

## Citizenship in Abeyance

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Draco part I, titles II and VI; part II, title V; part III, title II<sup>1</sup>

In a text which claims constitutional rank the principle of citizenship, in all meanings of the term, is fundamental. If a treaty has as its first reference the State, a constitution naturally has as a reference also the citizen. Indeed in the European Constitution provisions abound referring to the citizen. In Part I they are to be found in Titles II and VI; in Part II there is the whole Title V and in Part III there is Title II. As citizenship is everywhere in the Draft, this would deserve it the rank of Constitution that it claims.

This first impression, however, is not supported by reading the different actual provisions in the Draft Constitution concerning citizenship. They fall short on three grounds.

First, these provisions, contenting themselves to repeat the qualities existing and acknowledged for Union citizenship, bring nothing new. Freedom of movement and of residence in Member States' territories, the right to vote and to be elected to the European Parliament and in local elections in the State of residence, generalized diplomatic protection, right of petition, access to the European mediator, freedom of association and of political parties, all these existed already. True, the Constitution grants a new right to the citizens: to ask the Commission to adopt a new legal act in application of the Constitution (I-46(4)). But the request must be made by at least a million Union citizens 'coming from a significant number of Member States'. To establish the exact number has been made a matter of a further European law, and consequently the effectuation of this right has been postponed. On top, the Commission is not legally bound to follow up on the request. It is hard to see this amount to a right of legislative initiative for Union citizens.

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<sup>1</sup> All references in the text are to the Convention's Draft Constitution of 18 July 2003 (here Draco) unless identified otherwise. The Constitution's provisions have been renumbered upon its conclusion. The final numbering was not yet established at the time of printing.

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Second and maybe above all, Union citizenship is not made an autonomous legal category, foundational or better, *self*-foundational. It remains a category without roots in the political space which it designates, rooted in another space – that of the Member States. In fact it remains in dependency, under tutelage, of the nation states. It is linked to the national statist logic and does not inaugurate, at least not in its foundation, a supranational logic. The Draft Constitution reasserts very clearly a classical conception. According to this, Union citizenship's foundation is not the Union's but the Member States'. Only nationals of a Member State can be Union citizens. The same classical position appears in the Constitution's restriction that Union citizenship is additional to nationality and does not replace it (I-8(1)).

Third, the Articles III-7 to 13 reinforce this statist hold on Union citizenship. True, these articles provide that a European law or a framework law may establish measures to combat any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article III-8); to regulate passports, identity cards, residence permits and social protection and security (Article III-9); to facilitate the exercise by every Union citizen of his or her right to vote and be elected locally and at the European level in the Member State of residence (Article III-10). It would be tempting to think that these European laws would allow some autonomy of Union citizenship from its national foundation. But these provisions also stipulate that the laws are to be adopted in the Council of ministers by unanimity. The States remain full masters of the putting into effect of these constitutional provisions; the more so as unanimity grants to each Member State the power to block any initiative aimed at autonomy.

The same goes for Article III-13, which opens the possibility to supplement the list of Union citizenship rights by way of a European law and which not only requires unanimity in the Council of ministers but then needs to be approved by the Member States in conformity with their constitutional requirements.

The whole of constitutional provisions draws up, consequently, a very classical Union citizenship: timid, dominantly under national sway. All this makes it appear that the present Draft Constitution is the mere end of a cycle, that of Europe's progressive building up from the Second World War, that it now consolidates the blessings. As though the present Draft is a salute to Europe's past, not venturing to imagine for her a new future.

What future? No doubt it is as yet difficult to conceive of citizenship, i.e., the status of political subject, in dissociation from nationality. But surely it was equally difficult to imagine, in the eighteenth century, the status of political subject dissociated from the body of the King or from the three orders. And yet

... We should, therefore, begin rethinking the relationships between nationality and citizenship, starting from Sieyès who held that citizenship was based on that which makes men resemble each other and rally (*se ressembler* and *se rassembler*). What today rallies Europeans? What makes them resemble each other? We should also appreciate the role the European Parliament can play in support of a European evolution of Union citizenship. Indeed, the European laws provided for in Articles III-8, 9, 10, and 13, apart from requiring unanimity in the Council of Ministers, require from consultation to consent of the European Parliament. The latter will then have the possibility to enforce a more European vision of Union citizenship.

The future of Union citizenship consequently is caught between a national logic which the constitutional provisions strongly protect and a European logic which the European Parliament might favour. In any case, Union citizenship is ahead of its text rather than into it. That is to say, it is still in abeyance.

#### QUESTIONS FOR FUTURE SCHOLARSHIP AND PRACTICE

1. What shall be the substantive, conceptual, differences between national and European citizenship?
2. What shall be the remaining role for national citizenship, once European citizenship exists?
3. What is the first element for the European Parliament to add to the present concept?

#### LITERATURE

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