Everyone knows the tale of the baker's wife, written by Jean Giono and immortalized on the screen by Marcel Pagnol and the actor Raimu. The baker's wife is fickle and deserts home and bakehouse to follow her lover. How can a baker live without a wife? He makes the bread and she sells it, and the loss of their married love means that he loses all will to carry on at all. So the baker goes on strike, as it were, making but one simple demand: if she returns so will the bread. Deprived of its bread, the entire village intervenes to bring the baker's wife back to her husband and thus restore, along with conjugal love, an employment relationship that is indispensable to the bakery.

As always, an artistic work tells us more, at a stroke, than any academic dissertation (to name but one comparison) and, indeed, tells it better. There could be no way of encapsulating more neatly the subtle relations that link employment, citizenship, and the general public interest. Although the baker is a private-sector worker and, what is more, self-employed, his work nonetheless serves the general interest. The question therefore arises whether, and to what extent, work that provides a service to the public carries special rights and obligations for the individual who performs it. Is it not the case that citizenship (membership of the village community) implies having uninterrupted and equal access to the services that are essential to the life of that community as a whole? And, conversely, that those who provide such services are entitled to special considerations?

Stating the question in these terms without preamble presupposes the acceptance of some change in the very notion of public service. Unless the baker's wife has deceived us (!), it is relatively unimportant whether the service provided to the community is public or private in nature. What matters is that it serves the interest of society as a whole. Consequently, we need to start by examining the links between the notion of services of general interest and that of citizenship: does citizenship imply guaranteed access to certain services (section 1)? If so, the next question concerns the
identification of such services (section 2). We can then return to the question of the work performed in providing those services: does it call for a special legal regime, or not (section 3)? To conclude, a number of reflections are presented on the place of the notion of 'social' citizenship in an integrated Europe (section 4).

1. Services of General Interest and Citizenship

The very conception of citizenship axiomatically implies the existence of certain values of general interest that are shared by all citizens, since it is these common values which weld society into one. Originally, the notion of citizenship carried a purely political meaning deriving from Ancient Greece. In this sense it designates an equality of participation in public affairs. Power or authority lies at the centre, with all free adult males constituting a circle around it, each of them eligible to assume in turn the role of exercising it. This circular configuration finds concrete expression in the form of the agora, where all public business is debated, and contrasts with the pyramidal configuration of monarchy. Jean-Pierre Vernant has demonstrated the essential features of this citizenship: substitution of the principle of equality for that of hierarchy, participation by all in the exercise of power, substitution of the spoken word for force as the means of dispute, and, lastly, contra-distinction of the private from the public. The private sphere, by its very nature, stands apart from citizenship as so defined. This private sphere encompasses the family in the etymological sense of the word: not only wife and children but also the body of household servants or slaves (familia), or, in other terms, employees in a position of legal subordination.

In the nation-state model, the State constitutes the sole representative of the general interest. Consequently, citizenship tends to become identical with nationality and, equally, serving the general interest tends to become identical with serving the State. The exclusive role conferred on the State is manifested in, for example, the monopoly wielded by a country's Department of Public Prosecutions over representation of the general interest in the administration of justice. More generally, in systems of Roman-law law it has resulted in the contra-distinction of the public sphere, as the domain of the general interest, from the private sphere, which is left to particular interests.

The Treaty of Rome, by contrast, places the concept of serving the general interest in a grey area which does not fall within either public law or pri-
interests which are distinct from those of public law bodies. Such a suggestion has significant implications in that if, like the Court of Justice, we accept that nationality is inseparable from the notion of serving the interests of a given Member State, it has to be accepted that European citizenship is, in its turn, inseparable from general interests that transcend those of the Member States.

The very wording of Article 86 of the EC Treaty presents citizenship of the Union as an evolutive status characterized by the gradual accretion of new rights (or obligations) extending beyond the limited provisions adopted at Maastricht.² Such citizenship is seen as progressively acquiring substance, although without in any way encroaching on national citizenship: it is additional to the latter, not in place of it.³ Hence it clearly designates a general interest which transcends, without negating, that of individual Member States. What, then, will be the substance of such European citizenship? The rights enumerated in Articles 8a—8d are of two kinds: first, rights of a political nature (vote and eligibility, diplomatic protection and petition) and, secondly, the extension to all such citizens of the freedom of movement and right of residence that were initially conferred only on workers. There are, therefore, two facets to this citizenship, one political and the other 'social'. The political facet, curbed as it is by the reaffirmation of national sovereignties, is perhaps unlikely ever to develop in any significant measure. By contrast, the social facet (better termed the 'socio-economic' facet) is by definition at the core of the Community dynamic. Consequently, social citizenship is potentially the most fruitful direction for the development of citizenship of the Union.

Social citizenship, just like political citizenship, may be defined as an equality of rights and obligations. They differ only in the nature of those rights and obligations, which are political in one case and socio-economic in the other. As so defined social citizenship includes, without question, equal access to certain essential services (i.e. services of general economic interest as referred to in Article 90(2) of the Treaty) of appropriate quality (not conceived in terms of universal minima). It also includes recognition of a freedom of labour construed not merely in formal terms but as the opportunity available to every individual to earn a living by performing a type of work that best expresses his or her personal talents and aspirations. This guarantee must not be confused with a right to employment (which relates only to work as an employee) but encompasses all forms of activity (on an employee or self-employed basis, market or non-

² Arts. 8a (freedom of movement), 8b (right to vote and to stand as a candidate in municipal and European elections), 8c (right to diplomatic protection) and 8d (right of petition). See J. Boudant, 'La citoyennété européenne', in G. Krabi (ed.), De la citoyennété (Lireux, Paris, 1999): G. Saisse, 'La citoyennété européenne' [1993] Rev. dr. pub. 1263.

market, public or private) performed to supply something to others. Consequently, the services of general interest referred to in Article 90(2) and the notion of social citizenship of the Union invoke the same perception, in both cases, of a general interest capable of transcending national laws and Community competition law alike. But how is that perception constructed? What definition has been given, and might be given, to services of general interest in an integrated Europe?

2. The Identification of Services of General Interest

There is a certain ambiguity attaching to the notion of a public service which makes it preferable to use the alternative service of general economic interest as referred to in the Treaty. This is because the term 'public service' possesses two distinct meanings. In an organic sense, it designates a service provided by or under the authority of the State (as is the case, for instance, with public enterprises charged with responsibility for providing a service to the public). In a functional sense, however, the term designates a service which is indispensable to the general public. That is, a service of general interest. Such a service may equally well be provided by a public law body or a private legal person, but it is public in the sense that the general public must have uninterrupted access to it, which precludes its wholesale abandonment to competition law. Hence, a distinction needs to be drawn between serving the sovereign authority of the State and serving the public at large.

Even within an individual country, although the two largely overlap they are not identical. In France, for example, it is recognized that a private law organization may be given the task of providing a service to the public (the Social Security Offices are a case in point) or serving a general interest (the Supplementary Pension Schemes, for example), and that, conversely, certain activities performed by public bodies are subject to the rules of private law. This dissociation, originating from the famous case of 1921 referred to as the Bac d’Elata judgment,⁴ gave rise to the definition of the category of industrial and commercial public services, which is undoubtedly the closest to the categorization of services of general economic interest used in the Treaty of Rome. The real point is that there is no such thing as a public service by definition, since it is impossible to conceive of any service that cannot be provided through private-sector financing. The construct of a public service is therefore always an institutional one, founded on the choice of those services to which everyone must have uninterrupted and equal access. Although such choices may be influenced

⁴ T. cont. 22 Jan. 1921 (Société commerciale de l’Ouest africain), Rec. 91; Dalloz 1921, 3, 1; Strey 1926, 3, 34 with conclusions by Matter.
by technical considerations (territorial responsibility for networks, for example, with the argument applying as much to motorway systems as to railways or power lines) or by economic consideration (reduction of business costs, ban on de facto monopolies), in the final analysis it is the choice of values (or more prosaically, the choice of a type of society) which identifies the sense of community and forms part of the definition of citizenship.

As such, however, those choices fall within the sphere of positive law and are open to challenge. There is no reason why tomorrow it should not suddenly be deemed more essential to guarantee all French citizens equal access to a bakery, to banking services, or to street urinals (which, in disregard of the needs of the homeless and of the demands of the most undeniable of natural laws, have disappeared from our streets) than to air transport or the high-speed trains which daily intensify the process of rural depopulation and relentless urbanization. It is true that such choices carry with them compensation for their costs in the form of the universality, continuity, and equality of the service provided, and hence exemption from competition law. They also have redistributive effects that must be taken into account if an accurate picture of their social significance is to be obtained.

However, since their value is not universal they are manifestly vulnerable to international redefinition. The ‘made in France’ theory of public service, which has undoubtedly influenced the Latin countries and Catholic Belgium, has not really been echoed elsewhere in Northern Europe. That is not to say that these North European countries, with their Protestant culture, have failed to appreciate the necessity of guaranteeing access for everyone to certain services. What it means is that they have not made the State the pivot of the organization of those services. The notion of services of general economic interest might have been expected to be the focus of an attempt at a Community definition of welfare. Yet the organic criterion has been strangely dominant in the definition of these services, and Article 90 has become the repository (and an untidy one at that) of national perceptions of the general interest rather than the site of dynamic thinking on the notion of a European general interest.

Convincing evidence of this is obtained simply from examining, for example, the manner in which the common transport policy (Articles 74 ff., EC Treaty) has been implemented, particularly in the field of surface goods transport. The circumstances surrounding road transport have been changed profoundly by the effective implementation of freedom of establishment and freedom to provide services, and by the harmonization of competition conditions. The quota arrangements designed to prevent excess supply have been dismantled; contributions by hauliers from one Member State towards the financing of infrastructures of which they make use in another Member State have been ruled to be in contravention of the Treaty; and road haulage charges have been deregulated, resulting in lower earnings for drivers and prompting some to call for a ‘safety-level mileage tariff’. Safety in this sector does indeed give cause for concern, with 50,000 people killed and 1.6 million injured every year on the roads of the Europe of the Twelve.

In the case of rail transport, on the other hand, European integration seems as yet to have had very little impact at all, and the Europe of the railways is a juxtaposition of national networks controlled by individual Member States. The first significant Community measures are only recent, consisting in an obligation to separate infrastructure and operating accounts (the so-called unbundling rule) and recognition of a right of transit for the provision of international services. In other words, it has been best as if the reference to services of general economic interest was relevant only at national level, even though the field in question concerns a common policy (transport), i.e. one where Community-level thinking on the general interest should surely have been a matter of course. If it is confined to the margins of Community policy in this way, the idea of services of general interest is clearly doomed to ossification. And as viewed by public opinion, Europe gives the impression of being the grave-digger of national public services, not the inventor of transnational public services. In this context, the Swiss were not mistaken when they identified the Europe of the Community with the liberalization, with the brakes off, of heavy goods traffic. And heavy goods lorries without brakes are certainly a cause for disquiet.

The only way in which this situation can change is if the question of the general interest in regard to the surface transport of goods is considered in

10 Conversely, the notion of a public social system or welfare state has led to the insertion into the French legal system of social-security models which are largely inspired by examples in other countries. France has exhibited little inventiveness on the matter, and its system is a costly hodgepodge of elements originally conceived in Germany and Great Britain, combined (with varying degrees of success) with specific national features: the role of mutuality, the importance attached to protected occupations, etc. See the studies backed by MIRE, Compter les systèmes de protection sociale en Europe (Rencontres d'Outre, Imp. Nat., Paris, 1995), I, especially M. Kerachen, L'influence du rapport Beveridge sur le plan français du securité sociale, at 127 ff.; Rencontres de Berlin (Rencontres de Florence, 1996), iii.
11 See the overview presented on the subject by CEBP in Europe, concurrence et service public, n. 4 above.
14 Regulation 4083/89 (OJ 1989 L300/1).
15 See Bull. Transports 1990, 593.
its full context, i.e. examined in terms of road transport and rail transport together. This could have some very unwelcome implications in both cases. First, it would involve accepting that considerations of the general interest are likely to impose far tighter constraints on road transport, particularly as regards working conditions and environmental aspects. Secondly, it would involve questioning the justification for the monopolies and company regulatory systems that are characteristic of the railways sector. In both cases, thinking on the general interest in regard to transport would inevitably have an impact on the legal regime of employment in the sector.

3. The Legal Regime of Employment in the Provision of Services of General Interest

Assuming that employment serving the general interest is treated as separate from employment in the service of the State, and that it therefore does not necessarily relate to employment within the public administration, is it axiomatically governed entirely by ordinary labour law? Does employment in the provision of public services have special features and, if so, what are they? In the case of French law, the answer to this question has been twofold. Certain public services are categorized purely and simply as being in the service of the State, and those employed within them are therefore covered by the special service regulations governing employment in the public administration. This applies, for example, to education, postal services, and the public health service.

By contrast, so-called industrial and commercial public services are usually provided by public enterprises whose employees are covered by regimes which, although based in general on employment within the public administration, are distinct from it. Unlike the special service regimes governing employment within the public administration, these regimes incorporate a link with private law: employees are bound to the enterprise through a contract of employment and are therefore in principle covered by labour law. Because this applies only within the limits prescribed by the relevant service regulations, it is often said that, in a public enterprise, the latter fulfill the role played by collective agreements in the private sector. However, the analogy quickly finds its limits, since they represent a unilateral act of a regulatory nature which is not subject to collective bargaining and whose interrelations with labour law give rise to numerous legal difficulties.

These service regimes were the cornerstone of a set of professional ethics common to managers and those managed, in which job security and security of income were inseparable from the continuity and universal accessibility of the service being provided to the public. In this, special service regimes and the State reveal their common origin: the status that gives a community its meaning. Over the years, however, this close tie between public services and special service regimes has been eroded. The stringency and rigidity of these regimes make them difficult to adapt to technical and economic change. On the management side, there have been attempts by public enterprises to circumvent the obstacles they present by resorting to subcontracting or introducing legal formulas imported from the private sector (collective bargaining, merit pay). But circumventing special service regimes rather than reforming them merely served to hasten their ossification. The unions, for their part, sought to combine the advantages of public law service regimes with those of private-sector employment whenever the latter were felt to be more favourable. As a result, labour law has, to varying degrees, left its stamp on special service regimes, which have accommodated the right to join a union, the right to strike, and, then, the right to collective bargaining. It has thus encroached at both ends of the hierarchical ladder: at the top with the cumulation by senior managers of the advantages of both public law employment (security of tenure, relative non-accountability) and private-sector employment (pantouflage and its derivatives), and at the bottom with the swelling

23 Nowadays this viewpoint is supported by the Cour de Cassation, which in such cases applies the 'fundamental principle whereby, in the event of conflicting rules, that to be applied is the one most favourable to the employee'; Soc. 17 July 1996 (SNCF and SEFID Dr. Soc. 1996, 1269, concl. G. Lyon-Caen).
24 Pontonnage is the popular term used in France to describe the widespread practice whereby high-ranking civil servants leave public service to take up managerial posts in large private-sector enterprises. Of the 15 leading industrial enterprises in France, 12 are headed by such former civil servants, and barely 20% of the heads of large enterprises have spent their entire career in the sector. During the past 10 years all these trends have become even more marked, despite: (a) the privatizations that have taken place. See the report on the latest study by M. Mazer and B. Bégin-Mouri of CNRS in Le Monde, 17 Feb. 1992.
numbers of quasi-civil servants under job-creation contracts\textsuperscript{29} and quasi-public employees in subcontracting enterprises.\textsuperscript{36}

In the light of these developments, the notion of public services no longer signifies the same thing as the state administration in the form of the high-ranking corps of civil servants who manage them (notably those in the technical corps) and the ordinary public employees who work in them. For the former, the notion of public service is tending to become identified with a demand for efficiency and minimum cost that runs up against the special service regimes, which are now perceived at best as an archaism and at worst as a poison jeopardizing the very survival of public services. In the minds of many of these managers, the divorce between special service regimes and public service is already complete. By contrast, to workers and the unions special service regimes represent the last bastion of the spirit of public service; which they see as having been betrayed by those managers and by the State. For them, the defence of special service regimes is therefore identified with: the defence of public services; it is at once a way of preserving their acquired rights and of reminding the State of its duties towards the public at large. In such a context, it is easy to see why special service regimes have become a particularly explosive issue. It is because the State, and hence the heads of public enterprises, no longer embody commitment to the general interest in the eyes of public sector employees that the latter are turning to the legal regime governing their employment in order to defend their idea of that general interest. It is these developments that explain the repeated and serious labour disputes which have marked the life of public enterprises since the end of the 1980s.\textsuperscript{37}

At first sight, the movement towards flexibilization of the law applicable to employment in the public sector in France appears to be part of a tendency common to a number of European countries. Starting from Great Britain, this movement has progressively gained ground in continental Europe, although in widely diverse forms. The most widespread tendency has been to pluck services of general economic interest from the bosom of the public administration\textsuperscript{28} and entrust their management to independent legal entities, whether public\textsuperscript{30} or private.\textsuperscript{33} The aim everywhere has been to create legal structures suited to the opening up of competition and hence to internationalization, decentralization,\textsuperscript{33} and the contractualization of relations with users, who are nowadays perceived more as customers. Nowhere, however, has the movement amounted to total privatization, which would signify a straightforward alignment of services of general interest with commercial law.\textsuperscript{35} Even where the reforms have been pursued most vigorously, as in Great Britain, the State has certainly not retreated from the scene, and still features as the ultimate guardian of the general interest. The route adopted has been the establishment of 'regulatory' authorities responsible for ensuring that this general interest is satisfied.\textsuperscript{30} The process is thus more accurately described as one of autonomization rather than privatization: services of general economic interest are made independent of state sovereign authority without becoming identified with the sphere of private interests. Here again, therefore, we have an instance of the area of social citizenship, defined as an area of general interest distinct from the interest of the State.

This trend of development in legal structures for the provision of services of general interest has been accompanied by fresh thinking on the terms and conditions of employment of the personnel concerned in cases where they were formerly exempt from ordinary law. It is a point that needs to be emphasized, since it suggests the existence of a link between the definition of services of general interest and the legal regime for those employed in providing the services. The redefinition of the legal regime of employment in public services has varied widely from one country to

\textsuperscript{27} See, e.g., the conversion of the Swedish and Italian railways into public enterprises (the Statens Jernbaner in 1988 and the Ferrovie dello Stato in 1986) and that of the German postal services in 1994.

\textsuperscript{30} Such privatization may be purely legal (a commercial company with the State as its sole shareholder), or the creation in 1994 of the Deutsche Bahn AG, a state-controlled public limited company in Germany; and similarly, since 1992, Statsverket in Sweden in the field of electricity supply or also economic (with the privatization of capital: see, e.g., the case in Great Britain in respect of electricity supply since 1989 and telecommunications since 1984).

\textsuperscript{31} A borderline case is the split-up of British railways in 1994 into 25 train operating units headed by the British Railways Board. Decentralization has existed for a long time in certain sectors, such as electricity supply in Germany, where it is linked to the country's federal structure.

\textsuperscript{32} For an overall view, see Y. Moneau, Entreprises de service public européennes et relations sociales. L'acteur oublie (ASPF, Paris, 1990), 222, and the collected articles in (1990) 136 International Labour Review, special issue.

\textsuperscript{33} See, e.g., the role entrusted to the Eisenbahnhochschulamt in the recent reform of German railways or to the rail regulator in Great Britain and, in the electricity supply sector, to Statistik Konzern in Sweden or to Office d'Electricité in Great Britain.

\textsuperscript{29} See Code de travail Art. L.322-4-7: this refers to employment under contrats d'emploi et d'assurance d'emploi, i.e., fixed-term and part-time contracts of employment confined to public institutions and non-profit-making associations.

\textsuperscript{30} On this subject, see M.-C. Morin, "Sous-traitance et relations salariales" (1994) 60 Travail et Emploi 23 ff.

\textsuperscript{36} As in the case of postal services, where a recent study reveals that, of 15 enterprises in the countries surveyed, whereas in 1990 there were still 7 that had special public administration service regulations, by 1996 none did.
The organic criterion of the private or public nature of the employer is therefore less likely than ever to justify any difference of treatment in the legal regime of employees providing services of general economic interest. Consequently, the natural inclination of the Community institutions, always reluctant to take bold action in matters of social policy, will probably be to leave this question to national laws, possibly invoking the principle of subsidiarity. That solution would not really be satisfactory, however, since it presumes that the legal regime of employment makes no difference to the proper performance of functions of general interest, and such a presumption is unsound. The factor which is unimportant, at Community level, is the public or private nature of the employment relationship. Article 48, as interpreted by the Court of Justice, does not make this an obstacle to the free movement of workers. It is, on the other hand, important that the terms and conditions of employment should be reconcilable with a guarantee of equal access for all European citizens to services of equal quality throughout Union territory.

The institution of this social area cannot fail to have implications for terms and conditions of employment in the services of general interest concerned. There is known to be a direct link between precariousness of employment and the incidence of accidents at work. In addition to ignorance of the risks involved, the uncertainty regarding tomorrow that is characteristic of precarious employment inevitably has an effect on observance of the law. For example, the rules on driving times in the road transport sector have no chance of being obeyed when the precariousness of his employment forces the driver to achieve the output required by his employer or his principal. To permit fixed-term contracts or 'self-drive' (drivers who hire their vehicle) is therefore tantamount to accepting that there will be accidents. Here, safety at work goes hand in hand with job security, the only context in which a calm and calculated approach to the use of fixed-term and temporary contracts, which has been intensified in the haulage industry by the deregulation promoted at Community level, is therefore incompatible with the requirements of the general interest. Far from excluding Community intervention, the principle of subsidiarity would appear to justify it fully in this case.

The same argument can be demonstrated in the case of the maintenance of nuclear power stations. The public enterprise Electricité de France has subcontracted this maintenance work to private enterprises, which recruit employees for the purpose on a fixed-term basis. The subcontractors have a form of 'job management by dose', terminating the contract of employment as soon as an employee has received the maximum permissible dose of radiation. As a result this encourages the employees concerned, in order to keep their jobs, to conceal the actual doses of radiation they receive. The enterprise's own permanent staff, for their part, suffer a loss of expertise and control over the conditions in which the maintenance work is carried out. The link between lack of job security and lack of nuclear safety is obvious here, and the general interest should prompt a ban on the use of precarious forms of employment for such work. In French law, 'protection of the health and safety of persons and property ranks as a constitutional principle, and this can result in certain employment relationships being made subject to special rules.'

What has been said here regarding transport and electricity generation could equally well apply, mutatis mutandis, to all services of relevance to the general economic interest, regardless of whether the suppliers of those services are public or private. Social citizenship implies, for example, the possibility of being treated with the attention due to a sick person (not a customer or user) in any country within the Union in which one happens to fall ill, something which is not without its relevance to the employment regime of hospital staff. To give another example, it implies the possibility of obtaining information freely, and hence that the employment regime of journalists should protect them both from the sovereign authority of the general interest.
4. Citizenship and the European Social Model

There are, however, reasons for doubting that the notion of citizenship represents an adequate basis for a social model that also observes the values of liberty, equality, and solidarity. By defining a social constituency that excludes non-citizens (i.e., barbarians in Ancient Greece and non-Community nationals in modern-day Europe) it contradicts the universal nature of the rights it protects. By definition, citizenship discriminates between citizens and non-citizens in respecting for former the full exercise of the equality and solidarity it establishes. For example, basing freedom of movement on European citizenship and no longer on the fact of being a worker means denying freedom of movement to foreign workers who are normally resident in one of the Member States. Similarly, making access to public services or social protection an attribute of European citizenship means denying that access to non-citizens.

The coverage of human rights in regard to employment is not the same as that of citizenship, and basing such rights on citizenship will necessarily exclude from them all workers who are non-Community nationals. Given the respective demographic and economic trends in the Member States and their neighbours to the south and east, the already large numbers of such workers can only increase. And the influence of the European model will depend on its capacity to a prolific melting-pot of cultures, not a confederation of the privileged inward-turning few.

The question that therefore arises is how the development of a European citizenship can be reconciled with the universality of the social rights that are recognized in Europe. For some, the only point of reference capable of transcending nationality is the market. They reason that, whereas 'social rights' are always ultimately dependent on membership of a particular social group, 'economic rights' are, by contrast, subject to no limits other than those of the market. Since the market concept which presided over the creation of the European Community is capable of gradual extension to all the products and services of all countries, the calculated harmony which presides over market relations can, they conclude, encompass the whole of humanity. And since it is a question of regulating access to services of an economic nature, the citizen must be treated as a consumer.

The strength of this thesis (which is in the tradition of the doctrine of utilitarianism from which economic ideology emerged) lies in the fact that the market is the only institution to exclude discrimination other than that based on money. It is alone in incorporating the concept of universal formal equality. With all institutions founded on the principle of solidarity, the collective interest prevails over that of the individual, and the interest of the group members prevails over that of outsiders. The thesis therefore has the merit of reminding us that every solidarity-based legal system involves a hierarchization of the interests present.

It is unconvincing, on the other hand, in the radical separation it operates between economic rights (capable of being universal) and social rights (particular by nature). To put it bluntly, this opposition of the economic and the social makes no sense: no legal bond exists which does not have both an economic dimension and a social dimension. The employment relationship, for example, is indissolubly an economic relationship and a social relationship. Markets are instituted, as regards their legal aspects, in conditions that are heavily influenced by 'social' (national) factors. To talk of a common labour market within an area, where, for example, some enterprises bear the cost of employees' sickness insurance while others are free of this burden because it is borne by the State would be an abuse of language.

If we acknowledge the truth of these facts we are led to distinguish rights not according to their assumed economic or social natures but ...
rather according to the degree of universality that we attribute to the values they express. At one extreme there are values which possess a universal character because they attach to the human condition. They are, in particular, the values that underlie human rights. A vocabulary expressed in terms of ‘rights’ is perhaps not the most appropriate means of affirming the universal character of these values, given the narrowly western nature of the notion of personal rights as opposed to the general rules of law, but it is certainly suited to their affirmation and application in the European context. At the other extreme there are values which are directly linked to a narrowly defined national membership. In the words of the Court of Justice, such membership designates ‘a special relationship of allegiance to the state together with a reciprocity of the rights and obligations on which the bond of nationality is founded’. 48

Between these universal rights and national rights, with the notion of European citizenship we are immediately in an intermediate area. It would therefore be possible to accept that access to this status exists not only by virtue of national membership (of a Member State) but also by virtue of employment. Such access to citizenship by virtue of employment obviously relates, first, to non-Community nationals who work in Union territory, and as such will be accorded the same social and economic rights as Member State nationals. It could, however, be taken a step further by accepting that those who, although working outside Union territory, are so employed on behalf of European enterprises (either as posted workers or under subcontracting arrangements) should likewise enjoy at least some of the rights attaching to this ‘social’ (i.e. socio-economic) citizenship. With a conception of citizenship expanded in such ways the European ‘social model’ could truly be given universal scope.