical: at the start of the third millennium, the world urban population, those who live in towns, has overtaken the world rural population, those who live in the country[4].

An old professor once said to me: "the city has everything except country". What he meant was that the city is a large container that contains everything, apart from a few things such as agriculture that belonged to the rural world[5].

Everything in the city is flowing: everything inside must flow out from the city and from outside it must flow in. The city, then, is not sufficient unto itself.

Second theory. Today it can be said more precisely that the city is the container of everything because the city is a hub. According to many writers it is "a network of networks"; in my opinion, it is more precisely *a hub of a plurality of networks*, which may be interconnected by the hub or may be independent or even unrelated. The city is always a network locus - a hub that links one centre to another[6]. An individual network normally links a smaller centre to a larger one, but it may also just connect centres that are equivalent to each other, or middle-sized.

However, it is only the "network of networks" that connects all the centres, from the smallest to the largest. This is possible solely because certain hubs serve as hubs for several

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Contemporary Europe, (2000) (original ed.: A. Bagnasco, P. Le Galès, *Villes en Europe*, 1997); R. Ezra Park, E. W. Burgess, R. D. McKenzie (eds.), *The City*, (1925); L. Gambi, F. Merloni (eds.), *Amministrazioni pubbliche e territorio in Italia*, (1995); A. Harding, P. Le Galès, *Villes et États*, in V. Wright, S. Cassese (eds.), *La recomposition de l'État en Europe*, (1996); P. Le Galès, *Du gouvernement des villes à la gouvernance urbaine*, in Revue française de science politique, 1995, 1, 57 s.

[4] Commissione di lavoro CSS about "*Governo delle città*", *Società e territori da ricomporre. Libro bianco sul governo delle città italiane. Sintesi del rapporto conclusivo*, Consiglio italiano per le Scienze sociali, aprile 2011, 6; G. Dematteis (eds.), *Le grandi città italiane. Società e territori da ricomporre*, (2011).

[5] A. Faure, Le *village et la politique Essai sur les maires ruraux en action*, (1992).

[6] G. Pinson, M. Rousseau, *Les systèmes métropolitains intégrés: état des lieux et problématiques*, Territoires 2040 (DATAR), 3 (2011) 29-58; M. Castells *The Rise of the Network Society, The Information Age: Economy, Society and Culture,* Vol. I. (1996), tr. it., *La nascita della società in rete*, (2008); Id., *La città delle reti*, (2004); G. Catalano, *Reti di luoghi. Reti di città*, (2005); M. Castells, *The Informational City*, (1989); P. Perulli, *La città: la società europea nello spazio globale*, (2007); Id., *Piani strategici: governare le città europee*, (2004); C. Salone, *Logiche reticolari e politiche territoriali*, in Urbanistica Informazioni, 1999, n° 166, 32-40.

networks: these are the cities. The smaller centres may be rural or urban, but the city remains a point of connection for several networks.

In this sense the city is everything; more specifically, it is what it can have, but it is also what it can give through relationships with *others*.

Third theory. As the old professor also told me: "the city is very convenient; the soil is hard, one has to bend and do back-breaking work to cultivate it". While it is normal in the countryside for every family to bake its own bread, even though it may be in a communal oven, in the city it is the combined presence of many trades that enables individuals to follow just one. This has made it possible to specialise in one profession, in an art (including the military art) or in a trade, not for oneself but necessarily for *other people*. Specialisation does not happen in a country environment.

The city must be convenient to live in, for the very reason that it enables individuals to specialise. The city therefore means plurality and differentiation, in other words very many corporations or professions, or arts or trades[7], are all there side by side within the city, whether mediaeval, modern or contemporary.

The mediaeval guilds have been succeeded in the cities of today by the professions, in the sense of "the liberal professions" that have their own special discipline, in other words a regulated market of producers who are normally organised as a network in the cities and between cities, on a local scale and on a potentially global scale[8], almost always linked with the rest of the world.

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[7] A. Faure, *Les élus locaux à l'épreuve de la décentralisation. De nouveaux chantiers pour la médiation politique locale, in Revue française de science politique,* 44e année, n. 3, 1994, 462-479 (spec. 474 on the idea of an entrepreneurial city).

[8] S. Sassen, *Cities in a World Economy*, (2012), updated 4th ed. (1st ed. 1994); P. Perulli (eds.), *Nord. Una città regione globale*, (2012); C. Ratti, S. Sassen, *Le mega città iperconnesse*, May 3rd, 2009; Id., *Denationalization: Territory, Authority and Rights in a Global Digital Age*, (2005); Id., *The Global city. Introducing a concept*, in The Brown Journal of World Affairs, 2005, vol. XI, Issue 2; Id. (edt.), *Global Networks, Linked Cities*, (2002); A.J. Scott (eds.), *Global city-regions*, (2002); B. Jouve, C. Lefèvre, *Métropoles ingouvernables*, (2002); J. Gottmann, *Megalopolis. The Urbanized Northeastern seaboard of the United States*, (1961); Id., *Megalopolis, or the urbanization of the Northeastern Seaboard*, in *Economic Geography*, 33 (3): 189-200, 1957.

Each professional, however, is at the same time a hub for consumers, above all a contact point not just for city clients but also for other clients wherever they are located, who connect with them through technology or through other professionals to obtain ever more specialised services on a wide scale on the consumer market.

Clients from the city and clients from outside the city are drawn to the city, which is seen as a network of networks, or more precisely to the *hub of a plurality of networks* that is the city. Again it was the old professor who said to me that peasants going to the market in the city once a month took the opportunity there to visit the doctor for treatment, the lawyer or notary to obtain advice, and so on, because it is the city - the network node - that makes it possible to go from one network to another, even though the two networks are normally segregated.

Fourth theory. The city is not the *resident* population; the resident community, on the contrary, constitutes the *comune* (municipality); this also explains why the city is not the same as the institution of the *comune* (municipality) and its bodies and offices (the *consiglio comunale* or town council, the *giunta* or executive council, the mayor). But we shall return to this point later.

Since it is the *hub of a plurality of networks*, the city has people who come and go every day, each with their own agenda, inflows and outflows of goods, flows of services, more specifically flows of producers, as well as flows of consumers and not least a flow of capital.

The city has its own peculiar problems, because levels of criticality unknown in other places are created there[9]. Apart from the problems caused by the connection with others (transport, telecommunications, energy, etc.), there are critical environmental and health and hygiene factors, as well as the criticalities of urban planning and housing, compatibility with internal traffic conditions, generally due to what are said to be "networked" services that, where they remain unaddressed, give rise to critical

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[9] G. Dematteis (eds.), *Le grandi città italiane. Società e territori da ricomporre*, (2011); Y. Kazepov, *Cities of Europe. Changing Contexts, Local Arrangements, and the Challenge to Urban Cohesion*, (2005); G. Martinotti (ed.), *La dimensione metropolitana. Sviluppo e governo della nuova città*, (1999).

problems of public order. Jean-Bernard is right, then: in cities there are legal norms that are peculiar to each one.

The city, then, is made up of all those people who use it, live in it, and therefore simply constitute it as a community that is the *hub of a plurality of networks.* People who may belong to different municipalities – located throughout the world (in places far or near) – but who at least briefly, as a result of travelling, are concentrated in the city according to recurrent patterns of behaviour.

The different flows are characterised by differing rates and parameters, since the very idea of a flow indicates the behaviour not of a single individual but of a group of individuals who display a far from random periodicity of behaviours[10]. What in other sciences is said to be a "flow" is, in law, named a community – a community of professionals, users, workers, transporters, etc. – that on occasions is inaccurately described as *dynamic,* as opposed to a community of residents.

By now it is clear that every community necessarily adopts one or more behaviours for the optimum satisfaction of its own needs and organises itself to that end, and is therefore a *Ordinamento giuridico* (legal system) as defined by Santi Romano[11]. Communities or "networks" of professionals, users and workers: each one is a *Ordinamento giuridico* (legal system), and they have long since become organised as true professional orders, as unions to defend workers or as associations of businessmen, and more recently as purchasing groups or associations to uphold users' interests.

In this sense the city, as a *hub of a plurality of networks*, fits the definition of a system that regulates those who live in it together, not as individuals but as *ordinamenti giuridici* (legal systems) in themselves - a *ordinamento degli ordinamenti* (system of systems).

A system not regulated by law, a system that has the special characteristic of allowing systems to coexist in the city without problems of public law and order. The city as a territory is undoubtedly a place in which many *ordinamenti giuridici* (legal

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[10] A. L. Barabàsi, *Bursts: The Hidden Pattern Behind Everything We Do*, (2010).

[11] Santi Romano, *L'ordinamento giuridico*, II ed., (1946), reprinted by Giuffrè, 2013; Tr.: *L'ordre juridique*, (1975), II ed. 2002; *Die Rechtsordnung*, (1975); *El Ordienamento Jurídico*, (1963); *O Ordenamento Jurídico*, (2008).

systems) coexist; this cannot be a matter of chance, but it happens because the *Ordinamento della città* (The city legal system) regulates everything there.

Fifth theory. Professor Pericu has reasoned as a jurist based on his experience as the mayor of the citizens' community that is Genoa.

He has told us that he has tackled the tougher decisions with the Rector of the University of Genoa, with the President of the Union of industrialists, with the Secretaries of the leading trades unions or the representatives of the professional bodies, with other mayors or with the Presidents of provinces or regions, and last but not least with the Archbishop of Genoa or the leaders of other religious organisations: briefly, with the spokesmen of the systems that coexist in the city.

The law does not cover their meetings and procedures, nor is there any regulation stating which people should meet, or the formalities or majorities by which decisions should be taken. These are meetings, however, in which the formal institutions, through their own office-holders (mayor, president, secretary, etc.), decide on issues of great importance to the life of the city, following the necessary relevant deliberations.

The procedures and bodies are not laid down by any written provision, law or regulation, but nonetheless the development of a city over twenty years may be planned or a port redesigned, observing an order of precedence in meetings with the various representatives that becomes almost a ceremonial formally determining the procedure.

Whether it is called external coordination, a *conferenza di servizi* (as per article 14 *et seqq.*, Law 241 of 7 August 1990) or another workable definition, the example of a council of representatives of autonomous institutions has been at the origin of many European experiences under the names of *Privy Councils, Councils of State* or, lastly, *Councils of Ministers*. These too were certainly not initially provided for in *Constitutiones* (Constitutions), but they were no less important to kings and to the members of the councils: all of them conferred reciprocal legitimacy on each other, according to a construct that several parties have regarded first as an institutional rule and then a constitutional norm.

The city of Genoa therefore, as a *ordinamento* (legal system), has selected its own bodies, which can be distinguished from the municipal bodies and offices (the *consiglio comunale* or town council, the *giunta* or executive council, the mayor) and which, according to a lay or secular culture of the exercise of public authority, almost always choose as their meeting place the salons of *Palazzo Tursi* offered by the Mayor of Genoa, following methods and formalities that are ritualistic in nature - lay or secular rites, certainly, but no less effective for that.

Sixth theory. The "right to the city". Subjectively, therefore, the *right to the city*[12] is the individual's right to participate in a complex society, to participate in the "market" for goods and services; by contrast, the *right to the country* is the right to be forgotten or to live in ways that have been defined as "happy degrowth"[13]. I do not know whether the right to the city is part of the right to life, or of the right of movement and residence or other rights, but this descriptor may remind us that in the city the rights of man immediately imply complexity. In the city, if the rights to housing, or health and hygiene, or movement are not satisfied, public order problems inevitably arise[14]. In the city the "rights of man" are co-essential to the definition of security or public order,

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[12] D. Harvey, *The Right to the City*, in J. Show, I. Štiks (eds.), *Citizenship Rights*, (2013); H. Lefebvre, *Le Droit à la ville*, (2nd ed. 1968).

[13] M. Bonaiuti, *La Grande Transizione. Dal declino alla società della decrescita*, preface by S. Latouche, (2013); S. Latouche, *Can the Left Escape Economism?*, Capitalism Nature Socialism, vol. 23, issue 1, 2013. 74-78; B. Muraca, *Towards a fair degrowth-society: Justice and the right to a 'good life' beyond growth*, Futures, vol. 44, issue 6, 2012, 535–545; G. Kallis, C. Kerschner, J. Martinez-Alier, *The economics of degrowth*, in Ecological Economics (in press available online 21 September 2012); M. Pallante, *Meno e meglio. Decrescere per progredire*, (2011); Id., *La decrescita felice. La qualità della vita non dipende dal PIL*, (2005); G. Kallis, *In defence of degrowth*. Ecological Economics, vol. 70, issue 5, 15 March 2011, 873-880; S. Savioli, *Alla città nemica, Diario di una donna di campagna*, (2008).

[14] B. Secchi, *La città dei ricchi e la città dei poveri*, (2013); D. Harvey, *Rebel Cities: From the Right to the City to the Urban Revolution*, (2012), tr. it. *Città ribelli. I movimenti urbani dalla Comune di Parigi a Occupy Wall Street*, (2013); G. Pinson, H. Reigner, *Différenciation et standardisation dans la(es) politique(s) urbaine(s)*, in A. C. Douillet, A.Faure, C. Halpern, J. P. Leresche, *L'action publique locale dans tous ses états: différenciation et standardisation*, (2012), 163-178; N. Houard, *Politique de la Ville, Perspectives françaises et ouvertures internationals*, (2012); H. T. Andersen, R. van Kempen (eds.), *Governing European Cities: Social Fragmentation, Social Exclusion and Urban Governance*, (2001).

as in 1789. It is not by chance that, in the *Declaration of the Rights of Man and of the Citizen*[15], the "right to security" supplements the definition of the rights to liberty (art. 2 and art. 12).

Seventh theory. The city as a stress test of the effectiveness of the rights of man[16]. Many instances of non-discrimination are collated in Auby's book. It is well known that France is very conscious of this issue, particularly in its cities and above all in Paris. Non-discrimination among different peoples of different cultures, different religions, but also, more simply, of different mental and physical conditions.

A classic example is the elimination of architectural barriers for the disabled, something that is hard to obtain from the urban transport operators; others have mentioned the importance of social services, in particular care for the elderly or day-care centres for children, the lack of which considerably restricts the capacity of individuals.

If, as a father or mother, I am unable to find efficient day-care centres, I do not have the time to specialise and increase my professionalism, with a systemic effect that reduces the difference between town and country. Auby's book offers numerous examples that enable us to reflect on many questions.

Lastly, reflection as to method. I was tidying up my bookshelves and I came across a sociologist's book entitled "The end of cities". I looked at Auby's book and said to myself: this time the sociologists have got it wrong. In terms of method, his is

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[15] We adopt the most common translation - according to the Encyclopaedia Britannica among others - of the *Declaration des Droits de l'Homme et du Citoyen* in place of the quite less known phrase *Declaration of Human and Civic Rights*.

[16] S. Sassen, *La città aperta e i suoi nemici*, in *La Repubblica*, 4 aprile 2011; Commissione di lavoro CSS sul "Governo delle città", *Società e territori da ricomporre. Libro bianco sul governo delle Città italiane*, Consiglio italiano per le scienze sociali, aprile 2011, cit.; P. Costanzo, *Note introduttive alla Carta europea dei diritti dell'uomo nella città (quali competenze per gli statuti locali in materia di diritti?)*, in Giur. it., 2011, 6; A. Chabrot, *La Charte européenne des droits de l'homme dans la ville: un exemple d'acte «pré-juridique*, in Revue de Droit Public et de la Science Politique, 2007, 355 ss.; G. M. Flick, *La Carta Europea dei Diritti Umani nella Città nel sistema universale dei diritti umani*, in *Atti della Terza Conferenza per la Carta Europea dei Diritti Umani nella Città*, 2002, *www.comune.venezia.it; Tuzla Declaration: adopted on the Seventh Conference on the European Charter of Human Rights in the City held in Tuzla*, Bosnia and Herzegovina, 2010, in *www.cities-localgovernments.org;* L'Engagement de Barcelone, 1998, in *www.droitshumains.org*.

a fine book because it does not conceal the jurist's difficulties, but at the same time it is as a jurist that he confronts them, aware of the limitations of our science. It is a fine way of beginning. It may be argued that more studies are needed, but I feel that in a time of crisis this is methodologically useful, because the analysis of problems cannot be deferred *ad infinitum* and we have to begin by marshalling the facts, since - again, according to the classic legal maxim - *ex facto jus oritur,* the law arises out of the fact.