Urban Citizenship - a Status or a Practice?

Helmut Philipp Aust

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Introduction

Kicked off by Rainer Bauböck's essay, the general pros and cons of urban citizenship – or city-zenship as Avner de Shalit and Nir Barak have termed it in their responses – have been weighed. The question of who might lose out has been put on the table, notably by Patti Tamara Lenard. Other contributions have touched upon the question of the role of the law . Historian Maarten Prak has wondered, for instance, whether the turn to the language of "rights" is helpful due to its moralising undertones. Barbara Oomen has refuted this argument and has instead called for shifting the focus from citizenship more generally to human rights at the local level as a more tangible means for inclusion of those who are so far left out of the bond of citizenship. And Ran Hirschl has pointed to a more general deficit of constitutional theory that has avoided to tackle urban questions, possibly for the reason of its fixation on larger and arguably more important scales of government and governance.

In my contribution, I would like to reflect on the role of law in this discourse. The answer one might give to the question of decoupling citizenship from the state would arguably also depend on one's disciplinary perspective. It is easier to think outside of the box from the perspective of political theory, political philosophy, and history than it is from the perspective of the law. Even though "law" is not monolithic – neither as an object of study nor as an academic field – lawyers have to start with the law that exists. Law can be changed – for better or worse. But changing the law requires following a certain process. The "rules of change" of a given legal system are determinative for bringing about a change of the primary rules (Hart 1961). Scholarship can certainly influence these processes, point to existing lacuna, fill them with systemic thinking or suggest novel interpretations to courts and other decision-makers. But the starting point of a legal exercise remains bound up with the existing legal framework.

In the context of our symposium, this raises the broader question of the value of legalising urban citizenship, a point also already flagged by Josephine van Zeben in her contribution. She rightly has concerns about turning urban citizenship into some kind of copycat of national citizenship. She wonders how this promise would be filled with life. In other words, she is asking which sovereign attributes necessarily go hand in hand with calling a status "citizenship". To answer this question, it may be helpful to distinguish between status- and practice-based understandings of citizenship.

Urban citizenship as a status

A distinction exists between citizenship as status and citizenship as practice (Bauböck 2003). Lawyers tend to think of citizenship primarily as a status – a bundle of rights and obligations, which is defined by the common bond of belonging to a nation state. Inclusion in this circle of rights-holders (and duty bearers!) is passed on through legally defined mechanism, either at birth or through processes of naturalisation. Nation-states jealously guard the power to decide over this question, even though federal systems like the one in Germany may leave it to the component units of the federation to administer the concrete decision-making process on who obtains citizenship through naturalisation.

International law also expects states to a certain extent to keep these processes under control, at least if they wish to protect their citizens in the international arena. The *Nottebohm* case of the ICJ famously required a "genuine link" between a state and its naturalised citizen to make citizenship effective in the context of diplomatic protection.

From this legal perspective, citizenship fulfils a certain world order function as the current inter-state system depends on the demarcation of citizenship across some defined or at least identifiable lines. In the words of Rogers W. Brubaker it is an "international filing system, a mechanism for allocating persons to states" (Brubaker 1992). One can, of course, wish for the inter-state system to disappear and be replaced by an entirely different system (Barber 2013), but for the time being this looks unrealistic even to the most ardent supporter of the rise of cities as global actors. Yet, some scholars seem to take the leap. For instance, Alexander Aleinikoff argues that "urban citizenship is a useful concept only to the extent that urban areas possess legal authority".

This alone is not a bold claim. Many domestic legal systems bestow legal authority upon cities and local governments; Germany and South Africa are two examples with strong constitutional protections for local governments (on Germany, see Aust 2017). Yet, Aleinikoff envisages more, "some form of sovereignty" where things arguably become difficult. What would such a turn to urban sovereignty entail? I cannot help thinking back to the "new tribalism" evoked by the late Thomas Franck in the context of secessionist movements (Franck 1999). Arguing for urban sovereignty in the context of our current heated political debates seems to add fuel to the fire. Many contributions to current debates on urban futures share a romantic affection for the urban, which is coupled with a similar disdain for the supposedly rural backwaters. I am not sure whether arguing for urban sovereignty will help to close this gap (Aust 2019). As others in this symposium have also pointed out, which forms of urban life are shaping our thoughts when we reflect on a growing role of cities and along with that urban citizenship? This might be an attractive ideal for the urbanites of New York, Berlin, Melbourne and Tel Aviv – but not necessarily for urban areas that lack the appeal that these places radiate.

Urban citizenship as a practice

If there may be good reasons not to think of urban citizenship in terms of status, one is left with the somewhat vaguer notion of citizenship as a practice. This mode of citizenship is not a legal notion but rather derived from local practices, which set out to redefine a certain form of political membership in a community to the extent that local governments and cities have the possibility and capacities to allow for such processes. Citizenship as practice can easily tap into direct democratic experiments like participatory budgeting, resonate with ideas of a "right to the city", and generally help to stimulate a sense of community on a local level. There is much to be said for all this, and urban citizenship can well be an attractive label to encapsulate a variety of emancipatory practices on the local level.

Keeping this emancipatory potential alive would require, however, not to import the characteristics of the inter-state model of citizenship as status in a legally defined way into this realm of urban citizenship as practice. In other words: one can't have your cake and eat it. It is difficult to aim for political emancipation and yet long for the trappings of citizenship in a legal sense at the same time. Legal form can be stifling. It provides legal security and stability. But if you aim for change, do not look for the law first.

Importing too much of the citizenship thinking from the inter-state context into the vibrant field of urban citizenship practices may stifle innovation. City networks in the climate change context seem to be faced with a similar dilemma: In order to carve out a niche in the global climate change regime, they have argued that cities are essentially different from nation-states and the established forms of international cooperation. As extrapolated in the works of Benjamin Barber, these networks want to be the new kids on the block, not held back by ancient conceptions of sovereignty and power politics, but rather aiming towards pragmatic problem-solving, grassroots democratic legitimacy and shaking up the international system from the bottom up. Apart from the often-unsolved riddle how the managerial and pragmatic problem-solving attitude relates to the democratic legitimacy argument, it is also noteworthy how these networks – like ICLEI and C40 – simultaneously long for acceptance from more established actors like states

and IOs, and how their meetings resemble international summitry. In other words: there is a somewhat puzzling disconnect between an attempt to be apart and new and the wish to break into the inner circle.

Conclusion

I would like to end with the suggestion to realise urban citizenship as practice, but not as status. The emancipatory potential of citizenship is more likely to be fulfilled if there is no vain and potentially unrealistic urge to legalise it. If you wish to emancipate it, do not look to the law – at least not first.

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ABOUT THE AUTHOR

Helmut Philipp Aust
Helmut Philipp Aust is a Professor of Public and International Law at the Free University of Berlin.

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