On October 8, 2013, the Immigration Law Section of the Federal Bar Association hosted its second annual conference, in Rome, on Citizenship in a Global Era. The program provided a forum for attorneys, judges, and academics to exchange insights on a wide range of issues centered on the evolving concept of citizenship. The Rock Center for Corporate Governance at Stanford Law School and the John Felice Rome Center of Loyola University, Chicago, co-sponsored the event. It took place in the Center for American Studies located in the beautiful 500-year-old Palazzo Antici Mattei in Rome’s historic center.

**Conference Overview: Emerging Ideas of Citizenship**

As the past two years’ conferences have demonstrated, citizenship is a vast topic. It was addressed in this magnificent venue from differing perspectives, from retrospective to futuristic. When, how, and whether a person can become a citizen of a country is a significant and complicated question, with wide-ranging implications. To illustrate: some people have access to citizenship from multiple countries; others are stateless. In Europe, many enjoy citizenship of their country of nationality and also have citizenship-like rights of employment and settlement in EU member countries. Birthright citizenship (jus soli), devised when the goal was to make all people born under a monarch subject to the monarch, has been abandoned in Europe but flourishes in the United States. While sometimes criticized, the 14th Amendment guarantees citizenship to most persons born within U.S. boundaries. Conversely, while birth in Italy, for example, might not confer Italian citizenship, a child born abroad may have citizenship rights if his grandfather was born in Italy, even if the grandchild never even visited Italy. Some countries allow dual or even multiple citizenship, others prohibit more than one allegiance.

The phenomena of transferring parental rights across international borders and between citizens of different states can distort notions of citizenship in international adoptions and surrogacy arrangements. Critical issues can arise when children, who perhaps acquired citizenship in one country at birth are then adopted and move to another country where they may or may not be entitled to citizenship.

Changing political landscapes can create massive disruption to citizenship policies. Where governments fail because of war, corruption, or natural disaster, citizenship and cultural identity become confused. Examples, like the fall of the Ottoman Empire, the dissolution of the Soviet Union and Yugoslavia, and the current revolution in Syria have skewed citizenship status. Persecution or destitution can reduce the status of citizenship to worse than worthless. Refugees fleeing their home country may have no good options. Indigenous populations struggle to establish their rights after their homeland has been transformed.

With globalization, the concept of citizenship is emerging between two realities: one with borders, jurisdictional rules, traditional ideas of birthplace, ethnic nationality, and residence; the other a borderless world of the future, informed by global technology, markets, and economic interest. Our panelists addressed examples of all of these circumstances.

**World Citizens, Multinational Companies and Technology**

Daniel Siciliano, co-chair of the program and director of the Rock Center for Corporate Governance at Stanford Law School, moderated the first panel of the 2013 program. He described how radically technology has changed the nature of physical presence (residence), an important aspect of citizenship. It is now possible literally to be in two places at one time. He talked about a colleague who “commutes” each day from Singapore to California. The man works in a country where he has no legal status, using a Texit—a robot with a high-definition video conferencing “face” that can move around like a person, manipulate objects, visit a co-worker in his office, chat in the lunchroom, and participate in a meeting at a conference table.

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Citizenship Considerations with International Adoptions and Surrogacy

The second panel considered citizenship in the context of international adoptions and surrogacy. Moderated by program co-chair Peggy McCormick, the panel included Ray Fasano, the chair of the FBA Immigration Law Section, and Hon. Elaine Bucklo, a district court judge from Chicago. During this discussion, the speakers shared their own personal experiences with intercountry adoptions from China and South Korea.

The adoptive parents' citizenship is not automatically conferred on a child in an intercountry adoption. It is critical for adoptive parents to follow the laws of their home country and of the child's birth country. Children born overseas may carry the citizenship of their biological parents, which can create future obligations, sometimes unknown to the child.

Assisted reproductive technology has allowed couples who cannot conceive, including same-sex couples, to contract with a surrogate mother. This emerging area of both law and science involves a woman who has no biological relationship to the child but through in vitro fertilization can carry a child for intended parents, who may provide both the egg and the sperm. She is paid for her service and has no obligation to the child. In some places, surrogacy is a crime, considered the "manufacture of a child" for a fee. Much of Europe has outlawed surrogacy. It can, and does happen, that children born to surrogates are stateless. The panelists discussed a French couple who were the genetic parents of twins born through surrogacy in the Ukraine, who tried to sneak their babies across the border after the children had been denied French and Ukrainian passports. The parents were arrested and charged with illegal transportation of minors.

In the United States, the legality of surrogacy varies widely. In Michigan a surrogate parenthood contract is a felony, while in nearby Illinois, it is legal, with considerable protection given to the intended parents. Illinois has become a popular destination for European intending parents, where the child becomes a U.S. citizen at birth. The parents must then try to obtain citizenship in their home country, where surrogacy is outlawed.

India is another surrogacy destination. The panelists discussed a Japanese couple who made a commercial surrogacy arrangement in India, using the intended father's sperm and an anonymous donor egg. The couple separated before the baby's birth. The biological father wanted the baby, but the Indian legal system had no provision for children born through surrogacy, and there was a legal prohibition against the adoption of a baby girl without the joint petition from both husband and wife. Eventually the father's mother was able to adopt the child and secure Japanese citizenship.

Citizenship Issues in 20th Century Eastern Europe

The last panel of the morning began with comments by Maria Celebi, a U.S. immigration attorney practicing in Istanbul. She spoke of the implications for citizenship after the fall of the Ottoman Empire after World War I, resulting in the simultaneous expulsion of Greek-speaking Orthodox Christians from Turkey to Greece and of Muslims from Greece to Turkey. The Ottoman conception of nationality was that ethnic origins were superseded by religious affiliation, meaning that many Greeks whose ancestors converted to Islam under the Ottoman Empire were classified as Turks and forced to leave their homes, despite the fact that they had little or no familiarity with Turkish culture or language.

The second part of this panel focused on Lithuania and the implications of the dissolution of the Soviet Union on citizenship. Ernest Raskauskas, whose Washington, D.C. practice includes international law matters, served as the principal foreign consultant to the Lithuanian Parliament for the drafting of the post-Soviet Constitution. For several years he chaired a working group of the American Bar Association's Central and East European Law Initiative. Mr. Raskauskas spoke of the building of a new government and described the importance of cultural identity and language in their citizenship policies after much had been lost under Communism.

Citizenship and the Rule of Law

William Loris, program director of the PROLAW program at Loyola law school's LL.M. program in Rome, focused on rule of law issues in developing countries and countries in economic transition or recovering from violent conflict. Mr. Loris discussed citizenship as a human right under the Universal Declaration of Human Rights and the international law framework of citizenship and statelessness, which included his insights into how these issues have been playing out as a result of the Syrian crisis.

Two of PROLAW's LL.M. students from Kosovo, Dafini Bardhi and Venera Ramaj, concluded the panel with their description of the collapse of Yugoslavia and its particular impact on their lives. Kosovo
has had a volatile recent history involving issues of citizenship. After many years of struggle, it unilaterally declared independence in 2008, although not all countries have accepted its independence, most notably Serbia and Russia.

Indigenous People and Citizenship Rights

Citizenship status changes when one state is overtaken by another and a new state is established. Immigration Judges Mimi Tsankov and Lawrence Burman, in their personal capacities, and Greg Boos, who practices immigration law in British Columbia and Washington State, discussed indigenous people and citizenship rights. This panel explored the implications of dual nationality, self-government within a broader jurisdiction, and creation and denial of rights to indigenous populations, specifically Native Americans in the United States and Canada. They also explored the treatment of other indigenous populations like the Roma people in Europe. More than 10 million Roma live in the European Union and while they may have the same rights as other EU citizens, a large percentage live in extremely poor social-economic conditions.

Exclusive Citizenship Doctrines

The conference concluded with a discussion of exclusive citizenship doctrines. This panel was moderated by Margaret D. Stock, a recent recipient of the MacArthur Foundation Genius Grant who practices in Anchorage, Alaska. Her panelists included Paul Samartin, who practices U.S. immigration law in London; Hermie de Voer, who practices Dutch immigration law in the Netherlands; Stephen Coutts, a Ph.D. candidate at the European University Institute in Italy; and Maria Celebi from Istanbul.

This panel discussed issues that arise when a government prohibits dual citizenship. Demands for exclusivity of citizenship create conflicts, for example, when a person automatically acquires citizenship in a country that will not permit relinquishment. Sometimes people born in a territory are accorded citizenship but do not have the same level of representation as “full” citizens of a nation-state. While the U.S. recognizes multiple citizenships, it paradoxically discriminates against those who have multiple citizenships (e.g., military enlistment, security clearances), reflecting a schizophrenic mixture of openness toward multiple citizenships and suspicion as threatening to national security.

Other issues discussed included exclusive citizenship rules in the Netherlands and the United Kingdom as well as a program instituted in Turkey to allow its citizens to take up opportunities in other countries. Many Turks migrated to Northern EU countries that do not allow dual citizenship. Turkey has devised program that allows its citizens to renounce their Turkish citizenship to seek citizenship in a country for employment opportunities. If they return to Turkey, they may re-obtain almost all domestic rights.

Next Year’s Citizenship Conference in Rome

One of the points made clear by this year’s citizenship conference is that there is much more on this topic that can and should be analyzed and discussed. Hence, the third annual Citizenship in a Global Era conference will be held in Rome on Sept. 23, 2014. Citizenship is often reviewed from an immigration law perspective, but it is a far broader topic, going to questions of allegiance, civic responsibility, cultural identity, and body politic. To broaden the conference’s reach, the chairs are working with the PBA International Law Section to expand its curriculum. There will be several networking opportunities again, including a dinner the evening before and a reception after the program, as well as a tour of the art collection at the U.S. Embassy in Rome. Mark your calendar for another memorable conference in a glorious Rome.

TAX TALK continued from page 7

Endnotes

1See Smith v. United States, IRS (In re Smith), 205 B.R. 226 (B.A.P. 9th Cir. 1997) (holding that a debtor contesting his federal tax liabilities was not entitled to a jury trial). Although Smith seems to foreshadow the notion of jury trials in bankruptcy tax litigation, the issue has not been addressed by many courts.


3A right to setoff is also treated as a secured claim. 11 U.S.C. § 506(a). In other words, one year’s tax liability can be secured by another year’s tax overpayment.


5Even when prepetition federal tax liabilities exist, the IRS may choose not to file a claim when there are no assets to pay the liabilities. Priority tax claims will still be excepted from discharge regardless of whether a claim has been filed. 11 U.S.C. § 523(a)(1)(A).


7Journalistic disclosure: The author of this piece was the president of his high school’s marching band. Go Highlanders!

8In bankruptcy court, tax litigation may be initiated through the claims objection process by any “party in interest.” 11 U.S.C. § 502(a). Depending on the facts or circumstances of the case, a third-party creditor may have standing to object to the IRS’ tax claim. See, e.g., In re Thomas Bros. Restaurant Corp. One, 195 B.R. 918 (Bankr. C.D. Cal. 1996).


10Fed. R. Bankr. P. 7001 contains a list of requests that must be made by adversary proceeding.


16Id.