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CULTURAL RIGHTS AT THE WORKPLACE IN CANADA: TOWARDS POST-INDUSTRIAL CITIZENSHIP?[1]

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Abstract

In classic industrial relations and labour law theory, "Industrial citizenship" remains strongly linked to the idea of a "collective autonomy" of the workplace. In a fordist perspective, the workplace is seen as homogenous, with workers evolving in highly unionized settings and holding more of the same cultural background. The workplace is highly institutionalized, with strong unions facing a powerful employer. Labor rights are based upon collective bargaining and guaranteed by a kind of neutral adjudication, that of grievance arbitration. Seen in this way, "Industrial citizenship" celebrated the (partial) victory of collective autonomy in the sense of Hugo Sinzheimer or of "droit social" within the thought of Georges Gurvitch. Of course, such industrial citizenship, the idea that basic civil, political and social rights for the workers are to be gained by way of collective bargaining at the level of the workplace, was quite idealized: citizenship at the workplace was made possible by the combined effects of Welfare State interventionism and of centralized or decentralized collective bargaining, not by worker's struggles alone. Though quite univocal, the idea of "industrial citizenship" nevertheless reflects a part of the story, when industrial relations systems, in North-America, seemed for ever well in place.

Nowadays, the two pillars of industrial relations in North-America are in crisis: there is a decline of collective bargaining throughout United States and Canada (even in strongly unionized Quebec) and a generalized crisis of the Welfare State. According to their former proponents, there is a demise of industrial citizenship and the idea now appears obsolete, in a era of globalization. Cultural rights play a role in this process: there seems to be a growing fragmentation of the workforce, where minority groups (in a statistical or sociological sense) are fighting for recognition, dignity and equality of rights (meaning, in most cases, reasonable accommodation without undue hardship), often bypassing unionized forums to put their grievances directly to the judiciary. In Canada and Quebec, a *constitutionalizing* process is going on as regards labour law, dividing the

[1] Thanks to my colleague Pierre Bosset, professor of public law at Université du Québec à Montréal (UQAM), for his help in revising this paper.

labour law and industrial relations community between "chartists" and "travaillistes" (the former being partisans of a labour law strongly influenced by the charters of rights and freedoms, which have constitutional status in Canada and Quebec). Far from seeing in this constitutionalizing process a negative trend adding to the demise of industrial citizenship, the author will argue that the "*Wertrationalisierung*" upon which this movement is based opens the way for a renewed "post-industrial citizenship" founded upon constitutional guarantees of both social and *cultural* rights at the workplace.

Introduction

In classic industrial relations and labour law theory, "Industrial citizenship" remains strongly linked to the idea of the "collective autonomy" of the workplace. In Fordist perspective, the workplace is seen as homogenous, with workers evolving in highly unionized settings and sharing in the same cultural background. The workplace is highly institutionalized, with strong unions facing a powerful employer. Labour rights are based on collective bargaining and guaranteed by a sort of neutral adjudication – that of grievance arbitration. Thus seen, "Industrial citizenship" celebrates the (partial) victory of collective autonomy, as conceived of by Hugo Sinzheimer, or of "droit social" according to Georges Gurvitch (see Sinzheimer, 1936; Gurvitch, 1931). Of course, such an industrial citizenship, *i.e.* the idea that basic civil, political and social rights for workers are to be gained at the level of the workplace by way of collective bargaining, has always been quite idealized: citizenship at the workplace was essentially made possible by the combined effects of Welfare State interventionism and centralized or decentralized collective bargaining – not by worker's struggles alone. Though somewhat univocal, the idea of "industrial citizenship" nevertheless reflects a part of the story, when industrial relations systems in North-America seemed forever established [well in place].

Nowadays, the two pillars of industrial relations in North America are in crisis: there is both a decline of collective bargaining throughout United States and Canada (even in strongly unionized Quebec) and a generalized crisis of the Welfare State. Even according to their former proponents, there has been a demise of industrial citizenship and the idea now appears obsolete, in an era of globalization (Arthurs, 1996a, 1996b; 1998). Human rights play a role in this process: there seems to be a growing fragmentation of the workforce, whereby "minority" groups are fighting for recognition, dignity and equality of rights (entailing, in most cases, a duty of "reasonable accommodation" without undue hardship), often bypassing unionized forums in order to put their grievances directly to the judiciary.

In Canada and Quebec, a process of *constitutionalization* is going on as regards labour law (Brunelle, Coutu, Trudeau, 2007), dividing the labour law and industrial relations community between "chartistes" and "travaillistes" (the former being partisans of a labour law strongly linked to the charters of rights and freedoms, which have constitutional status in Canada and Quebec, while the latter have the Charters in abhorrence – see Coutu, 2006b).

Far from seeing in this constitutionalizing process a negative trend further adding to the demise of industrial citizenship, I will argue that this movement – a kind of value rationalization ("*Wertrationalisierung*") of law in Max Weber's terminology (Weber, 1978) – is opening the way for a renewed post-industrial citizenship founded upon constitutional guarantees of civil, social and cultural rights at the workplace.

I will first characterize summarily the constitutionalizing process of labour law in the Quebec context, a process in which cultural rights form the most dynamic component. I will then identify links with the current plight of industrial citizenship and what appears to be a trend towards a more encompassing though ambivalent post-industrial citizenship.

1. The Constitution and Labour Law

1.1. A Paradoxical Process

Constitutionalizing labour law is a highly paradoxical process. As regards the industrial relations system, it produces both reinforcing and destabilizing effects (Jeammaud, Vigneault, 2000). After a lengthy period of indifference and, at times, overt hostility towards workers' fundamental rights, the Supreme Court of Canada recently issued a number of landmark decisions pertaining to workplace freedoms of expression and association. For instance, the Supreme Court found laws prohibiting so-called secondary picketing, the unionization of farm workers and collective bargaining regarding contracting out and lay-offs in the public sector to be in breach of the Constitution[2]. The most important of those judgments, the *Public Health Services* ruling of June the 8th 2007, recognizes collective bargaining, as protected by ILO conventions and international law, as a basic constitutional right in Canada. In so doing,

[2] *Dunmore* v. *Ontario (Procureur général)*, [2001] 3 R.C.S. 1016. *S.D.G.M.R., section locale 558* c. *Pepsi Cola Beverages (West) Ltd.,* [2002] 1 R.C.S. 156. *Health Services and Support-Facilities Subsector Bargaining Assn.* v. *British Columbia* 2007 CSC 27.

the Supreme Court is constitutionalizing basic features of the industrial relations system in Canada and may, to a degree, counterbalance the weakening of the Welfare State.

But numerous other rulings reflect the growing diversity of the workforce, the changing nature of labour relations and the urgent need for renewed public policies in the workplace. Here the courts are also assuming a more important role than ever, as mediators between contradictory demands stemming from management, the unions and, most and foremost, "minority" groups (in an historical or sociological sense) seeking recognition, with or without union support[3]. In a very broad sense we may call "cultural human rights" those new constitutional rights granted upon workplace minority groups, be they based on gender, colour, ethnic origin, religion, civil status, disability, sexual orientation and so on. The new cultural human rights often infringe upon traditional management rights, union representation, basic principle of collective labour law (such as seniority rights) and collective autonomy of the workplace as entrenched in collective agreements. As a result, such human rights are destabilizing industrial relations systems, both at a substantive and institutional level.

Industrial relations systems, as Dunlop convincingly argued, are webs of rules, both formal and informal (Dunlop, 1958). In a Weberian perspective, such systems are empirical legal orders with their own legality and specific legitimacy (Coutu, 2007; see Weber, 1907). True, industrial relations systems nowadays are regulated, besides the indigenous law of collective autonomy, by the interventionist law of the State, such as labour standards and workplace health and safety regulations. Labour law, as rightly anticipated by Hugo Sinzheimer, is the product of two converging forces: both rules of collective autonomy, and the extraneous norms of the Welfare State (Sinzheimer, 1936). Those two set of rules are in no way contradictory: in fact, they strengthen each other, resulting in strong industrial relations systems.

The same cannot be said, at first glance at least, of cultural rights: they introduce a new logic, oriented towards minority rights and communitarian recognition, alien in principle to the universalistic notion of equality which historically was at the root of labour law and Welfare State interventionism. This new logic is law's response to pressures, unknown before,

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[3] *Colombie-Britannique (Public Service Employee Relations Commission)* v. *BCGSEU,* [1999] 3 R.C.S. 3. *Commission des droits de la personn e et des droits de la jeunesse* v.. *Hôpital général juif Sir Mortimer B. Davis,* 2007 QCTDP 29 (CanLII). *Parry Sound (District), Conseil d'administration des services sociaux* v. *S.E.E.F.P.O., section locale 324,* [2003] 2 R.C.S. 157. *Québec (Commission des droits de la personne et des droits de la jeunesse)* v. *Québec (Procureur général)*, [2004] 2 R.C.S. 185.

put on human resources management, union policy and industrial relations institutional frameworks by an ever more diverse workforce, at a time when contemporary ethics and human rights norms preclude discriminatory practices contrary to human dignity and substantive equality (which often requires differential treatment). In the past, such practices used to include the ghettoization, blatant exploitation and exclusion of minorities from labour markets, *i.e.* traditional socioeconomic answers to cultural diversity; or majoritarian rule and universalistic equality – trade unions' normal response to the same problem, in the name of class solidarity. "Cultural diversity" of manpower should not be understood here as a pure statistical fact, but mainly as a *social construct*: for example, women, ethnic and religious minorities, young and older workers were of course already present in the past, but they were not seen, until recent decades, as bearers of specific rights to equality; and new communities, based on disability, sexual orientation and so on, that were simply ignored previously, now appear on the radar screens of law as a result of the growing delegitimazing process of various forms of discrimination.

1.2. Cultural Rights and the Courts

Let us identify here two consequences of law's answer to cultural claims stemming from the heightened diversity – in the sense given above – of the workforce:

1. Since the Supreme Court of Canada's landmark decision in the *Meiorin* ruling of 1999[4], as soon as *prima facie* cases of discrimination are made then the burden of proof shifts to the employer who then has a duty to accommodate, unless undue hardship can be established. The change brought about by the *Meiorin* ruling in management practices cannot be overstressed. Consider for example absenteeism related to disability, such as physical or psychological illnesses and deficiencies, or even alcoholism and drug addiction. In the past, these were, according to most grievance arbitrators in Quebec, cases of non culpable behaviour justifying so-called "administrative" dismissals at employers' will, unless proof of employer arbitrariness or bath faith established by the dismissed employee. In other words, such grievances were almost always ruled in favour of the employer. Now, the situation has completely been reversed, as arbitrators deal with *prima facie* cases of discri-

[4] See *Colombie-Britannique (Public Service Employee Relations Commission)* v. *BCGSEU, supra,* note 2.

mination in human rights matters, instead of "administrative" dismissals: the burden of proof eschews to the employer, who must prove either that substantial efforts to accommodate the employee were made or undue hardship, which means more than mere inconvenience. The case-law is complex and the task of arbitrators far from being easy (see Vallée, Hébert, Coutu, 2001): if based upon an erroneous construction of constitutional and human rights law, their sentences will be quashed without any deference by the higher courts.

2. The rules of conduct are evolving not only for management or arbitrators, but also for unions. These have a statutory duty of fair representation, especially in matters of collective bargaining and grievance arbitration. Traditionally, this duty is narrowly constructed by the labour relations boards and the Courts: a very broad discretion is conceded to unions and they have nothing to worry about unless a blatant case of bold negligence, arbitrariness or bad faith is proven. Very few complaints are found justified. But things are changing in human rights, especially in discrimination matters. The leading case here is the Canadian Industrial Relations Board's ruling in the *Bingley* case which dealt with the quality of union representation as regarded a discrimination grievance involving the duty to accommodate. In such cases the Board will verify "whether the union went beyond its "usual" procedures and applied an extra measure of care in representing the employee", so that higher scrutiny than normally applied is needed in those matters[5].

2. From Industrial to Post-Industrial Citizenship

2.1. Post-Industrialism and Society

"Post-industrial" is a sociological concept coined in the path-breaking works of Daniel Bell (new release, 1999) and Alain Touraine (1969). In *The Coming of the Post-industrial Society,* Bell argues, building largely on a new reading of Marx, and to a lesser degree of St-Simon, Max Weber and Colin Clark, that the industrial society, based upon mechanical knowledge, the secondary economy (manufacturing) and the organization

[5] *Bingley (Grace)* v. *Section locale 91 des Teamsters,* CCRI/CIRB no 291, 12 October 2004.

of society – in its capitalist variant[6] – around class conflicts between employers and employees, is now being displaced by a new "post-industrial" society centered around theoretical knowledge, the tertiary economy (services) and new leading strata such as researchers, *techniciens* (in the broader French meaning) and managers. Social stratification is less a function of property and inheritance than of education and skills[7]. According to Bell, the leading feature of post-industrial society is theoretical knowledge based on scientific expertise[8], in contrast to the empirical knowledge characteristic of the businessmen – both entrepreneurs and inventors – who put forward the great mechanical innovations of the industrial age like the steam pump, electricity, the telephone, the combustion engine, automobiles, planes and so on. New technologies based on electronics, miniaturization, digitalization and software cannot be the products of ingenious *dilettantes* but of strictly expert researchers with a strong scientific training, normally working in research centres, be they in the universities, corporations or State agencies.

Using such an imprecise notion as "*post*-industrial" may appears highly unsatisfying, but it illustrates perfectly how we are going through a transitory period, the precise contours of which are actually far from being easy to grasp[9]. We should also be aware that the concept of post-industrial society remains an intellectual scheme, an ideal-type construct: as Bell puts it, echoing earlier remarks from Max Weber, ideal-types are neither true nor false, they are useful or not[10]. Finally, Bell in no way

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[6] Industrial society was a common feature of both capitalist and "socialist" economies where the leading strata was not the industrial bourgeoisie (and others elites, especially the upper spheres of public administration), but the Party and State bureaucracies. See Bell, 1999: 75ff. Touraine, 1969: 14ff; 70ff.

[7] Bell, 1999, p.119: "The essential division in modern society today is not between those who own the means of production and an "undifferentiated'proletariat' but the bureaucratic and authority relations between those who have powers of decision and those who have not, in all kind of organizations, political, economic, and social".

[8] See also Touraine, 1969: 74ff.

[9] "In sociology this sense of marking time, of living in an interregnum, is nowhere symbolized so sharply as in the widespread use of the word *post*... to define, as a combined form, the age in which we are moving" (Bell, 1999: 51). See also *ibid,* p. 112: "The term post is relevant in all this, not because it is a definition of the new social forms, but because it signifies a transition".

[10] See Bell, 1999, p. 112: ´What we are forced back to is the creation of new paradigms in the sense that Thomas Kuhn has used the term, i.e. conceptual schemes which themselves are neither models nor theories but *standpoints* from which models can be generated and theories developed". See also, *ibid,* p. 116.

defended the idea that all social phenomenon might be, from now on, understood in reference to post-industrial society: the new paradigm applies in his view to evolving tendencies, mainly in the technical and economical spheres of society[11].

2.2. Towards a New Citizenship at Work?

Contrary to that of post-industrial society, the notion of post-industrial *citizenship* is not of current use in the academic lexicon. Nevertheless, as far as I can ascertain, there are a few scholars who promote the notion. Most of the time, though, post-industrial citizenship is thought of in relation to global society, and not strictly to the sphere of work[12].

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[11] "The concept of post-industrial society is not a picture of a complete social order; it is an attempt to describe and explain an axial change in the social structure (defined as the economy, the technology and the stratification system)" (Bell, 1999: 119).

[12] For instance, Maurice Roche, in a paper published in 1987 (Roche, 1987: 363--399) and centered upon a lengthy critique of T.H. Marshall seminal work "Citizenship and Social Class" (Marshall, 1963), draws relations between an emergent "post-industrial society" and trends towards "post-industrial citizenship". Roche, after coming back to Marshall's analysis of industrial citizenship in 19th Century England (Marshall, 1963), writes of a new "post-industrial citizenship". In agreement with most scholars, post-industrial society means for Roche major changes in the economy, induced by information and communication technologies, growing power for skilled workers, experts and professionals, and the undermining of effective nation-state control and regulation of a globalized economy (Roche, 1987: 387ff.). Roche suggests connections between post-industrial citizenship and human rights, but does not pursue this idea very far. More basically, post-industrial citizenship does not seem to be directly linked here with work, but, more generally, with the overall condition of the citizen in the new society.

In a 1999 paper on "Post-industrial Solidarity or Meritocracy?", John Andersen promotes post-industrial citizenship (Andersen, 1999: 328 ff.) as a means to fight social exclusion under the new economy. As older class antagonisms are more or less vanishing, a basic characteristic of post-industrial society is the deepening of social exclusion (the emergence of "underclasses" in Anglo-Saxon literature), at a time when the actors at the top of the social ladder are increasing their power resources (Andersen, 1999: 328 ff.): in order to counterbalance both tendencies, new me asures should be put in place. The author thus referred to antidiscriminatory policies (based on gender, age, ethnic origin and so on) in the educational sector, thereby avoiding the reinforcement of meritocratic mechanisms of exclusion; and innovative policies at the workplace, such as work-sharing programs (In the 1990s, the Danish Government established innovative work sharing programs, such as an extended parental leave, sabbatical leave and educational leave up to two years. See Andersen, 1999: 328 ff.)

We intend here to build a concept of post-industrial citizenship as an intellectual scheme pertaining only, as was the case with "industrial citizenship", to the realm of labour. In order to achieve this task, we have first to recall the main characteristics of *industrial* citizenship, which will be done by referring to the seminal works of Harry Arthurs (following a brief but absolutely necessary overview of T.H. Marshall's perspective); then, we must define the alternate concept of *post-industrial* citizenship, drawing upon what was previously said about Daniel Bell's and Alain Touraine's studies on post-industrialism.

2.2.1. Industrial Citizenship[13]

To the best of our knowledge, the concept of "industrial citizenship" first appears in T.H. Marshall's classical lecture on *Citizenship and Social Class*[14]. This work is rightly considered by many as Marshall's most significant and original study (see e.g. Rees, 1996). As we all know, Marshall, through his analysis of citizenship, has influenced to a high degree many leading social scientists in the English-speaking world, such as Reinhard Bendix and Talcott Parsons. Actually, most works on the theme of citizenship – either in English or in other languages – refer to *Citizenship and Social Class*. As portrayed by Marshall, citizenship finds its basis in the concept of equality, which translates itself progressively into guarantees for a series of basic or (sociologically speaking) fundamental rights for citizens. Referring only to the case of Britain – which undoubtedly questions the universality of his developmental model (Rees, 1996: 14) – Marshall acknowledges three dimensions of citizenship, according to the nature of basic rights. First, there was a recognition of basic civil rights, then a granting of political rights, and finally – and, in essence, as late as the 20th century – the development of basic social rights. Civil rights are defined in Marshall's study as including property rights, freedom of contract and fundamental human rights, such as freedom of speech or of religion. Political rights concern rights of involvement in the political process, essentially through the widening of the right to vote. Social rights, for their part, refer to the right to education and the right to social benefits from the State (Marshall, 1963: 73ff). Specific institutions (the judiciary for civil rights, Parliament and local governments for political rights, and health, education and social services systems as regards social rights) are the historical bearers of each such dimension of citizenship.

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[13] The following passage summarizes some developments in Michel Coutu (2004), p.74ff.

[14] T.H. Marshall, *supra* note 2. This is also the view of Carl Gersun y (1994) and Walther Müller-Jentsch, (1991: 442 ff.).

Industrial citizenship was the result of large segments of the working class being unionised: trade-unionism meant a transposition of civil rights (mainly, freedom of association) into the economic sphere. Collective bargaining allowed workers to improve their social and economic plight and, by so doing, to benefit from certain basic social rights. As Marshall put it: "civil rights became, for the workers, an instrument for raising their social and economic status, that is to say, for establishing the claim that they, as citizens, were entitled to certain social rights" (Marshall, 1963: 97). From Marshall's viewpoint, this was only a transitory situation. For it was only the State which could efficiently render social rights applicable to all citizens. And, according to Marshall, it was only after World War II, with the rise of the Welfare State, that social rights really became guaranteed to the citizenry as a whole, a state of affairs that he viewed as quite irreversible. Apart from this *transitory* character, industrial citizenship possesses two specific features. First, it is a kind of *hybrid* form of citizenship, being at the same time based upon civil rights and oriented towards elements pertaining to social citizenship (Streeck, 1997). Second, industrial citizenship remains largely *autonomous* as regards the State apparatus; it tries to remedy for the non-interventionist policies of the State in the labour field: "Trade unionism has, therefore, created a secondary system of industrial citizenship parallel with and supplementary to the system of political citizenship." (Marshall, 1963: 97).

We may compare Marshall's concept of industrial citizenship with the one we find in Harry Arthurs's initial work on this subject (Arthurs, 1967). We should be aware, though, that such a comparison may not be very accurate and is perhaps even unfair, as Marshall's perspective was that of a sociologist studying historical and empirical phenomenon, while Arthurs was (at the time) mainly concerned with legal dogmatics and legal theory.[15]

We ought to stress here that Arthurs's specific understanding of the concept of "industrial citizenship" is quite different, precisely on those three aspects found in Marshall (i.e., the transitory, hybrid and autonomous character of this kind of citizenship). At first glance, Arthurs puts

[15] See Harry Arthurs, 2003. As regards legal dogmatics, the point was to defend the autonomy of labour law by considering the legal relationship between employers and employees more as status than as contract. As regards legal theory, "industrial citizenship made an important point about legal pluralism: the workplace should be seen as a semi autonomous social field, with its own legal norms, its own legal institutions, its own legal processes." Finally, there was a kind of normative statement, expressing Arthurs's hope and confidence in the extension in the context of the workplace of rights of citizenship formally recognized in the broader polity.

forward a definition of industrial citizenship which is similar to Marshall's: "an employment-related system of entitlements which would protect workers against arbitrary treatment by their employer and against the vicissitudes of the economy, old age and illness" (Arthurs, 1967:46). However, it is clear from Arthurs's early work on the subject, in 1967, that the concept is considered neither as a kind of hybrid nor as a transitory form; while the autonomy which characterises citizenship in the industrial relations sphere is much more strongly emphasised than with Marshall. Industrial citizenship constitutes, in Arthurs's view, a specific, well-defined form of citizenship, not a hybrid one. It presents, says Arthurs, analogies with the legal characteristics of citizenship "in general" (Arthurs, 1967:46). Nevertheless, contrary to Marshall, who delivers a highly sophisticated analysis of the civil, political and social elements at the core of the idea of citizenship, Arthurs does not explain what the components of this more general concept of citizenship are. Maybe the very notion of citizenship was seen at first by Arthurs as quite unproblematic. To be fair, it should be stressed again that contrary to Marshall, Arthurs's aim was not to construct a general sociological theory of citizenship in the Nation-State, but to put forward a theoretical framework enabling him to explain the labour relationship in a non-contractual fashion and to defend the autonomy of labour law (Arthurs, 2003). Although in no way hybrid according to Arthurs, industrial citizenship nevertheless possessed a dual feature: it was, at the same time, a product of the autonomous action of parties to the collective bargaining process, and a product of State action (through the legislative, administrative and adjudicative processes).

At least in his initial work, Arthurs would not either, as Marshall did, describe industrial citizenship as being of a transitory nature. It is, rather, a long-term phenomenon, which reflects a fundamental change in the situation of the workers: a passage from contract to status, to use the well-known dichotomy created by Maine. Such status is at the core of industrial citizenship (Arthurs, 1967: 786ff). Finally, the analysis of the autonomous character of industrial citizenship goes much deeper with Arthurs than with Marshall. Marshall's analysis focuses upon the central role of the State, while Arthurs refers to a quite distant perspective, by which we mean *legal pluralism* (Arthurs, 2003). What constitutes for Arthurs the "industrial relations community" is built upon an autonomous system of rights, largely distinct from the common (State) law. In Arthurs's own words, "it has become increasingly obvious that the largest, and arguably most important, part of labour law is not exclusively or primarily state law." (Arthurs, 1996b: 1). More precisely, labour arbitration remains one of the most important institutions on which the autonomy of the

"industrial relations community" *was* founded (Arthurs, 2003). That is, before a globalized economy changed the basic rules of the game and rendered the idea of an industrial citizenship quite obsolete[16].

2.2.2 Post-industrial citizenship

What is the new form, then, of citizenship at work?[17] We believe that this new form is post-industrial citizenship. Drawing upon Bell's and Touraine's works on post-industrial society, we stressed theoretical knowledge and the role of experts as central features in an economy otherwise characterized by rapid technological change, the fluidity of capital, the decentring of the State, globalization, the restructuring of firms, and social exclusion, all this while class stratification becomes elusive and leading elites are more powerful than ever.

In such an economical, political and technological environment, citizenship at work appears increasingly fragmented.

Formal citizenship. At the bottom of the ladder, we find workers excluded from any real citizenship at work, though in principle formally equals to anyone else. This is the plight of most who work in the "infor-

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[16] Aguiar characterizes Arthurs's pessimistic prognosis about the future of industrial citizenship, as developed in his 1996 Don Wood Lecture on «The New Economy and the Demise of Industrial Citizenship» (Arthurs, 1996), as founded upon the idea of post--industrial citizenship (Aguiar, 2006: 450). We should remark though, that apart from a brief statement on the fact that «'industrial' and 'modern' are both passé: we are all post--industrial now, and post-modern to boot», there is no explicit reference to the notion of post-industrialism in this text. I think more appropriate to state that post-industrialism and citizenship at work are, in Arthurs's view, quite antinomical (see below).

[17] In recent works, Harry Arthurs has defended the thesis of a demise of *industrial* citizenship. For Arthurs, there is an elective affinity between the "new economy" and the emergence of a "new legality." The concept of a "new economy" encompasses three separate but nevertheless interrelated phenomena: globalization, technological change and the crisis of the Welfare State. The transformations of law add to these processes, the result being the demise of industrial citizenship. Legal, political and economical processes show a basic congruency in their rationality, due to three structural and ideological factors which reinforce each other: globalization – meaning, from a legal perspective, a growing lack of regulation of the economical sphere, – the decentring of the State – involving a retreat from welfare interventionism – and neo liberal ideology – questioning the allocation of resources necessary to the adequate functioning of the State legal system. See also'Müller-Jentsch,2004: 462. The combined effect of these trends is a growing discrepancy between law's symbolic promises and law's empirical effectiveness: "Citizens are being reminded constantly of the importance of the rule of law, but law's capacity to rule is growing weaker day by day." (Arthurs, 1996: 52). For a discussion of Arthurs's views, see Coutu, 2004. See also Aguiar, 2006: 449ff.

mal" sector, in low-paid, low-skilled jobs, in various precarious and vulnerable work, with no voice whatsoever and lacking any knowledge (which might be useless anyway) of their basic rights. In a sense, the plight of these workers is similar to that of 19th century working people, deprived of all effective legal safeguards and subjected to employers' absolutism and arbitrariness.

Industrial citizenship. Despite all setbacks (such as a weaker level of union density, firm downsizing, deregulation and so on), this classic form of citizenship at work will in all probability remains an enduring feature of contemporary societies. As the growth of post-industrialism has not made industry-based mechanical production obsolete (it remains highly vigorous in strong, performing economies such as the German and Japanese ones), the rise of post-industrial citizenship, similarly, does not mean that classic industrial relations systems will be steadily waning. Industrial citizenship is historically based on unionized workplaces[18] with accurate collective bargaining practices: these are more or less autonomous empirical legal orders grounded in collective agreements and regulated, in case of conflict, by grievance arbitrators. That being said, those autonomous legal orders are now facing unheard of challenges, due to major changes in the economy, the polity and technology, but also to basic transformations in firm structures, organization of work and growing diversity of the workforce. Historically, industrial citizenship was based on a predominantly male realm of labour market activity with full-time, permanent employment (Coutu, Murray, 2005: 619). Now, we find instead a range of collective identities based on gender, ethnicity, religion, disability, sexual orientation, age, and so on. Legally speaking, we find a variety of claims pertaining to cultural rights, as we stressed at the beginning of this paper. Along with other factors such as changes in the distribution of employment and work organisation, cultural rights pave the way for a new paradigm of citizenship at work.

Post-industrial citizenship. Here we are facing a new, encompassing form of citizenship at work that permeates both unionized and non unionized settings. We must stress the following characteristics:

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[18] That is not to say that non-unionized workers cannot benefit nowadays from a kind of industrial citizenship. In particular, unionized economic environments create incentives for employers wanting to avoid unionization to give more or less comparable advantages to workers, including fair human resources management. Labour standards (especially norms against unlawful dismissals), health and safety regulations and human rights laws reinforced such industrial relations micro-systems. Needless to say, the ever--present possibility of unionization is a basic precondition for the upholding of workplace citizenship in such circumstances.

a. Post-industrial citizenship is founded upon the granting of constitutional and quasi constitutional rights, be they civil (rights of association, of expression, of privacy), political (rights of participation), social (minimum standards of work) or cultural (rights to equality and non-discrimination). ILO conventions and others components of international labour and human rights law are also reinforcing those rights and contributing to the construction of their substantive content. International law appears more and more indispensable here, as it is the most convincing way of conferring legitimacy to courts and tribunals rulings.

b. The driving forces behind post-industrial citizenship are cultural rights, i.e. claims about infringements of equality rights at the workplace, on behalf of "minority" groups as regards gender, ethnicity, religion, disability, sexual orientation and so on. These claims paved the way for substantive adjudication in the field of human rights – more precisely, to the overall movement of labour law constitutionalization. As we have seen, this movement does not limit itself to cultural rights, but obey to a vast agenda encompassing trade unions freedoms and social rights.

c. The cornerstone of post-industrial citizenship is theoretical knowledge, just as empirical knowledge (the "law of the shop") was of axial importance to industrial citizenship. Historically, employers, union representatives and grievance arbitrators shared such empirical knowledge: when the intervention of the arbitrator was required, the two institutional actors (the employer and the union) were pressing for informal, speedy adjudication, which at times amounted to what Max Weber called substantive irrationality and, unjustly perhaps, "Khadi Justiz" (Weber, 1978). Such adjudication would be completely inaccurate in the context of post-industrial citizenship. Constitutionalized labour law calls for much more sophisticated adjudication, requiring in-depth knowledge of constitutional and human rights norms (even international law) as constructed in a highly complex and ever evolving case-law, the rationality of which can only be reconstructed by scholarly jurisprudence.

d. Apart from substantive complexity, post-industrial citizenship puts in play a wider range of actors than was the case with industrial citizenship: not only employers and unions, but also individual workers (who were previously more or less excluded from the process), cultural minorities, new social movements fighting for the rights of women, ethnic and religious minorities, migrant workers, the disabled and so on. In addition, adjudication is not anymore the exclusive realm of grievance arbitrators, but of a wider range of administrative tribunals, such as human rights tribunals, labour boards, health and safety commissions and so on.

Conclusion

Post-industrial citizenship is a promising new form of citizenship at work. But it is not a panacea. (i) As it is based on scholarly scientific knowledge, here we find a new basis of stratification: not between individuals and management (and sometimes, unions), but between those who have the knowledge to decide or to mobilize the new knowledge, and those who haven't. The latter will not be able to find their way in such a complex legal environment and to voice accurately their complaints. (ii) Complex legal claims are time consuming and this contradicts the idea of an informal and speedy adjudication of labour law matters. A number of complainants will not be able to sustain the amount of time, stress and uncertainty required by the mobilization of law. In other words, the quest for equality in the workplace creates new inequalities, of a different nature. (iii) Post-industrial citizenship holds the huge promise of a renewed citizenship at work, both inclusive (not being based, at least in all respects, on majoritarian rule pure and simple) and extensive (it links most of labour law to constitutional, or human rights or international law). There will be strong incentives put on government, management and unions to conform to the new rights and duties conferred by post-industrial citizenship. But the legal system does not control its own effectiveness: the effectiveness of law largely depends on reactions from other social sub-systems, such as the economy and the polity. Strategies of avoidance, delay, indifference, non-compliance, etc., will certainly come into play. (iii) A crucial test will be the future of social rights in Canada. For the time being, when discrimination is not involved, those rights depend of government will and enjoy only a symbolic, quasi constitutional reconnaissance in Quebec. But in an era of globalization and world-wide firms restructuring, it is illusory to expect broad post-industrial citizenship without effective social rights of a constitutional nature that may counterbalance the negative impact of a globalized economy on labour.

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