

Maurer School of Law: Indiana University  
Digital Repository @ Maurer Law

Indiana Journal of Global Legal  
Studies

Volume 7 | Issue 2

Article 6

Spring 2000

# Contextual Citizenship

Heinz Klug

*University of Wisconsin-Madison Law School*

Follow this and additional works at: <http://www.repository.law.indiana.edu/ijgls>

 Part of the [International Law Commons](#)

## Recommended Citation

Klug, Heinz (2000) "Contextual Citizenship," *Indiana Journal of Global Legal Studies*: Vol. 7: Iss. 2, Article 6.  
Available at: <http://www.repository.law.indiana.edu/ijgls/vol7/iss2/6>

This Symposium is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Journal of Global Legal Studies* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact [wattn@indiana.edu](mailto:wattn@indiana.edu).



**JEROME HALL LAW LIBRARY**

INDIANA UNIVERSITY  
Maurer School of Law  
Bloomington

# Contextual Citizenship

HEINZ KLUG\*

By employing a two-fold analysis, disaggregating the very meaning of citizenship on the one hand and then applying these different aspects of citizenship to address some of the questions that the idea of a denationalized citizenship raises, Linda Bosniak offers a well-reasoned and dynamic contribution to our understanding of citizenship.<sup>1</sup> Furthermore, in pointing to the place of citizenship as a “core concept in our political and moral vocabulary,”<sup>2</sup> Bosniak makes a convincing argument for rejecting the suggestion that the concept of citizenship should be bypassed in the age of rapid globalization. It is therefore in sympathy with the project Bosniak outlines that I wish to use a particular experience—that of the anti-apartheid movement in South Africa and around the world—to engage the question of a denationalized citizenship.

The power of Bosniak’s strategy is the creation of a contextualized understanding of citizenship which takes us away from both the limited meaning of citizenship as a “legal status” and the fundamentally nationalist bias in the more distinctly political notions of citizenship as a system of rights, form of political activity, and form of identity and solidarity. Adopting this more nuanced understanding of citizenship enables us to both appreciate the significance of the practice and possession of citizenship—which provides the source of its high normative value—and to contextualize the emergence of a denationalized form of citizenship. This approach allows us to view the denationalized form as contemporaneous to, and in dynamic tension with, the hegemonic nationally-centered form of citizenship.

Although distinct from the political meanings of citizenship, the formal legal notion of citizenship, as legal status, shares the same fundamentally nationalist

---

\* Assistant Professor, University of Wisconsin-Madison Law School; Honorary Research Associate, University of the Witwatersrand School of Law, Johannesburg, South Africa. The author is an Advocate of the High Court of South Africa and a member of the California Bar. Growing up in Durban, South Africa, he participated in the anti-apartheid struggle as a journalist and African National Congress activist. After eleven years in exile, he returned to South Africa in 1990, teaching law at the University of the Witwatersrand. His book, *CONSTITUTING DEMOCRACY: LAW, GLOBALISM, AND SOUTH AFRICA’S POLITICAL RECONSTRUCTION*, is forthcoming with Cambridge University Press.

1. Linda Bosniak, *Citizenship Denationalized*, 7 *IND. J. GLOBAL LEGAL STUD.* 447 (2000).

2. *Id.* at 451.

bias. Only nation-States have citizens and only nation-States may grant citizenship. Birth within a particular nation-State usually, although not always, brings citizenship as a matter of birthright. Yet, even a birthright does not guarantee political or other rights, let alone the promise of identity, solidarity, and participation inherent in more deeply textured notions of citizenship. Given the limited scope of even the legal status of citizenship, Bosniak is more than justified in insisting upon a strategy that gives meaning to the normative power of citizenship by recognizing its multiple dimensions and sources of value. It is these multiple coexisting sources of the experience of citizenship that may be traced in the history of the anti-apartheid movement in South Africa, outside South Africa's borders, and in the international arena.

In order to explore these different aspects of citizenship in the context of the anti-apartheid struggle, I will discuss a number of specific locations and argue that these different aspects of citizenship, including the element of denationalized citizenship, coexist in each. The specific locations I will briefly explore include: the internal notions of citizenship and nationhood within apartheid South Africa; internal notions of citizenship and nationhood within the South African liberation movement; notions of citizenship within the South African exiled and refugee communities in Southern Africa and internationally; the notion of citizenship among participants in the anti-apartheid struggle; and finally, the notion of citizenship among those groups and communities active internationally in the anti-apartheid movement. There is, however, an initial point that needs to be made about the relationship between nationalism and citizenship that runs through these examples. Although some argue that the South African struggle for liberation is, like most anti-colonial struggles, essentially nationalist, it is precisely because of the dominant nationalist theme that it is possible to demonstrate the coexistence and significance of a denationalized form of citizenship that, not only coexisted with, but thrived in, the anti-apartheid context.

Within apartheid South Africa, the formal designation of citizenship was inherently problematic. Although racialized by apartheid, the structure of citizenship was also determined by both colonial history and the status of indigenous peoples brought together in a single nationalist, yet nonracial, movement committed to the creation of a single national citizenship. Even as the apartheid regime denied the citizenship rights and identity of the majority of South Africans, the African National Congress (ANC) and its allies in the Congress Alliance asserted a single citizenship through participation in the anti-apartheid struggle. When the apartheid regime attempted to unilaterally

decolonize by balkanizing the country into separate ethnically-defined African “states,” four of which were “granted independence” by the regime, the international community denied these entities recognition. The inhabitants of these areas retained their “legal status” as South Africans in the eyes of the international community, despite their formal “legal” denationalization by the regime. Finally, after the reform of apartheid in the early 1980s, the regime attempted to extend citizenship in the form of political participation in a racially-defined system of pseudo-consociationalism to South Africans of Indian and “coloured” or “mixed-race” descent, while limiting African “citizenship” to participation in local government bodies. The subsequent rebellion rejecting this “reform” constitution marked the beginning of the end of apartheid.

Despite repeated states of emergency, the South African State finally entered into negotiations with the ANC and other anti-apartheid parties leading to the democratic transition and the creation of a single national citizenship for all South Africans. In the apartheid State, citizenship coexisted in multiple and often dysfunctional forms. Whites, born and naturalized, had full citizenship rights—legal status, participation, and national identity. However, while the nationalist divisions between Afrikaans and English-speaking whites retained a degree of significance, when placed in the context of the denial of the black majority’s citizenship, this division was completely subsumed. The apartheid State even went so far as to formally deny the legal status of the African majority as “South African” citizens, casting them instead as ethnic citizens of separate geographic archipelagoes dotted around the margins of South Africa.

Within the liberation movement, the question of nationality and citizenship played a central role in distinguishing the politics of the two main organizations—the ANC and the Pan Africanist Congress (PAC). The PAC maintained a formal commitment to Africanism, which in its initial form articulated a denationalized “African” or continental citizenship, designating all others as colonial intruders. Although the PAC broadened its formal definition of “South African” to include all black South Africans, the narrow Africanist claim remained a central element of its politics. In contrast, the ANC, while formally an African nationalist organization, was allied from the 1950s with groups representing all races in South Africa and formally adopted a program, the Freedom Charter, defining South Africa as belonging to all who live in it—black and white. This inclusive nationalism was followed in time by the racial integration of the organization itself and commitment to a common national citizenship, a process which was only formally completed as late as 1985. In this context, although citizenship had no legal status, it retained its

dominant nationalist form. While participation was initially based on membership within opposition parties and the campaigns led by anti-apartheid organizations, it was through this participation that identity and solidarity began to form around the notion of a future national citizenship which would unite these elements in a new South Africaness.

Within the exiled and refugee communities that developed from the early 1960s and grew through the 1970s and 1980s, the disruption of “legal status” and each individual’s adoption of alternative “denationalized” or “foreign” status, decentered the place of formal citizenship. Refugees located in different Southern African countries were officially registered by the United Nations and granted “refugee status”—a form of legal statelessness—while many others sought ways to obtain some other “foreign” citizenship so as to retain and guarantee the privileges of easy travel and residence rights necessary for continued political effectiveness. Now, as citizens of a multitude of countries, these individuals participated in the creation of an identity of anti-apartheid activists whose “citizenship” in the forms of participation, identity, and solidarity was oriented to the maintenance of the anti-apartheid struggle and the creation of an alternative nonracial South Africaness. Within the exiled ANC, citizenship was exercised through participation so that individuals from all origins, from within and without South Africa, became participants in the struggle against apartheid. Individuals also became full participants in the identity and solidarity of the movement through time or personal relationships of marriage.

Among participants in the anti-apartheid struggle, “legal status” and nationality took on a secondary status. However, this nonnationalized participation and solidarity remained linked in myriad ways with “legal status” and the interaction of identity. Although full participants in various aspects of the ANC’s political and military struggles, various “foreign” individuals, though sometimes captured and even imprisoned by the Apartheid regime, were able to use their “foreign” legal status to travel across South African borders or, because of their “foreignness,” to remain invisible to the Apartheid authorities despite their connections to and participation within the ANC. This exploitation of “legal status” or alien-origin, coupled with active political participation, may either be understood in the frame of international solidarity—surely an incipient form of denationalized citizenship—or as a more distinct form of postnational citizenship through participation in a transnational social movement. Others (South Africans by birth) participated in their national movement, imagining themselves as citizens of a future post-apartheid land, yet spending their lives

alternating between participation in the anti-apartheid movement and in the creation of denationalized lives as participants (through settlement, professional engagement, or personal lives) in various geographic locations across the globe.

Although many of those who participated in the anti-apartheid struggle either returned or took up residence for the first time in the new South Africa in a series of waves between 1990 and 1994, many South Africans either remained in or left the country to become part of a new South African diaspora. Like many other diasporic communities around the globe, the South African diaspora retains a multitude of affinities, including a citizenship of identity and solidarity with their compatriots in South Africa—regardless of their “legal status”—as well as a degree of participation through linkages of a personal, business, or other nature with their old communities. In this context, legal status is often divided through dual nationality, either as a matter of birth or through some form of adoption or naturalization, while issues of participation and identity become increasingly fluid. Here, there is the coexistence of an original “nationalized” citizenship with both a denationalized citizenship of varying degrees of participation and an identity within a new community, as well as the possibility of an emerging new legal status of citizenship through emigration and naturalization.

Of even greater significance to the discussion of denationalized citizenship is the example of communities engaged in anti-apartheid activities around the globe. Although in some ways these communities were also permeated with a dominant form of national citizenship, in other important ways they exhibited a denationalized form of citizenship through participation and solidarity. Many anti-apartheid groups and communities included a smattering of expatriate or exiled South Africans, yet the bulk of these communities were constituted through the participation of individuals with no national connection to South Africa. For these individuals, participation and solidarity with the anti-apartheid cause gave them an identity as part of a denationalized community of individuals and groups that together formed part of, and helped generate, in the context of their interactions and interconnections, a transnational arena of participation, identity, and commitment—an emerging, denationalized, global civil society.<sup>3</sup>

---

3. The emergence of “an international movement of private actors” was most dramatically demonstrated by the unprecedented influence exercised by more than 1,500 NGOs, from all regions of the world, over the agenda of the World Conference on Human Rights in Vienna in 1993. See Claudio Grossman & Daniel D. Bradlow, *Are We Being Propelled Towards A People-Centered Transnational Legal Order?*, 9 AM. U.J. INT’L L. & POL’Y 1, 17 (1993); see also *All Human Rights*

The international anti-apartheid movement in many ways represents a prime example of what Kathryn Sikkink terms “Principle Issue Networks.” These networks consist of formal and informal links between a host of agents—including individuals, non-governmental organizations (NGOs), parts of international organizations, and even State agencies. Participants in a network focus on particular goals organized around a particular issue of principle, whether in support of human rights, against abortion, in opposition to environmental degradation, or in this case, against a particular racialized political system.<sup>4</sup> The significance of these networks for the notion of a denationalized citizenship lies both in their detachment from the dominant national framework and in their emphasis upon participation and solidarity across national boundaries and beyond traditional notions of national citizenship. In their efforts to gain leverage over governments or even more powerful international organizations such as the International Monetary Fund (IMF), World Bank, or World Trade Organization (WTO), the networks demonstrate how their “citizens” transform, through their participation, understandings and practices which have comprised and reinforced the “shared set of understandings and expectations about the authority of the state.”<sup>5</sup> This new “citizenship” has not only worked toward, but to a degree succeeded in, reconstituting the very notion of sovereignty upon which State authority is constructed. One important aspect of these networks is their complex interaction with different political forms from civil society to States and organs of international organizations.

The international anti-apartheid movement provides a clear example of the creation and practice of a transnational social movement or issue network. Constructed around the shared principles of anti-racism and anti-colonialism, the anti-apartheid movement included a vast range of organizations, from international interstate bodies to local cultural groupings. These organizations shared information and campaigned to reshape international understanding and practice toward the internal policies and sovereignty of a Member State of the United Nations, namely South Africa. Activities of the movement ranged from providing material support to victims of apartheid, including the South African national liberation movements, to the mobilization of alumni votes at Harvard University for the election of a slate of anti-apartheid activists to the Harvard

---

for All: *Report of the NGO Forum*, U.N. Doc. A/Conf. 157/7/Add.1 (1993).

4. See Kathryn Sikkink, *Human Rights, Principled Issue-Networks, and Sovereignty in Latin America*, 47 INT’L ORG. 411 (1993).

5. *Id.* at 414.

Board of Overseers in order to challenge the University's refusal to divest from U.S. and transnational corporations with investments in South Africa. Participation in the movement included such diverse behavior as individually boycotting South African products, establishing bodies to monitor the investment and divestment patterns of corporations, promoting and monitoring the international arms embargo, and campaigning for anti-apartheid legislation within certain nation-States, including the campaign for the U.S. Congress to impose sanctions on South Africa. Even the more nationalized aspects of participation in the movement—participation in the underground structures or military activities of the ANC—were not closed to individuals on the basis of nationality.

Yet, again, the denationalized form may be seen to be in close interaction with national forms of citizenship. Individuals and organizations were participating in a transnational project toward a common political goal regardless of their own national origins or future national status. The denationalized project is often quite dependent upon the resources mobilized by particular national elements. In the case of the anti-apartheid movement, this may be seen through the distinctly different relationships and forms of support the movement obtained from different States in the international community. Where foreign governments were sympathetic to the anti-apartheid movement, their citizens were often able to mobilize government resources, directly or through NGOs and churches, to promote the struggle against apartheid. In these instances, despite the denationalized orientation of the individual activists, they were closely tied to their own national backgrounds through patterns and sources of support. This support stretched from the Soviet military advisors to Umkhonto we Sizwe (the armed wing of the ANC) and Swedish government officials who provided financial support, on the one hand, to the solidarity groups in Canada and the Netherlands and in internationally constituted NGOs, such as the denationalized World University Services that distributed funds contributed by foreign governments on the other.

At times, the interaction between a nationalized form of citizenship and the denationalized engagement in the anti-apartheid struggle took on a particular “nationalized” pattern. Although committed to the anti-apartheid struggle, and adopting strategies and activities of anti-apartheid groups across the globe displaying truly transnational demands, such as the release of political prisoners (with Nelson Mandela as a central symbol), the transnational anti-apartheid movement also evinced patterns particular to the national political contexts in



which they operated. While the Dutch anti-apartheid movement focused on the cultural links created by the early colonization by the Dutch East India Company, the British anti-apartheid movement oriented itself toward the predominant economic links between South Africa and the United Kingdom.

A remarkable feature of the anti-apartheid movement's impact in the United States (as a consequence of the manner in which issues and concerns over race-consciousness and racism in the United States resonated with the movement's principal issue) was its ability to persuade ordinary people that their own town's or city's economic links (through contracts or even pension fund investments) with companies active in South Africa created a moral link with apartheid, which required and enabled them to act locally to challenge racism and apartheid as global phenomena. To this end, individuals and groups engaged in boycotts, advertised, conducted educational and electoral campaigns, and provided material support by establishing cultural exchanges and initiating people-to-people diplomacy through sister-city projects and other innovative activities. In this sense, the anti-apartheid network managed to both mobilize a particular understanding of apartheid as a violation of human rights in the international community and also "globalize" apartheid by making it an issue for millions of individuals and organizations around the world who adopted new understandings and activities based on their perceived linkages with the abhorred practices of the Apartheid regime. In the first instance, these networks provided the grounding for claims about the emergence of an incipient global civil society;<sup>6</sup> in the second instance, they provided examples of globalized political processes—the location of a denationalized form of citizenship—that helped shape both the normative content of international political culture and the practice of governance in different arenas.

Finally, Bosniak's emphasis on a pluralistic understanding of citizenship provides an opportunity to view the question of a denationalized citizenship as coexisting with, but not displacing, a dominant national form of citizenship. This approach provides an opportunity to understand the significance of participation, identity, solidarity, and commitment to the idea of citizenship separate from, or at least supplemental to, citizenship in its more legalized and nationalized forms.

---

6. See Ronnie D. Lipschutz, *Reconstructing World Politics: The Emergence of Global Civil Society* 21 MILLENNIUM J. INT'L STUD. 389 (1992).