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European single currency, citizenship and constitutional developments

by

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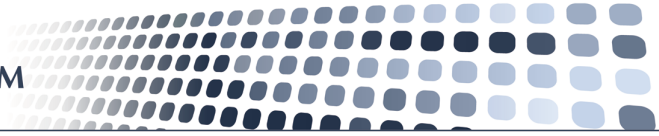


Abstract

The author questions the influence of the creation of a single currency on the formation of European citizenship. Whereas the transnational dimension of such citizenship (which affects the citizen of one Member State residing in another) must be kept separate from the supra national dimension (which affects the relationship between the people and the public powers of the Union), he believes that the euro mainly concerns the second dimensions and that it marks the peak in the contradiction between the success of the European market (compared with the division in national markets) and the failure of the Union as an organised form of political cohabitation. The reasons would consist mainly in the shortsighted and irresponsible vision of the national political classes, interested in maintaining the image of a European bureaucracy or technocracy in order to continue gaining consensus without taking responsibility.

Key-words:

Euro, single currency, citizenship



Our seminar's general topic¹ poses a variety of questions. We might first ask ourselves whether the euro, being an instrument of economic exchange, is likely to concur to the creation of European citizenship, the decisive conditions of which have rather to do with politics. This question requires an approach grounded on political philosophy.

Irrespective of such approach, we might then inquire into the extent to which the euro, having been adopted ten years ago as single currency by the majority of the EU Member States, has affected the representations of European citizenship. In such case, the euro is seen as a symbol, perhaps the most powerful symbol of the EU, and the question is sociological, concerning the identity of the European citizen.

However, the fact that the euro has been adopted as the EU's single currency might raise the further question of whether it has succeeded on economic and financial grounds, and, if so, of the political and social consequences of this success. Economists should be in the frontline to provide an answer to this question.

Finally, we might deal with the topic moving from the fact that, according to the EEC Treaty, the status of European citizen is automatically acquired by citizens of the EU member States and that it consists of the rights and duties indicated in that Treaty. In this perspective, which is clearly legal, the connection between the single currency and European citizenship is far less evident than in previous cases. But this does not mean that it does not exist. Its existence depends rather on the approach taken by legal scholars while reconstructing the notion of European citizenship. According to a formal approach, no relevance should be given to the establishment of the single currency for the aim of such reconstruction, given the absence in the European treaties of any connection of that sort. The result does change, if we consider the treaty's provisions concerning European citizenship as the basis of a process aimed at progressively defining the main features of such notion. In that case, the single currency is likely to be included among the components of that process.



Legal discourses on European citizenship are therefore capable of including within their analysis the issue of the single currency to the extent that they leave aside the pretext of exhausting the definition of European citizenship in formal terms, that is, by exclusively relying on the Treaty's provisions. A preliminary choice is therefore needed.

It is time to recall that Article 20 of the TFEU (Treaty on the functioning of the European Union, approved in Lisbon together with the amended Treaty on European Union), which reproduces art. 17 of the TEC, still in force, states that

“1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subjected to the duties provided for in the Treaties. They shall have, inter alia:

- a) the right to move and reside freely within the territory of the Member States;
- b) the right to vote and to stand as candidates in elections in the European Parliament and in municipal elections in their Member States of residence, under the same conditions as nationals of that State;
- c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State under the same conditions as the nationals of that State;
- d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder”.

Most legal scholars, however, believe that, while reconstructing the notion of European citizenship, further elements need to be taken into account, namely the judicial developments following the enactment of the Treaty of Maastricht and the fact that the features of such citizenship are inextricably connected with a legal order which is itself far from being fairly stabilised.

In this perspective, European citizenship is conceived as part of a broader process of progressive definition of the EU's identity, rather than as a clearly defined legal notion. This brings the legal approach closer to the sociological approach, although the former, contrary to the latter, is bound by the aforementioned constraints, which in the meantime



afford at least a general structure of the discourse. While taking a legal approach, even the function of the single currency in the construction of European citizenship needs then to be investigated in light of these elements.

An analysis of the Treaty provisions, of the further developments due to the European Court of Justice, and of the attempts at constitutionalization of the EU succeeding, in other words, since the 2001 Laeken Declaration, drives to the assumption that European citizenship is characterised by two distinct dimensions: transnational and supranational. While the former corresponds to the bundle of rights of the citizen of an EU Member State moving to or resident in another EU Member State, the latter corresponds to that citizen's rights with respect to the EU institutions (Pinelli, 2005).

The transnational dimension is older and far more consolidated than the supranational, going back to the very foundation of the EEC, grounded on freedom of movement of people, goods, services and capital, and particularly to the ECJ's recognition of the EEC Member State employee's rights, irrespective of residence in a certain Member State.

This case-law was encompassed in Article 17 of the TEC. While stating that citizens of the Union shall have "a) the right to move and reside freely within the territory of the member States", the Treaty of Maastricht used the word "citizen" to label the bundle of rights which the ECJ had already deemed inherent in the status of the citizen of a certain Member State working in another Member State. On the other hand, Art. 17, a) of the TEC paved the way to a further development of the ECJ's case-law. Departing from the need to combine the right to free movement with the equal treatment principle, the ECJ holds that free movement is a fundamental right that does not need to be justified. It is rather for the Member State to justify any restriction to such right as reasonable and proportionate. This reversal of the burden of proof puts the citizen on the move in a much stronger position vis-à-vis national administrations. The cases relate to the need to reconcile free movement of citizens with policies such as access to education, social benefits and taxation, which are highly sensitive and close to national sovereignty.

The Treaty, as implemented by the ECJ, is also bringing about more recognition of citizens as citizens rather than as different categories of the population or professions. Following the lead taken by the Court, EU legislation on free movement and residence – the "European citizenship" directive (2004/38) – collects nine separate legal texts for



different categories. Similarly, new legislation on the recognition of professional qualifications brings together 15 previous texts for separate professions. At any rate, the expansion of the transnational dimension of European citizenship is still led by the ECJ. Legislative acts follow, and tend rather to rationalise, previous judicial holdings.

The supranational dimension of European citizenship appears more fragile and problematic than the transnational. Its legal origin lies of course in Art. 17 of the TEC, but the only rights recognised therein as corresponding to the supranational dimension are “d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language”. A pitiful, if not insignificant, list, certainly not comparable with the flourishing recognition of the European citizen’s rights grounded on freedom of movement. Nonetheless, the Treaty provisions are far from exhausting in relation to the rights which are likely to be connected with the supranational dimension of European citizenship. The 2000 Charter of fundamental rights of European citizens has become a crucial point of reference for these rights, mainly due to the case-law of the national courts. European courts, on the other hand, have hugely expanded their own jurisdiction over rights falling outside the traditional sphere of the European market.

Hence derives the widely held opinion that European citizens’ rights, both in the transnational and in the supranational dimension, are being given sufficient judicial protection, and that the issue at stake is rather the overlapping among national and European Courts, including the European Court of Human Rights. Apart from this inconvenience, the degree of protection of citizens’ rights at European level is believed to have gradually reached that ensured at national level. However, this does not lead to the conclusion that the process of creating European citizenship has come to an end. To the contrary, in spite of the increasing judicial protection of citizens’ rights which has taken place over the last decade, European citizenship remains difficult to obtain.

Where does the source of this difficulty lie? Why is European citizenship still a pale figure, compared with national citizenship? Attention needs to be drawn to the persistent asymmetry between the enormous impact of the EU’s decisions on citizens’ lives and expectations on the one hand, and the representation of politics, which is still largely positioned within the borders of each Member State. Such persistent asymmetry is due to the interest of national governments and political parties in burdening the EU with solving



problems which appear politically intractable on a national scale, thus threatening their own electoral consent. The fact that European political decision-making depends largely on the action of national governments and representatives is therefore carefully hidden behind the image of the EU as a bureaucratic or technical entity, detached both from popular feelings and from political passion, which has characterised it right from the start. This result is achieved through the sophisticated devices that characterise the EU's institutional system, including the unanimity rule affecting the Council's decisions, and through the resistance of parties to transform the EP's elections into a competition among different political visions of EU policies, by appointing a candidate to the Presidency of the Commission, with the presentation of a corresponding programme, by the main European political families represented at the Strasbourg Assembly. Hence derives the mistaken impression of politics as a national activity steadily connected with the interests and passions of citizens, which the media corroborates while depicting an EU standing against the background of a blue sky, remote from the earth of citizens' lives and expectations.

The single currency issue is an important piece of the picture. Apart from its impact on the transnational dimension of citizenship, consisting in the facility of monetary exchanges within the Eurozone, as far as the supranational dimension is concerned, the single currency has created a parallel asymmetry. The single currency immediately acquired a crucial role in the development of the single market and, contrary to certain beliefs, a positive impact on the certainty of market exchanges. It might also be inferred that, without the single currency, the 2008 global financial recession would have brought the economy of the Eurozone's Member States to its knees. Moreover, the euro's performance in the recession is likely to change the stance of some of the States which have not adhered to it, despite having the necessary financial requirements.

The institution of the single currency and of an independent central bank aimed at granting financial stability has thus proved to be a necessary condition for the sake of the European economy. However, it has also appeared insufficient in order for it to flourish. This depends *inter alia* on the absence of an institutional counterpart of the ECB, corresponding to the Finance minister at the EU level, which the informal gathering of the Eurozone's Finance ministers in the so-called Eurogroup appears unable to supply. For such purposes, the Eurogroup's Member States should forego a significant part of their own competencies in national political economy. However they are far from accepting such



limitation, which would weaken their power over issues decisively affecting the relationship with their respective electorate, including taxes. In this respect, Member States are not ready to go beyond slight forms of intergovernmental coordination, such as that provided in the 2000 Lisbon Strategy. Why, unlike the Maastricht standards, aimed at granting financial stability within each State of the Eurozone, and therefore strictly connected with the ECB's task, did the Lisbon standards, aimed at enhancing economic growth, fail to be achieved in most cases? The answer lies in the respective institutional assessments. While the evaluation of the respect of the former standards, and the correspondent sanctioning, was centralised before the European Commission, the latter, beyond the rhetoric surrounding the “open method of coordination”, remained in the hands of national governments. A trade-off has consequently emerged during the last decade between the welfare of European citizens and the national organisation of politics.

Such a trade-off is unknown to since even minimal information on such issues goes against the interests of politicians and holds no appeal for the media. Unsurprisingly, citizens tend to perceive the euro as the most powerful symbol of a European technocracy wholly detached from their own interests. And it is no mere coincidence that, after going to referendum in Denmark (2000) and in Sweden (2003), the adhesion to the single currency failed to achieve the consensus of majority of voters, popular support for the national currency, seen as a symbol of national identity, being stronger than economic considerations.

Let us now look at the attitude of the elites. After the rejection of the Treaty establishing a Constitution for Europe at the French and Dutch referendum, no reference to the symbols of the Union, including the euro, was made in the Treaty draft which was approved in Lisbon, as if the elites were now ashamed of the neurotic quest for European identity which had affected the constitutional treaty.

Nevertheless, the single currency is the most powerful landmark of supranational integration, and corresponds to its point of no-return, being inextricably connected with the single market. Unless caught by a *cupio dissolvi*, no member of the Eurozone would abandon the single currency. The “paradox of the euro”, that is, the contradiction between the good performance and the scarce popular support of the single currency (Bini Smaghi, 2008), ultimately reflects the same gap between reality and representation affecting the EU at large. Once again, we are confronted here with the lip-service that characterises the



Member States' attitude towards the EU. It is this attitude that inevitably biases European citizenship, making the claim of a 'European identity' artificial. The vicious circle currently affecting the relationship between EU Member States is likely to be reversed either due to the pressure of an external threat, or because of the emergence, particularly among younger generations, of a public opinion seeking a fresh approach to the European enterprise. In this respect, a longstanding commitment would of course be required from groups, associations and networks, founded both on the delivery of information about the present, and on a thorough understanding of the challenges that a democratic supranational organisation such as the EU is expected to meet in the years to come.

¹ Report at the Seminar organised by Fondaca-Scuola Superiore S. Anna di Pisa, "The Single Currency and European Citizenship. An Assessment", Pisa, June 3rd 2009

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