

Cities vs States: Should Urban Citizenship be Emancipated from Nationality?

Bauböck, Rainer (Ed.); Orgad, Liav (Ed.)

Veröffentlichungsversion / Published Version

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Empfohlene Zitierung / Suggested Citation:

Bauböck, R., & Orgad, L. (Eds.). (2020). *Cities vs States: Should Urban Citizenship be Emancipated from Nationality?* (EUI Working Paper RSCAS, 2020/16). San Domenico di Fiesole: European University Institute, Robert Schuman Centre for Advanced Studies. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-96156-7>

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Orgad, Liav

Book Part — Published Version

A Political Promise or a Hollow Hope?

Provided in Cooperation with:
WZB Berlin Social Science Center

Suggested Citation: Orgad, Liav (2020) : A Political Promise or a Hollow Hope?, In: Orgad, Liav Bauböck, Rainer (Ed.): Cities vs States: Should Urban Citizenship be Emancipated from Nationality?, European University Institute, San Domenico di Fiesole, pp. 76-78

This Version is available at:
<http://hdl.handle.net/10419/228495>

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A Political Promise or a Hollow Hope?

Liav Orgad*

The puzzle of urban citizenship

The 15th GLOBALCIT Forum, kicked-off by Rainer Bauböck, provides plenty of food for thought. *Conceptually*, is there a concept of ‘urban citizenship’ in law and political theory? What does ‘urban’ mean—only sub-national territorial units, defined by geography, or also sub-national functional units, determined by authority? Is the focus only on the city or also on other provincial, regional, and local entities? And what does ‘citizenship’ mean—a legal status or a practice (Helmut Aust); a set of rights (which ones, for whom, and why?) or also responsibilities; a residency-based or also identity-based notion? *Normatively*, what are the theoretical foundations and justifications for a concept of urban citizenship? What is the connection between urban and national citizenship functions? Is urban citizenship only an ethical idea or also a legal concept? *Legally*, what reforms should be taken to recognise a concept of urban citizenship in a juridical sense? Should it be merely about individual rights or also about cities’ rights? *Politically*, is urban citizenship bad (Enrico Gargiulo and Lorenzo Piccoli; Avigail Eisenberg) or good for human rights, social equality, and global justice? Bauböck has provoked so many questions on the essence and meaning of urban citizenship.

Reading the Forum’s contributions, it is clear that the answer to Bauböck’s question, “should urban citizenship be emancipated from nationality?” is more nuanced than a binary yes-or-no. For what *goals*: enfranchising non-citizens, enhancing global governance, or fighting populism? Different goals call for different solutions. And by which *means*: while Ran Hirschl seeks to give cities a constitutional status, as an answer to their constitutional “silencing” in most states, Barbara Oomen wants to buckle them up to international law, as an improvement to human rights conditions of city dwellers. It is precisely at this point where the debate seems to have lost track. Hirschl, for one, concludes that “this concept [urban citizenship] seems to me to be slightly off target in identifying the main issue of city under-representation”, yet this issue has not been Bauböck’s concern. Some authors agree on the goal yet dissent on the means; Gargiulo and Piccoli share Bauböck’s vision but differ on whether residency-based urban citizenship is a wise means to achieve it due to its exclusionary implications. It is no longer clear what are the problems and whether the debate is on concepts, justifications, applications, or implications.

Making cities great again

“Once upon a time”, Bauböck reminds us, “all citizenship was urban”. And although “[t]alking about urban citizenship in this context [of nation-states] has seemed anachronistic”, urban citizenship, based on residence, which “complements national citizenship instead of replacing it”, seems to Bauböck a promising reform that could give new salience to the old idea. This is due to the role that cities can and should play “in addressing global problems, such as the climate crisis or international refugee protection”, the irrelevance of the distinction between national citizens and city dwellers to local democracy, and the potential of cities to better protect human rights. These reasons, alongside the changing demographic landscape of cities, call for a change in the status and role of cities to the point of creating a new narrative of citizenship.

I share the plea for rethinking the status and role of cities, yet three points should be stressed. *First*, for achieving Bauböck’s goals, one does not need to reinvent the concept of citizenship; Such goals can be achieved by incremental improvements in local democracy, such as the “expansion of voting rights

* European University Institute, Florence

to non-national citizens”, as Alexander Aleinikoff shows (in this regard, the concept of urban citizenship is too broad), or by globalising (rather than localising) citizenship, as Eisenberg and Stephen Minas imply (in this regard, the concept of urban citizenship is too narrow). *Second*, even if citizenship is the right framework, is it in the Arendtian sense of a “right to have rights” (in this case, legal rights cannot be entirely emancipated from nationality as the prerogative of cities is derived from the state)? Or is it in the Brubakerian sense (1992: 31) of an “international filing system, a mechanism for allocating persons to states”? There is hardly any added value of urban citizenship in these respects. Or is it citizenship in the Smithian sense (2001: 1857) of a “sort of membership in a political community”? In this case, perhaps residency alone is too thin for urban citizenship acquisition and one can think of cultural bonds and other essential traits of belonging to a city. *Third*, what should be the nexus between urban and national citizenship? Bauböck says that urban citizenship can complement national citizenship and identifies three accounts of the relation (diminutive, derivative, and postnational). Yet, as always, the devil is in the detail. For instance, he mentions that “cities should determine who their citizens are independently of how states do this”. Yet, this idea undermines national sovereignty fundamentally. And if residency is the criterion to urban citizenship, how is it defined: by a number of days, ties to a city, or other rules? And what about dual residence, or the connection between urban and national residency (e.g., I am no longer an Israeli resident even though I am still a resident of my city of birth in Israel)?

Before one celebrates the rebirth of urban citizenship, more details are essential about the substance of the concept and its goals. One should ask what will be achieved and for what price.

Populism and localism

Here is one way to think about political gains and losses. Bauböck and others (e.g., Sandra Seubert, Harald Bauder, Warren Magnusson, and Avner de Shalit) believe that urban citizenship may reduce populism since cities are generally more inclusive than rural areas. Maybe. *Empirically*, Gargiulo and Piccoli challenge the “emancipatory effects” of cities and show how urban citizenship may “enhance, rather than reduce, populism, anti-immigrant sentiment, and exclusionary policies” (for a similar claim, see Patti Lenard). *Politically*, even if cities have a magic emancipatory touch that can bring about more inclusion of migrants, will this reduce or increase populism? Populism is rising because, among other reasons, states are losing control over the borders and boundaries of national membership. There is little point in trying to solve a problem by enhancing the same root cause that has contributed to its creation. And *conceptually*, if urban citizenship is interpreted broadly to include towns, villages, and other local entities—as Bauböck, Johnna Hase, and Luicy Pedroza suggest—it is likely to increase populism since minorities and migrants are more likely to be oppressed in small and homogeneous communities. The political price of a rebirth of urban citizenship may be high.

Toward legalisation of the status of cities

If one accepts the proposition that control of the gates is a core feature of state-centred citizenship, what can be the *legal* implications of urban citizenship, in addition to the ones that already exist (as detailed, e.g., by Monica Varsanyi and Ken Stahl)? I suggest two meanings that urban citizenship is capable of delivering on a practical level—in the sense of what is politically feasible in the short-term given current political conditions. Other meanings may be desirable too, yet my point refers to politically feasible legal claims that can provide the concept with more concrete meaning—“a status with a punch”, to use Aleinikoff’s words. This is particularly essential to lawyers, who work with recognised legal concepts with which one can go to court—it is not by accident that the strongest sceptics in this Forum are legal scholars.

The first meaning relates to rights of *cities* in international law. On the international level, cities have no legal personality. Global activities—such as the involvement of the C40 organisation in the climate

change initiatives or the rise of sanctuary cities in North America and Europe—have emerged outside the formal legal realm. This reality may change as cities enjoy an ‘international moment’ and receive increased attention in international forums (e.g., the U.N. Sustainable Development Goals), statements, conferences, and reports (e.g., the U.N. Human Rights Council report on the role of cities in promoting human rights). It is not surprising that cities, once the focus of urban sociologists, have become a focus of international and constitutional law scholars, such as Alex Aleinikoff, Helmut Aust, Ran Hirschl, Gerald Frug, David Barron, and Janne Nijman. As the proliferation of cities continues to rise, they are no longer seen as sub-national units, but partners to international regulation. This can lead to a transformation in the legal status of cities in international law, beginning with a ‘consultative status’ at the U.N.

The second meaning relates to rights of *cities* in constitutional law. Hirschl has already explained the constitutional silence surrounding the legal status of cities and presented models to grant a constitutional status to cities that will enhance their power. I want to add another direction that urban citizenship can possibly achieve—a greater autonomy in constitutional interpretation of national laws. The overall idea is to grant local bodies, including courts, the power to deviate from mandatory national norms according to the composition of the local population, its social and cultural traditions, and its special interests and needs. In Israel, for example, the Supreme Court has adopted such a rule in different policy areas. The Court ruled in *Solodkin v. Beit Shemesh Municipality* that the scope of the prohibition on selling pork in shops should be determined at the local level; the balance between religious feelings, offended by selling pork, and freedom from religion depends on the specific nature of the municipality (and its neighbourhoods) and its unique characteristics. This logic of local functionality in implementing national rules can apply to other policy areas—for instance, voting rights to noncitizens—and be framed as a legal right of localities to decide, to some extent, the essence of urban citizenship.

In order to promote urban citizenship, whatever it means, it is essential to provide it with a concrete legal meaning; otherwise it may remain a hollow hope. One option, as suggested here, is to entrench the powers of *cities* and upgrade their status as a way to promote human rights, democratic participation, and involvement in global governance. Other options, among them the empowerment of *individuals* in cities and the extension of citizenship rights to noncitizens, are possible too, but they have a different logic, goal, and set of assumptions. These dilemmas will continue to occupy legal and political theorists (and policymakers) in the years to come.

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