

Mills on Cosmopolitan Sovereignty

Alex Mills (University College London) has posted Normative Individualism and Jurisdiction in Public and Private International Law: Toward a 'Cosmopolitan Sovereignty'? on SSRN. The abstract reads:

This paper examines one aspect of the role of the individual in international law, through analysis of the increasing recognition of individual rights in the context of jurisdiction in both public and private international law. Jurisdiction has traditionally been considered in international law as a right or power of states. The challenge to this traditional approach has arisen both at the international level and also within states, through the rise in theory and practice of doctrines of 'denial of justice', 'access to justice' and 'party autonomy', which reflect the increasing treatment of jurisdiction as a matter of individual right rather than state power. These developments arguably signify a transformation in the status of individuals at both international and national levels, from the passive objects of jurisdictional regulation to active rights-holders.

The analysis in this paper therefore highlights a challenge which cuts across the dual aspects of sovereignty – as international law increasingly recognises the power of legal persons beyond the state, this also provides a challenge to the claims for exclusive legal authority within states. This can also be described as the recognition of the individual, alongside the state, as a 'sovereign' actor, or as the recognition of 'normative individualism' in international and domestic law. The increased recognition of the individual in international law is a key feature of the arguments of cosmopolitan legal theorists – the challenge of normative individualism may therefore further be described as the question of whether, or to what extent, there is an emerging idea of 'cosmopolitan sovereignty' which attempts to accommodate the normative value of both state and individual actors.