

## **The Enlightenment's Social Contract vs. the Crypto-Identity of Contemporary Cyber Capitalism**

This article is not about blockchain. Rather, it is about how credible and recognized identities should be realized, preserved or, as is often the case for refugees, re-established.

It is a story which begins with communities vouching for their members' identity to outsiders. Throughout history, they would recognize the member as an individual, confirming his or her name and sometimes also their ancestry and social position. In the past, parishes and religious congregations, trade associations, village chiefs or powerful landowners took on this responsibility, but over time, in most jurisdictions, this role was transferred to or conferred upon the State. However, it is also a story that has attempted to cope with crises and the consequences of exclusion and the loss of identity.

In the period of turmoil in Europe that followed the First World War and the Bolshevik revolution, Fridjof Nansen, the renowned Norwegian explorer who had become the first League of Nations High Commissioner for Refugees, secured the agreement of States to issue so-called "Nansen Passports". These identity documents were issued to certain categories of people who it was accepted had lost the protection of their State. These refugees and stateless persons, numbering hundreds of thousands, often lacked any identity documents. States that welcomed the Nansen Passport holders would also issue their own identity documents and allow them to naturalize under the provisions of national law, integrating them into their new communities. Thus, Nansen passports have fallen into disuse and are now found only in archives and museums.

After the Second World War, when States came to consider a new framework to address the situation of refugees and stateless persons, questions of identity were high on the agenda. The 1951 Refugee Convention and the 1954 Statelessness Convention both make provision for the issuance of travel documents, identity papers and administrative assistance to refugees and stateless persons. What was an exceptional response to exceptional circumstances during the League of Nations period remained one under the terms of these conventions: Only where and when States are unable or unwilling to fulfill their role in protecting refugees, UNHCR is mandated to provide international protection to refugees. In this case, it can support States by identifying and issuing documentation to asylum seekers and refugees.

It is true, States sometimes fail their people. Look at poverty: While under the authority of States, Central Banks issue money and currencies, there is no equitable distribution of wealth. Likewise, States have problems to provide a legal identity for all. The World Bank estimates that over 1 billion people, mainly women and children, are unable to prove who they are while UNHCR estimates that there are at least 10 million stateless persons.

When reflecting on these monumental global challenges, the question has to be asked have cryptocurrencies, Bitcoin and alike, been conceived, or thus far contributed, to elevating people out of extreme poverty? If one considers the resources it takes to "mine" in this new El Dorado it is clear that they are a luxury rather than a panacea for global economic inequality. And if we were to take away the responsibility to establish individual identities from the State, to whom will we entrust it to instead? The news has been dominated in recent weeks by the failures of private companies that run platforms and implement business models built on the collection, storage, analysis (and sale) of

personal data. This gives rise to strong skepticism of any notion that the data industry in general, and a future identity data industry in particular, should be allowed to run their businesses in an unregulated manner.

In fact, today the new EU General Data Protection Regulation (GDPR), a regulatory framework put in place by States, provides one of the best safeguards for individuals to have agency over their personal and identity data. All those who wish for the individual to have the right to access, protect and share his or her personal and identity data ought to advocate for strong involvement of State authorities in this area. And here they will have full support of UNHCR since it is the values enshrined in the UN Charter reflecting the social contract between State and individual and the rule of law that guarantees protection. Neither self-appointed crypto-identity providers and traders, nor the inherent functionality of any particular technology—which may change or become more or less secure over time—can offer a reliable substitute for this guarantee.

States did not invent the steam engine, the automobile, or pharmaceuticals. Does that mean that industrial development and labour relations, traffic rules, and drug prescription policies were left to the inventors? Certainly not. States acting individually or together on behalf of their populations created the necessary rules for these inventions to flourish. Those who advocate for self-sovereign or distributed consensus-based identity systems and protocols have yet to prove that this technology is power agnostic. Otherwise, how will the poor and the marginalized access and control their identity data? All indications are that these populations need protections to ensure their rights are not overborne by more powerful actors seeking to use the technology or data for their own purposes.

It was said at the beginning that this article is not about blockchain. It is even less against blockchain. Any technical solution that provides a strong, legitimate, and recognized identity in times of upheaval and massive forced displacement, should be welcomed. The technology and identity data systems that we advocate for need to have iron-clad privacy by design at their core, be subject to and allow for recourse to the law, and be open to democratic control and legitimate State and inter-governmental regulation.

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