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Global Citizenship Law: International Migration and Constitutional Identity

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Abstract

Governing global migration is one of the most pressing issues of our time. With more than 250 million international immigrants, the question of how citizenship should be distributed has become a controversial issue, morally and politically. Traditionally, international law has not regulated nationality law; naturalization requirements remain the last stronghold of national sovereignty. This project seeks to develop a new subfield in public international law—International Citizenship Law (ICIL)—which would govern nationality law. It asks a critical and timely question: What should be the international norms and structure in setting up requirements for naturalization and, more broadly, for granting citizenship? In order to address this question, the project has five objectives: [1] to investigate the *history* of naturalization and what it can teach us about 21st-century challenges; [2] to identify the *legal* developments that, taken together, may form the basis for ICIL; [3] to set out the *theoretical* foundations and the *justifications* for the establishment of ICIL; [4] to analyze the *normative* and *structural* implications derived from an-ICIL approach for future citizenship policy development; and [5] to explore the *interrelationship* between ICIL, global migration, and constitutional identity. In essence, the project seeks to formulate international standards by which states can admit migrants without fundamentally changing their cultural heritage and slipping into extreme nationalism. The outcome can serve as a basis for a future reform in international law, EU law, and national legal systems.

Project Description

The project aims to advance the scientific understanding of a key topic in law and theory—naturalization—in at least three aspects: [1] we will start thinking of naturalization as a legal topic subject to legal limitations and governed by international *legal* standards; thus far, questions of naturalization are largely seen outside the realm of international law. The project will challenge, empirically and normatively, the dominant view that citizenship allocation is/should be purely a matter of domestic jurisdiction. This can place naturalization questions, currently discussed by political theorists and international relations scholars, at the forefront of legal debates; [2] global citizenship governance is not only a human rights issue, but is also an *interest* of states; states can *benefit* from ICIL, especially in Europe. The project challenges the traditional view that naturalization is a field in which states have no interest or benefit in international regulation and cooperation; [3] the project opens up new horizons for future science—concerning the ethics

of ICIL (political theory), the effectiveness of an international regime (empirical studies), ICIL's social effects (social sciences), and the possibility of a global regime of "burden-sharing" and "benefit-sharing" (IR).

Structure: the project is made up of five phases, each in a different field: [1] constitutional identity and global migration; [2] theory and policy of naturalization; [3] international law and governance of citizenship; [4] citizenship and governance in the European Union; and [5] the history of naturalization.

Constitutional Identity and Global Migration

Immigration, more than anything else, has revived the question of constitutional identity. Immigrants encourage nation-states to define themselves. Perhaps for the first time in human history, nation-states currently offer, or attempt to offer, a *legal* definition of their identity. As George Orwell rightly observed, "It is only when you meet someone of a different culture from yourself that you begin to realise what your own beliefs really are." To a large extent, the substance of the requirements "we" demand of "them" is about "us." It mirrors the qualities that "we" value in others and reflects the essentials that define "us" as a nation.

The nexus between immigration policy and constitutional identity has occupied political philosophy since ancient Greece. The project will examine the concept of constitutional identity—its normative sources, methods of identification, mechanisms of protection, etc.—and how states define collective identity in their constitutions; whether it is morally justified to protect fundamental changes in a country's constitutional essentials by setting selective rules for admission; how can countries be both open and global, while keeping a national "core" that goes beyond the global economy and political liberalism?; and how should states reconcile the tensions between the claims to identity made by majorities, and the rights of minority groups?

Theory and Policy of Naturalization

The manner in which citizenship should be allocated is one of the most sensitive decisions in any political community. And yet, naturalization policies have no clear theory; they include a little bit of everything—citizenship tests, loyalty oaths, integration contracts, attachment requirements, and language demands; "citizenship for sale," citizenship preferences for co-ethnics abroad, and restoration of citizenship for former citizens. Some requirements are knowledge-based (language proficiency, civic knowledge), other are behavior-based (good moral character, residency), and others are based on ties with the host country (family, employment). Some requirements apply to entry into the territory (admission), while others to access to citizenship (naturalization). Very often, the goal of these policies is unknown, their format is arbitrary, their guiding ideology is controversial, their effectiveness is yet to be ascertained, and their justification is unclear. The law of naturalization has never been so central and relevant; yet, it suffers from a lack of guiding theory.

The project will address normative questions relating to the theory and policy of naturalization. Examples of questions are: Should the naturalization process merely maximize national interests, or also contribute to global interests? What goals and criteria should be justified in setting naturalization policies? Are criteria based on merits and skills always legitimate? Are nationality-based or foreign affairs considerations always illegitimate? Should a modern theory of naturalization follow a *jus nexi* principle of membership, demonstrating a "genuine link" to a country according to a functional points-based system? And should the concept of citizenship be more hybrid, whereby a country offers a range of subscription options (subscription membership) based upon different options and services, thereby creating spheres of differential citizenship?

International Law and Governance of Citizenship

International law does not generally regulate the law of naturalization; it defers to state authority in setting up naturalization rules. This state of affairs creates three difficulties. First, a *human rights approach*: an international regime should prevent some of the mistreatment of resident aliens and abuse of power in citizenship allocation. Second, *state interests*: with the growing number of immigrants demanding citizenship, it is sometimes in the interest of states to have some guidance on the legitimate goals and means to restrict access to citizenship without being condemned for human rights violations. Third, as with other

transnational issues, the movement of people requires some level of *international framework and coordination*. The issue is broader than naturalization because, from the state perspective, the regulation of territorial admission pre-selects those who later may become citizens and there is a link between the two issues.

The project will examine questions of citizenship allocation, under international law, at the national level (e.g., what degree of integration may/should a sovereign state require from a person seeking citizenship?) and the global level (e.g., what should be the criteria and mechanisms to allocate immigration among states? should there be global quotas?). In particular, the project will explore a new concept of global citizenship. Should there be a concept of global—in parallel to national—citizenship, addressing global issues, such as climate change and the environment, in which nation-states are not necessarily the best representatives of individual interests? And what could be the justifications and institutional structure of such a hybrid concept?

Citizenship and Governance in the European Union

Any future discussion of the international law of citizenship is likely to pass through the European Union and its work-in-progress concept of Union citizenship. Currently, the Union does not have a clear and consistent EU nationality law, a reality that leads to a situation in which a policy in one Member State is likely to affect other Member States that are within the Schengen Area. Future developments in Europe may point the way for future citizenship regimes at the international level. We are witnessing the recreation of a new conception of citizenship and (possibly) of sovereignty. Developments of Union citizenship may change Western understanding of political belonging and redefine the borders and boundaries of national citizenship.

The project will address citizenship and governance in the European Union. Examples of questions are: Should a “genuine link” to the Union be established through a link to a Member State, under its own criteria, or should there be a common European regime? Should there be a European mechanism for responsibility-sharing? Should the European Union develop common criteria for admission into EU citizenship and/or a common integration policy for newcomers, similar to the criteria for admission of new states (“the Copenhagen Criteria”)? In essence, the project invites us to reflect on what it means to be “European” and examine interrelations between national sovereignty, self-determination, and EU citizenship and governance.

The History of Naturalization

The project asks to sketch the development of naturalization throughout history; today’s challenges may be new, yet the same type of questions and dilemmas existed in the past. It will also consider new ways of understanding naturalization by exploring the parallel between political membership and religious affiliation, citizenship ceremonies and religious rituals, “civic conversion” (naturalization) and religious conversion.

The project will track how attitudes to access to citizenship have evolved from ancient Greece to the present and what they can teach us about contemporary challenges. The review will analyze key milestones in the development of the theory of citizenship, such as *ancient citizenship*—Greece and Rome; *Medieval citizenship*—Christian “citizenship,” bond, and emotion; *the Calvin's Case* (1608)—denization and allegiance; the *American Revolution*: modern codification—the naturalization acts of 1790 and 1795; and *English Reform*—the renouncement of indelible allegiance and the redefinition of British citizenship (1869).

Never in human history has so much attention been paid to human movement. Global migration yields demographic and political shifts of historical significance, profoundly shaking up world politics as been recently manifested by the global refugee crisis, the Brexit referendum, and throughout the U.S. election. It has become the axis on which contemporary dilemmas in the liberal state meet; it affects concepts of sovereignty, self-determination, and the nation-state. The changes in the patterns of global migration, coupled with profound changes in Western society, yield one of the greatest challenges of the twenty-first century. *Global Citizenship* invites use to reflect on the concept of citizenship, the global structure for governing it, the meaning of being a citizen, and the basis for commonality and social identification in the 21st century.