

The Passport of a Global Citizen—On the Challenges of Defining a Legal Identity



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In 2019, 10 entrepreneurial families from Fiji, France, Germany, Italy, Kenya, Portugal, Romania, and the Swedish Saami Youth Association found common cause when their

businesses – largely in agriculture and tourism – were affected by climate change disasters. With the support of scientists and non-governmental organizations, they brought a case to the European Union Court of Justice in which they demanded more commitments from European institutions in reducing greenhouse gas emissions. This group, the People’s Climate Case, became one of the largest global actions related to climate change. Despite its strategic importance, the case ended with the Court of justice declaring on appeal that it was inadmissible because the plaintiffs were not eligible for direct access to the court.

In an increasingly globalized world, many people have acquired multiple legal identities that are formed “beyond the state.” These individuals have gained a form of administrative citizenship of the world – not a passport that is derived from belonging to a national community but that is the fruit of legal globalization. More cases like these will pose new legal challenges.

The 1998 case brought to the World Trade Organization (WTO) by India, Malaysia, Pakistan and Thailand on shrimp fishing is another example. The fisherman’s activities were severely affected by the U.S. embargo on imports of shrimp caught using methods dangerous to sea turtles. The U.S. embargo aimed to protect endangered sea turtles from becoming trapped in certain types of fishing nets. To protect fishermen and traditional fisheries, Asian states said the embargo had violated international trade rules. While the WTO recognized the legitimacy of restrictive measures to protect the environment, it found the U.S. measure unlawful because it was adopted in the absence of discussion with the states concerned and, thus, in violation of the principles of due process.



Although different, these stories demonstrate how citizens are impacted by decisions made by global or supranational authorities. They also highlight how the exclusive condition of citizenship is no longer just realized at the state level. The

interdependence resulting from economic globalization is governed through orders that are formed across national borders.

Although states remain central actors in international society, different forms of sovereignty are emerging in what Sabino Cassese has called a global public arena, in which public and private actors participate in different ways in the creation and implementation of norms.

Recognizing global rights and obligations promises a cosmopolitan ideal of universal rights outside the nation-state framework, but which proceeds from the inalienable contents of national citizenship – such as the right to vote and the duty to pay taxes. In a globalized world, this trend has arisen from conflict mediation outcomes between global actors. There are three main interpreters of these conflicts: the courts; administrative bodies; and political institutions. It is useful to briefly highlight different aspects of their activities to better understand the nature of the current processes.

Global Citizenship and Global Justice: The Role of the Courts

Courts play a key role in the process of asserting rights, but do not always succeed in meeting the demand for global justice.

Going back to the People's Climate Case, the discrepancy between the demand for justice and European procedural constraints generated an obvious and painful paradox: the more generalized the prejudicial effects of the European Union act were, the more access to the courts was limited. In the words of the entrepreneurs involved in the case, "the more serious the harm and the higher the number of victims, the less judicial protection is guaranteed."



The legal definition of who and under what conditions those persons can access the courts creates a bottleneck in the quest for justice. What happens, then, to all those situations that are not jurisdictionally protectable, yet embody interests of global significance? When the courts are not equipped to meet demands for justice, who responds to these demands in a global setting that does not have an aggregate political system?

Global Citizenship and Soft Law: The Role of Administrative Bodies

Public administrations are another crucial interlocutor in conflict mediation. Through informal cooperation between jurisdictions – and setting up standards, guidelines, and best practices – a so-called ‘soft law’ emerges, although without binding legal force. The guidelines of the European Securities and Financial Instruments and Markets Authority are one example. In theory, they ensure that advice on investment products is appropriate to the risk profile of clients. National authorities and firms can only deviate from these guidelines by justifying their dissent. In practice, not conforming to the guidelines inevitably means exposing oneself to an eventual international process of ‘naming and shaming.’

‘Soft law’ thus functions as a kind of glue. While not legally binding, it can become so in practice. But in the face of non-traditional, coercive techniques, how can the certainty of individual rights and obligations be ensured? Or how can global citizens recognize and defend themselves when administrations abuse their powers or act in violation of the law?

The quest for soft law legitimacy comes through sharing rules of conduct. Furthermore, a bottom-up process and transparency promotes consensus. But who influences these decision-making processes and who is represented? Selecting globally relevant interests is not a neutral, or just a legal, process. It is also a social and political process of discernment and mediation between diverse interests.

Global Citizenship and the Nation State: The Role of Political Institutions

Finally, politics plays a central role in mediating conflicts. Gaps between multiple legal identities create tensions between those benefitting from taking a global or regional perspective and those who hold conflicting rights and interests protected by national citizenship. Policy can either help to mitigate, or exacerbate, these conflicts.

National leaders have exploited these contradictions to construct 'us vs. them' identities.

In the last decade these tensions strongly characterized European citizenship. The ideal of a cultural European identity has, for example, been challenged by the problems that have emerged when people who are not actively working – such as students, the unemployed, and retirees – request to live in another European country under conditions of non-discrimination compared to nationals. The latter wish to limit the 'free riding' phenomenon of access to public resources, at least if those moving are not actively contributing to the economic life of the host country.

The European Court of Justice, at first a proponent of European citizenship as the "fundamental status of citizens of member states," has since aimed to remove the risks of this 'welfare tourism.' However, this development undermines the right to migrate to realize a better future and European citizenship has lost much of its potential in promoting social mobility.

National leaders have exploited these contradictions to construct 'us vs. them' identities.

The reduction of European immigration was former U.K. Prime Minister David Cameron's rationale for the renegotiation of the British participation in the European Union as well as central to the referendum campaign in favour of leaving it.

Conclusion

A more useful approach may be to look beyond political propaganda to the existence of multiple legal identities. How can such identities be reconciled so that uneven norms do not contribute to dramatically exacerbating latent social conflicts? The answers may come from a more cosmopolitan approach based on the principles of tolerance and dialogue.

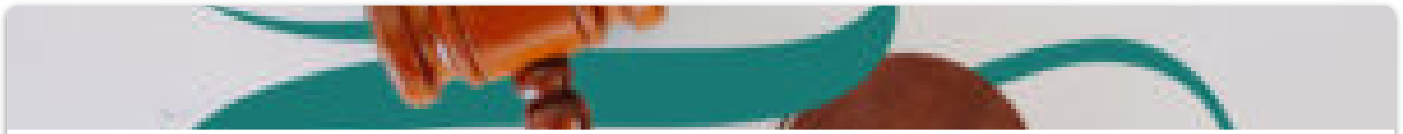
There are many knots to unravel to make the globalized world a space for exploring multiple identities. Our future depends on understanding these challenges in their complexity and seeking adequate solutions.

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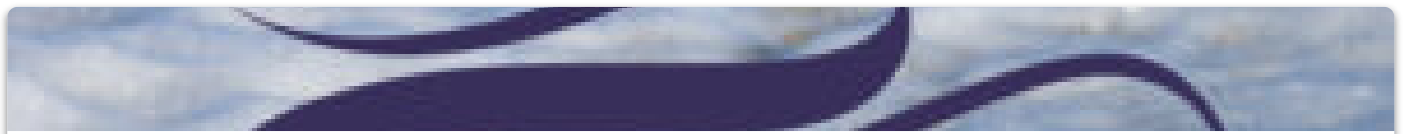


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