

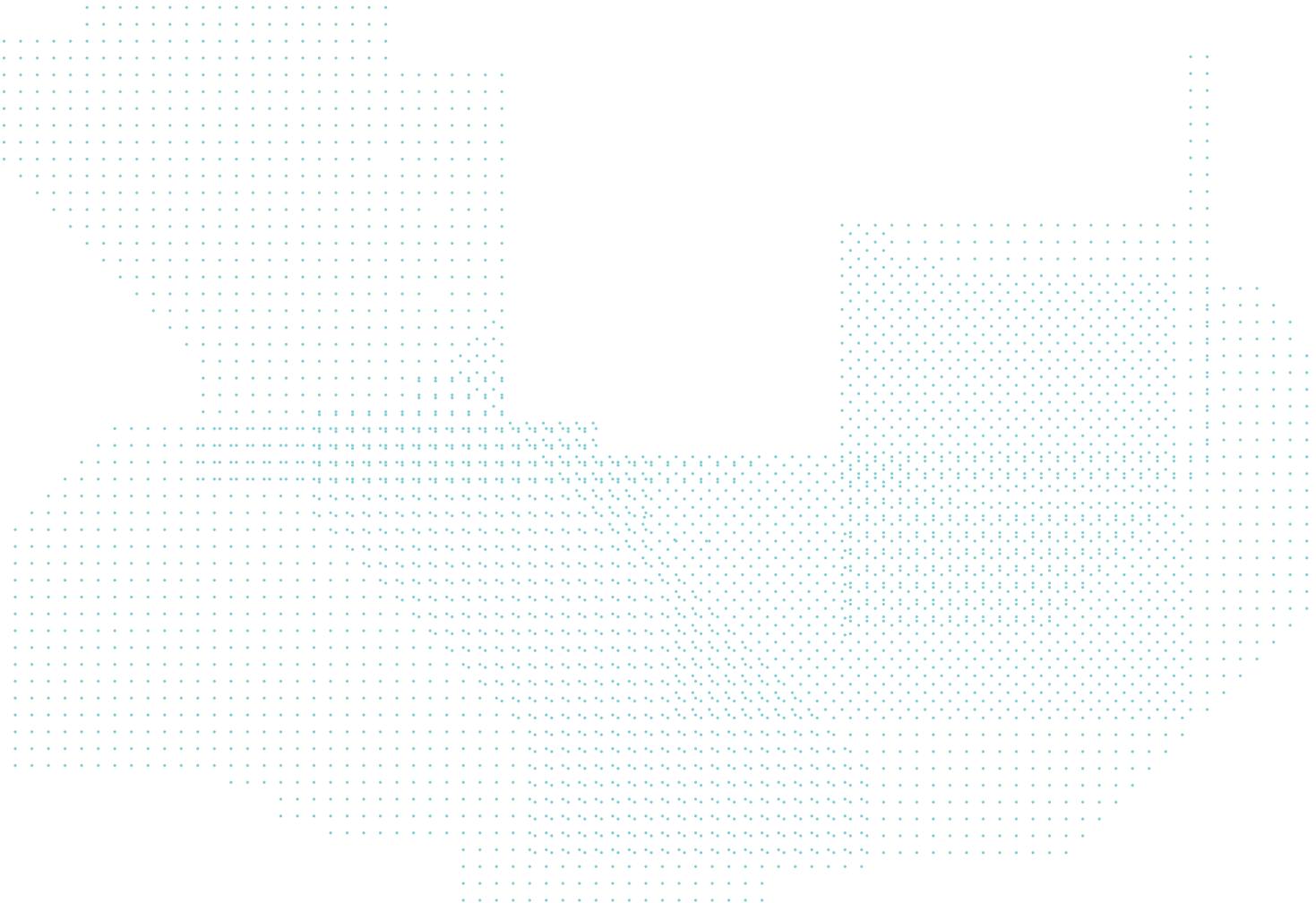
RESEARCH

REPORTS

RECOMMENDATIONS

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CITIZENSHIP: A STATUS UNFIT FOR PURPOSE?



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Citizenship: A status unfit for purpose?

If citizenship were a shareholder company, would we feel confident investing in its product today? To many observers in the European Union (EU), citizenship may have ‘burst its bounds’ (Kostakopoulou 2003). To some it appears out-of-date, unpopular and ineffective.

Out-of date, because large-scale immigration has resulted in a situation in Europe where roughly every second foreign-born immigrant residing in an EU-15 country for at least 10 years is not a citizen, and thus cannot vote in national elections (ACIT 2013). International migration produces citizens living outside the country whose government is supposed to be accountable to them and inside a country whose government is not accountable to them (Bauboeck 2008). Citizenship is supposed to determine full membership of a democratic community. Does this still apply when almost 12% of the population in Austria is excluded from the democratic process?

Unpopular, because large shares of eligible immigrants actually do not apply for naturalisation. To some immigrants, citizenship may have become unpopular because it is difficult to acquire due to legal obstacles such as residence, income or economic requirements; furthermore, formal refusal of dual citizenship can also be a deterrent for immigrants. Others may just not see the added value that citizenship would provide to their current status (Huddleston et al. 2012). Voting rights, diplomatic protection and visa-free travel seem a limited incentive for naturalisation. Less obvious benefits of citizenship such as less discrimination on the labour market and access to public sector jobs are debated among experts and often unknown to applicants. Upcoming elections, announced changes to a policy or PR campaigns can momentarily boost naturalisation rates before they decrease to low levels again.

Ineffective, because the impact of citizenship is not straightforward. It remains unclear to what extent citizenship fuels a sense of belonging and political participation. Many studies have highlighted the positive effects of citizenship on employment, but the results vary significantly across different countries, different groups and different degrees of restrictiveness of citizenship laws (OECD 2011, ACIT 2013). According to recent EU funded research, many immigrants did not experience a significant change after acquiring citizenship. A passport does not necessarily change self-perception or perception by others.

In light of these points, what does citizenship as a concept and as policy actually bring to the table? Would Europe be better off without it?

Citizenship today causes more confusion than stability

The debate about new conceptions of citizenship is not new. Since the 1990s, political theorists and legal scholars have pointed out the theoretical, normative and procedural shortcomings of current citizenship regimes in the EU. In the context of globalisation, high levels of international migration and increasing Europeanization through several legislative provisions (Single-permit Directive, EU-Nationality and EU long-term residence directive), it can be argued that the ‘traditional nation-state

centred model of citizenship has been called into question' (Kostakopoulou 2003). At the forefront of the conceptual criticism of citizenship was often an opposition to nation-based citizenship derived from ethnically centred ideas of nationhood (Bauboeck 2006, de Groot ...).

These discussions remained largely within the academic sphere. Since then the question has only become more pressing. There is a perception that citizenship policies that used to be fairly stable and supported by cross-party consensus in many countries have become thoroughly politicised and volatile (Bauboeck 2008). The variability of current citizenship policies may be a sign that a common understanding of citizenship is questioned.

This tacit uncertainty, and at times ambiguity, about the concept and forms of citizenship is felt among key stakeholders in the EU. The urgency of the debate about citizenship was reflected in the statements of civil servants, politicians, civil society representatives, academics, and citizenship lawyers in 10 national dialogues in the context of the ACIT research project (ACIT 2013). Experts discussed the laws and implementation of citizenship laws, the factors influencing naturalisation, the potential impact of citizenship on integration and the political environment for policy reform in each country. Despite great variation across different EU countries, there were a number of common questions that undermine citizenship as a concept:

- 1) **Definition:** What do we mean by citizenship? Is citizenship a legal status, a concept of participation in democracies or a vehicle of identity and belonging? Much of the confusion around citizenship in public discourse is caused by the interchangeable use of citizenship's various dimensions (legal, political, identity).
- 2) **Purpose:** Should citizenship be one step on the path to becoming a full member of society? Should it be the final reward for fully integrated immigrants? Can we require more of 'them' than of the majority of the general population? In times of plural identities, can citizenship be an expression of belonging?
- 3) **Legal complexity:** Is citizenship simply too complex to be reformed? As citizenship legislation has evolved over decades, sometimes centuries, at times through a series of half-hearted cross party compromises, few experts and practitioners in a country are capable of grasping the full complexity of citizenship laws. According to a number of ACIT dialogue participants, it is not unusual for implementing offices, often facing staff shortages, to apply rules incorrectly or misinterpret current legislation altogether. It may come as no surprise that immigrants are lost in a patch-work legal jungle when public authorities are challenged to implement citizenship.
- 4) **Obsolescence:** Since reforms of citizenship law require a large majority, they don't come around often. This is why in some countries, current laws include many particularities that do not reflect today's reality. Does it still make sense to have a fast-track procedure for Hispanic immigrants to Spain, when nowadays Spanish citizens are emigrating to Latin American in search of better opportunities? Does

it make sense that Italian citizenship legislation has not fundamentally changed since 1912 when Italy was still predominantly a country of emigration? There are many more examples of a mismatch of current challenges and obsolete legal baggage. Due to the administrative and political cost of comprehensive citizenship reform, mainstream political parties often shy away.

- 5) **Demand:** According to the ACIT research, on average half of the first generation immigrants in EU-15 countries that have resided at least 10 years in the country have naturalised. There are still diverging views among stakeholders on why immigrants naturalise or why they don't. Are requirements too demanding? Are personal incentives for potential applicants overrated? Do immigrants naturalise because they value certain practical benefits, such as visa free travel, voting rights and less discrimination from administrative offices and employers?
- 6) **Meaning:** Immigration and citizenship are controversial topics. Many EU societies have not come to terms with their new-found diversity. Political parties often avoid making it a big issue as they are frightened of upsetting or confusing voters. Can citizenship still capture an expression of identity? Does being a German citizen still mean 'feeling' German? Political parties, civil society and public opinion are very hesitant to engage in meaningful debate about how to re-define European communities in light of large-scale immigration. This hesitation may stand in the way of any attempt to reform legal membership of political communities.

This subtle and nervous uncertainty in debating citizenship not only surfaces in discourse. It has become practice in many EU countries. Many governments have introduced new requirements for citizenship (or have at least considered them). Then the next government abolishes them. Some requirements, such as raised language requirements and civic and cultural knowledge tests may be interpreted as a way of 'protecting' what it means to be a citizen – a kind of symbolic self-assurance of society that we still know who we are. At the same time, we see a transition towards (formal or informal) tolerance of dual nationality by many states. Dual nationality recognises the allegiance to and identification with more than just one country. Requirements for citizenship and long-term residence change more rapidly and cause more contentious debate. These policy changes may also feed into often uneasy public debates on 'what it means to be British or French or Dutch'.

I argue that it is worth considering whether citizenship as a concept has become an empty container and, as a consequence, citizenship policies still make sense in today's Europe. Citizenship as an 'often metaphorical and over-stretched' (Bauboeck 2008) concept may not provide helpful answers anymore. In the following pages, I will put forward some arguments why citizenship may not be fit for purpose anymore.

Why do we have citizenship in the first place?

In theory, citizenship states who is a full member of a society and who is not. Citizenship defines the rights and duties of membership of a certain community. Liberal democracies require active citizens that participate in society to transfer legitimacy and accountability to the system itself. In other words, only a system that

allows and encourages all its members to participate is a system whose decisions everybody can accept. Citizenship has three different dimensions often referred to in research: legal (rights), political (participation) and identity (belonging) (Leydet 2011). All three dimensions are interconnected. In theory, the rights a citizen enjoys will partly define the range of available political activities, while explaining how citizenship can be a source of identity by strengthening the sense of belonging.

The legal dimension describes the rights and duties that are associated with citizenship as well as conditions that are necessary to fulfil in order to acquire those rights. We see great variation across the EU. However, the main citizenship rights relate to voting and an unrestricted right to enter and leave the country.

The political dimension of citizenship concerns participation of members in the community. Citizens should exercise the rights that were given to them. This regards voting in particular, but can include other forms of participation such as party membership or holding a political office.

Furthermore, citizenship often conveys a strong notion of identity. In theory, a citizen feels a strong sense of belonging to the community. This is an incentive to participate in the community. The emotional attachment to the community acts as a safeguard for the state that members have a common interest and thus are more likely to abide by the law. As theorists argue, a certain social and symbolic bond is needed for any type of political community to exist (Miller 1995). The assumption that a belief in the rule of law and the constitution (see 'constitutional patriotism' in Habermas 1992) is insufficient to underpin any social order has been questioned.

The legal status that immigrants commonly acquire before becoming citizens is long-term residence. In many EU countries, citizenship and long-term residence have slowly converged over time. Owing to migration and settlement, social and political memberships have become disentangled, and non-citizen residents enjoy socio-economic rights on the basis of legal residence rather than formal citizenship (Soysal 1994). The status of 'almost citizenship' has been coined in the academic debate as 'denizenship'. In most cases, long-term residence provides full socio-economic rights and a secure residence. Long-term residents have access to social welfare, health insurance, schools, most parts of the labour market and almost all other services that nationals enjoy. They lack the rights commonly associated with citizenship, such as voting in national elections, unrestricted access to the territory, visa free travel in the EU, diplomatic protection abroad, access to political offices and certain public sector jobs, protection against expulsion and easier access to family reunification.

Why citizenship does not make sense

In an increasingly globalised world, it does not make sense to have one concept to accommodate legal, political and identity issues of community membership in one. Citizenship has become less able to cater to all three.

In terms of the legal dimension, the following applies:

As mentioned before, on average 50% of the settled foreign-born population in the EU is excluded from full membership and most importantly from national elections. This is a major problem of legitimacy for democratic systems.

Through the EU long-term residence directive, the EU grants European resident status to non-EU nationals who have legally and continuously resided for a period of five years within the territory of an EU country. This status includes a set of uniform rights that are ‘as near as possible to those enjoyed by EU citizens’ (EU Commission). The directive also includes the right of non-EU nationals to legally reside in the other EU countries, given that specific conditions apply. This would allow visa-free travel for non-EU immigrants that have a long-term resident status. At least in theory (the European Commission has deplored weak implementation by Member States and low uptake of EC residence), this directive provides equal residence and travel rights in the EU to EU citizens and long term residents.

Citizenship does provide stronger protection from expulsion. However, in some cases, such as capital crimes or military service in a foreign country, citizenship can be revoked. The EU long-term residence directive provides enhanced protection against expulsion for third-country residents. Citizenship usually facilitates reunification with family abroad. However, family reunification rights of long-term residents are already secured through the EC Directive on the right to family reunification.

Settled immigrants have access to rights comparable to citizens. Additional rights associated with citizenship are often of little incentive, difficult to obtain or just not well known by immigrants.

In terms of the political dimension of citizenship, the following applies:

It is true that only citizenship grants the right to vote or run for office in national elections. However, there is a broad range of other forms of political participation available to long term residents. In roughly half of EU countries, long-term residents can vote in local elections; in most, they can join parties, protest, sign petitions and join campaigns. Relying on voting as the only major incentive might overestimate the significance of voting for most people, including immigrants. Participation of naturalised immigrants in the EU is lower than the national averages in most countries, although it is increasing over time (Morales et al. 2012). While citizenship may provide the opportunity to vote, it does not necessarily mean that it makes people vote. Citizenship cannot replace a strong government policy that encourages everybody to actively participate.

In terms of the identity dimension of citizenship, the following applies:

Citizenship is often equated with belonging. Having a Portuguese passport means ‘being Portuguese’. In the public mind, being Portuguese is then associated with a set of norms, values, opinions and sometimes cultural features and appearances. It is assumed that citizens ‘feel at home’ and buy into collective (often national) identities

and shared histories. This symbolic notion of citizenship may be best reflected in policy terms in 'oaths of allegiances' to the state and 'citizenship ceremonies' which are now part of naturalisation procedures in many EU countries.

While citizenship may be one sign that somebody identifies with the country, it is not a guarantee. Many Catalans or Flemish people may have serious issues about being labelled 'Spanish' or 'Belgian'. Descendants of victims of the Second World War might be reluctant to be labelled 'German'. Many Europeans emigrate and take on other shared cultures. Long-term residents in EU countries may already strongly identify with their country of residence without necessarily pursuing citizenship. The spread of international communication technology and internationalisation of business and travel have enabled this generation to move around like no generation before. This exposure has also led to a normality of multiple identities

The argument that acquiring citizenship enhances an immigrant's identification with the state is predicated on the assumption that they cannot identify with the community beforehand. It is often believed that citizenship reduces discrimination. A foreign passport makes you a foreigner. However, discrimination does not stop with carrying a different passport. The fight against discrimination cannot be won by awarding a legal status. 'The passport does not change the colour of the skin', as one ACIT dialogue participant puts it. While citizenship can improve integration and reduce discrimination in some cases (OECD 2011, EU MIDIS), it is neither an automatic change of sense of belonging, nor does it necessarily cause a change of perception by others. A shared identity and a sense of belonging is a collective process including all members of a community. Citizenship may be an unnecessary barrier to being part of that process.

What would a country without citizenship look like?

The outlined issues with current forms of citizenship lead to the question of why we should keep the concept at all. Maybe it is time to abolish citizenship as a concept and as a term. What would be lost if the rights associated with citizenship were simply transferred to long-term residence status and citizenship scrapped?

Long-term residents would be able to vote in the country where they had settled and where they had paid taxes for years. If countries choose to make voting conditional upon passing knowledge tests, why should they not apply to everybody? Many nationals today have little idea about national history or how the political system works. If we require this knowledge to make informed decisions in elections, we should also require it of everybody. However, (the application of) tests in general should be approached cautiously. Where the state forces its people to [adopt] certain habits, values and good citizenship, it becomes illiberal (Bauboeck 2008).

Could the system be reduced to 'residence by birth or socialisation', 'residence by choice' and 'residence by refuge'? This would make everybody a resident and a potential immigrant. Some just stay longer than others: some all their lives, some 10 years and some only a couple of months...

‘Residence by birth’ would be the equivalent of birthright citizenship. It cannot be lost. However, it can be replaced by residence by socialisation in the event that a person resides in a country other than their birthplace during the majority of their childhood.

‘Residence by choice’ can be either short term (temporary work permit) or long-term (long term residence after 5 years). Once residents have fulfilled requirements for obtaining long-term residence they enjoy the same rights as all other permanent residents, including voting, visa travel and so forth.

In principle, every person can only have three resident permits. One is birthright (or socialisation) residence. The second is long-term residence in another country. The third one is a permit they acquire when leaving the country of permanent residence for a country other than the country of birth or socialisation residence. For example, a person is born in country X and receives ‘birth residence’. They move to country Y for work. After 5 years and meeting all conditions they receive ‘residence by choice’, which includes all rights formerly attached to citizenship and long-term residence. If the person were to migrate again to work in another country Z, they would receive a work permit there. The ‘residence of choice’ in country Y expires when the person acquires ‘residence of choice’ in country Z. The country where the previous ‘residence by choice’ was taken up provides preferential return conditions.

This system could be fairer, easier, and cheaper: everybody that has gainfully resided in a country for 5 years and fulfilled the requirements for long-term residence is eligible to vote and encouraged to participate in the electoral process.

Identity is completely left to the individual person and public discourse. ‘Feeling’ Dutch does not need legislation. Either you feel it or you don’t. What it could mean to be Dutch is subject to a collective process of deriving meaning from a community.

Political parties would have to be more flexible and appealing to all residents in the given country. This would make society more dynamic and the political system more open. Scrapping citizenship would allow outsiders to participate more politically, but also participate in the societal process of defining a shared identity. The pressure to describe who we are and where we belong would be less threatening as citizenship as a category would not exist. Citizenship is a prescribed identity. Abolishing citizenship would allow individuals to choose their identification and cultural ties. Identities are a matter of choice and experience rather than a prescription.

Abolishing citizenship would also render discrimination based on nationality less prevalent. If there was no category of citizenship, contributions to society would be valued more than a piece of paper when assessing belonging. The random event of birth as such is not a contribution.

The absence of citizenship could increase socio-economic integration. Especially in countries that formally do not accept dual citizenship, many immigrants do not naturalise because they could face practical disadvantages and discrimination upon return to their country of origin. They identify with their country of origin and maybe they have plans to go back in the future. If these immigrants did not face the pressure

to choose allegiance, they could be more motivated to invest in ties with the country of residence.

Clear and easy residence laws could work as a magnet for highly-skilled labour migrants. Traditional countries of immigration (Canada, US, Australia) attract a high share of highly-skilled immigrants. These countries also put immigrants on a clear and easy path to citizenship. Some Western European countries already have labour shortages in some occupational sectors. Providing secure and comprehensible residence while at the same time allowing multiple identities could attract many highly-skilled immigrants.

Lastly, once legislation has been made easier to understand and execute, administration would save immense resources on implementation and fighting appeal court cases.

Why would people think this idea is crazy?

This is crazy because citizenship, for many, is a symbol of 'nationhood', belonging, and a medium for the integration of the political community. Any attempt to question its principles is bound to generate reactions. They may include the following:

(1) The public will not support it. In legal terms, it is impossible.

True. That is an easy objection. But if societal developments in history were always dependent on what the majority supports, where would we be? Secondly, of course, a proposal like this would have immense implications for legal reform. It would also require numerous international treaties. An army of lawyers would be needed. However, similar efforts have been undertaken at the EU level before.

(2) Abolishing citizenship will erode cultural ties that are needed to sustain a society.

'Society works due to certain social bonds. A shared identity, a belief in the community makes people tolerate a government that imposes policies, collects taxes, builds highways next to your house etc. Trust in the 'imagined community' (Anderson 1990) and trust in institutions is a marker of good democratic governance in liberal societies. In other words, this objection highlights the 'difficulty in disassociating modern political communities from their pre-existing cultural heritage and the myth of more or less cohesive units with a shared historical destiny' (see Miller 1995, Tamir 1993). Cultures are often seen as endangered species that must be defended - and not as changeable, renegotiated and reconstructed creations susceptible to and enriched by external influences, internal reflections, struggles and collisions. Since cultural survival is taken to be both a norm and an expectation, then lawfully admitted newcomers of any nationality can only become 'true naturals' when they give their allegiance to the values animating communal life' (Kostakopoulou 2003).

But is this bond tied to a specific legal permit? As mentioned before, flexible and multiple identities beyond the nation state have become the norm. They do not necessarily impose a lack of participation or trust in society at large. More open civic conceptions of community would replace 'national' or 'ethnic' social bonds.

(3) Abolishing citizenship will open up ways for more discrimination

‘Abolishing citizenship could lead to its reverse intention. If citizenship did not exist, particularist, national and cultural identities would flourish and become more important. These community bonds tend to be even more exclusive in practice than citizenship is today. The absence of a legal status could lead to more discrimination and exclusion in everyday life. Citizenship was a means for people that did not share certain cultural characteristics to become part of the community.’

If everybody is a resident, this will lead to thinking about a new form of collective identity. Legal provisions often lead to social change in the long run. As mentioned before, exclusive cultural groups exist despite citizenship regimes. Naturalised immigrants already face similar barriers to being accepted by the community despite their formalised status.

(4) Democratic legitimacy

‘If we let permanent residents take part in elections, relative newcomers to the country would have the power to impact long-term decisions. People that have lived in the country for 5 years could decide on a new retirement age that affects generations to come when they will have left the country.’

First of all, it is not really clear that native-born nationals always think long term. Communities tend to postpone major decisions, leaving them to future generations. This is the case for issues such as climate change, energy efficiency, retirement ages, financial systems and public debt. Why do we assume that newcomers would necessarily take biased decisions? Who honestly believes that whatever their grandparents thought was a good idea actually is a good idea today? In this sense, newcomers might even be more suitable decision-makers. They also bring experience from a different country where similar issues might have been relevant. The random event of birth is not an achievement. Why do we think that this criterion is a better indicator of good decision-making than immigrant status?

Native-born nationals today can also leave the country, reside abroad and make decisions for a country in which they do not live. Does it not make sense to give voting rights to people who actually live in the country?

(5) Citizenship cannot be used as an incentive to integrate

Many today argue that citizenship as an additional ‘premium’ status incentivises applicants to fully integrate into society. Often this ‘incentive’ has become a requirement. Some EU countries require a B2 level of language ability, knowledge about the host country, above minimum wage income levels and uninterrupted residence in the country. Some countries require community volunteering.

Many countries already have strict residence, economic and language requirements for obtaining long-term residence. As a result, a minimum level of socio-economic and cultural capital can be expected and required of people that gainfully reside in the

country for 5 years. Immigrants might invest more in a country where they feel welcome and where they are encouraged to participate.

(6) Sounds like open borders and the loss of nation states?

'This proposal sounds similar to an open borders ideology where everybody can move and reside freely without any conditions. It assumes that the nation state is not the primary principle by which to structure our world.'

This is not the case. This idea can only work with functioning border control. The state maintains complete control over its territory. It can also apply conditions to visas and long-term residence. However, such conditions should be proportionate and within the norms of liberal democracies. The state still holds the monopoly on who to grant access to and who to grant different statuses to.

(7) Who pays the bill?

'According to many, immigrants, especially from less developed countries, would abuse the system. Clear and easy residence is an incentive for more vulnerable, less educated immigrants to come to Europe to reap the benefits of easy access to full membership. In addition, what about illegal immigrants? It would become easier for them to stay forever.'

If this assumption is true, why is it not true already? Immigrants from less developed countries certainly do not come to Europe for their love of a certain nationality. They might come to look for opportunities to work, learn, and improve the lives of their families. Irregular immigrants already transition into legality through various forms. Long-term residence is already a secure status for them. We also find that naturalised immigrants from less developed countries with less of a strong political culture vote less than native-born nationals. Why would citizenship itself make a difference in attracting immigrants from less-developed countries?

Additionally, the fear of mass immigration from poor countries is often exaggerated in public and political discourse. According to the United Nations, only 4-5% of the world population are currently migrants. Not counting 'irregular' immigrants, asylum seekers and family migrants, relatively few migrants are left who can actually enter the EU.

Citizenship at the EU level?

Abolishing citizenship as a legal status would create territorial tensions between EU countries and as such would have implications for EU cooperation. Currently, every person holding the nationality of a EU Member State is a citizen of the Union. This makes access to citizenship of the Union wholly dependent on the rules for acquisition, transmission and loss of its various national citizenships. Thus, immigrants can currently acquire residence in EU country X and enjoy more rights when they travel to EU country Y than immigrants that settled in EU country Y from the beginning (see Bauboeck 2006 for practical examples). This discrepancy of rights

would increase if one EU country adopted a ‘residence of choice’ model. This model also requires international cooperation to guarantee the right to return to the country of previous ‘residence by choice’. In this context, it makes sense that countries in the EU agree on common standards and requirements. Many political theorists and legal scholars have called for harmonizing national citizenship legislation in the EU (Bauboeck 1997, de Groot 2003). EU harmonisation in this area would not have to be done through a new treaty (most EU citizens are tired of them anyway) but through directives or even an open-method of coordination. More harmonisation of membership requirements is unlikely in the short run. As many countries feel their sovereignty threatened in many areas, citizenship is one of the inherently ‘national’ issues that members will be unwilling to give up.

Conclusion

It was the purpose of this publication to translate some elements of political theory on citizenship into accessible policy language and to reconnect some established ideas with current citizenship debates. However, this paper can merely be a snapshot reminder of the inconsistencies and shortcomings of current concepts and policies of citizenship in Europe today. Elements of the outlined ideas and their critiques are not new. Although alternatives to citizenship are often dismissed as ‘weak, unstable, utopian or dystopian’ (Kostakopoulou 2003), current debates and policy changes in the area of citizenship call for a revision of citizenship in the EU. As one theoretical solution, I outlined why abolishing citizenship and attributing all its rights and duties to long term residence may be less crazy than it sounds.

Some citizenship reforms such as increasing acceptance of dual nationality, stronger *jus soli* provisions and an extension of (local) voting rights for third-country nationals in many EU countries point to a direction where ‘abolishing citizenship’ sounds like more than a mere thought experiment. While cross-country variation continues to be a reality in the EU, there has been some convergence of citizenship laws over the last 30 years. The EU – as a unique supranational polity – has already introduced EU citizenship and EU long-term residence. Any reconsideration of ‘citizenship’ as a concept and as policy must incorporate the EU perspective. As outlined above, a first step towards ‘abolishing’ citizenship would be to harmonise common rules for access to full membership across the EU.

There is no lack of concepts and ideas. However, there is a lack of policymakers, practitioners and civil society organisations that consider new approaches. The presented proposal is unrealistic in the mid-term. It is at times radical, at times naïve or polemic. However, it does address the fact that citizenship in Europe is increasingly unfit for its purpose: providing an answer to questions of membership and belonging in light of Europe’s new-found diversity.

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