Università
Ca'Foscari
Venezia

Master's Degree in
Comparative International Relations

Final Thesis

The Transboundary Implications of Citizenship Law: The Recognition of Italian Descendants in Argentina

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Academic Year
2018 / 2019

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ABSTRACT

Con la diffusione degli effetti della globalizzazione e della post-modernità, gli anni Novanta hanno segnato l'inizio dello studio della cittadinanza come campo delle scienze sociali. Sebbene i suoi sviluppi si siano svolti nel corso dell'ultimo ventennio, si tratta di un campo non ancora istituzionalizzato. Tuttavia, il rafforzamento delle istituzioni internazionali e delle organizzazioni intergovernative ha contribuito alla rivalutazione accademica dello studio di questo fenomeno in termini transnazionali e globali. In questo senso, è stato necessario includere le questioni sociali che caratterizzano l'ordine globale contemporaneo, tra cui i fenomeni diasporici e migratori.

Questo cambio di rotta dimostra la dinamicità e la contingenza storica di tale concetto. La cittadinanza si è evoluta dall'essere strettamente collegata al concetto di appartenenza all'essere uno strumento del potere decisionale democratico. Il carattere internazionale della cittadinanza non solo crea stimoli nel campo della ricerca ma presenta anche risvolti più pratici. Ne sono una dimostrazione i disordini sociali in India tra il 2019 e il 2020 in seguito alla modifica della legge di cittadinanza, la quale risulta fortemente discriminatoria verso la parte di popolazione di fede islamica.

Lo studio delle questioni relative alla cittadinanza non può limitarsi alla sfera esclusiva degli studi sociali. Al contrario, se l'obiettivo è rendere tale ricerca più efficace, è necessario analizzarla anche dal punto di vista giuridico. Infatti, considerando la sua regolamentazione, è possibile trovare degli esempi fin dai tempi dell'antica Grecia e dell'Impero Romano. Inoltre, sono innumerevoli gli strumenti legislativi adottati dagli Stati, sia da un punto di vista del diritto interno sia da un punto di vista del diritto internazionale. Nonostante il quadro giuridico internazionale si sia dunque sviluppato, esso non può ritenersi sufficiente per regolamentare le diverse fattispecie relative al concetto di cittadinanza.

Infatti, è evidente che sono presenti molte lacune nella sua regolamentazione. Secondo l'UNHCR, il numero di apolidi registrati nel 2018 era 2.820.348, dei quali una considerevole parte proviene dall'Asia e dalla regione del Pacifico. Tuttavia, tale dato non tiene in considerazione gli apolidi non registrati. Ciò significa che il diritto alla cittadinanza non è sempre riconosciuto e, di conseguenza, esiste una parte di popolazione

che non gode di alcuni diritti fondamentali, come il diritto all'istruzione, il diritto di accesso ai servizi medici o il diritto di voto. La campagna UNHCR #IBELONG ha promosso una conferenza di tre giorni nel marzo 2020 nello Zimbabwe sul tema dell'apolidia. Inoltre, nell'ottobre 2019, la comunità internazionale si è impegnata a porre fine all'apolidia entro il 2024 attraverso azioni concrete ed efficaci, come la riduzione dell'apolidia per i nuovi nati o facilitazioni per migranti apolidi per durante il processo di naturalizzazione.

Per questo motivo, oltre all'identificazione degli aspetti transnazionali della cittadinanza, questa tesi mira ad analizzare le lacune normative del diritto internazionale. Tradizionalmente, la cittadinanza è stata considerata una materia di dominio riservato. Tuttavia, i cambiamenti nella società e nell'ordine mondiale hanno modificato tale concetto. Dunque, l'obiettivo di questo studio è evidenziare l'inadeguatezza degli strumenti giuridici internazionali che regolamentano lo status attuale della cittadinanza.

Al fine di analizzare questi aspetti, è necessario descrivere l'evoluzione storica del concetto di cittadinanza. In primo luogo, deve essere operata una distinzione tra i concetti di cittadinanza e nazionalità. Il riconoscimento della cittadinanza, oltre a comportare conseguenze pratiche, assume anche un significato emotivo per gli individui. In questo senso, le principali teorie della cittadinanza si sono sviluppate distinguendosi in teorie empiriche e normative, che si ricollegano alla possibilità di identificare i diritti che l'ottenimento della cittadinanza comporta. Inoltre, è dibattuto il fatto che la cittadinanza stessa possa essere definita come un diritto ad avere ulteriori diritti. Al contrario, a questa teoria si contrappone la questione pratica e filosofica della partecipazione e la presenza o meno di diritti e doveri che lo status di cittadinanza comporta. Infine, è necessario effettuare un'analisi dei vantaggi e delle critiche alle quattro principali modalità di acquisizione della cittadinanza: *jus soli, jus sanguinis,* per matrimonio e naturalizzazione. Dunque, il focus della tesi si muove da un'analisi politica e sociale della nozione di cittadinanza come diritto ad un'analisi giuridica della sua attribuzione, estendendo il campo di applicazione da quello del diritto nazionale a quello internazionale. Pertanto, il concetto di cittadinanza è studiato nella sua dimensione transnazionale.

Dopo aver brevemente presentato la distinzione tra nazionalità dominante e secondaria nel diritto internazionale, si utilizza il caso Nottebohm per illustrare l'evoluzione della regolamentazione della nazionalità e dell'applicazione del principio di

leale cooperazione all'interno della comunità internazionale. In primo luogo, i casi di cittadinanza multipla sono stati confrontati con l'ambigua definizione del diritto alla nazionalità. In secondo luogo, un'altra questione problematica è la privazione volontaria o involontaria della nazionalità da parte degli Stati. Inoltre, ciò deve essere collegato al problema dell'apolidia e all'esistenza di strumenti giuridici nella comunità internazionale contemporanea. Allo stesso modo, la protezione diplomatica e consolare, parte importante del diritto internazionale consuetudinario, ha rappresentato un diritto degli Stati a partire dal caso Mavrommatis del 1924 fino ai più recenti sviluppi. A tali questioni si deve aggiungere il tema degli atti discriminatori nei confronti di cittadini e non cittadini all'interno della legislazione internazionale sulle pratiche discriminatorie. Infine, il processo di decentralizzazione ha prodotto una nuova forma di cittadinanza a livello regionale, che trova espressione nella cittadinanza dell'Unione europea e la cittadinanza del MERCOSUR.

Un esempio di transnazionalità del concetto di cittadinanza può essere il caso del riconoscimento *jure sanguinis* degli argentini di discendenza italiana. Dopo aver fornito una panoramica dell'evoluzione della legislazione nazionale italiana in materia di cittadinanza e del fenomeno dell'emigrazione italiana verso l'America Latina, sono stati illustrati il fenomeno dell'immigrazione di ritorno dall'Argentina e le implicazioni del possesso di una cittadinanza.

Dunque, le lacune normative nel quadro della cittadinanza non possono essere analizzate senza tenere in considerazione la nozione fondamentale di sovranità statale. Tale dottrina ha inciso sulla definizione del diritto di cittadinanza, che deve essere ricollegata al concetto di *Westfailure* e alternative post-Westfaliane. Dunque, lo sviluppo del processo di globalizzazione non può prescindere dai suoi effetti sulla cittadinanza e sulle comunità politiche. Il concetto di cittadinanza come mezzo di mobilità è strettamente collegato al tema della globalizzazione e ai fenomeni di internazionalizzazione. Inoltre, la creazione di un diritto internazionale dei diritti umani ha avuto un impatto anche su questioni relative alla cittadinanza, un concetto da sempre in contrasto con quello universale dei diritti umani.

Per quanto concerne la metodologia utilizzata, in primo luogo, è stata effettuata un'analisi degli strumenti giuridici internazionali e regionali. Tale analisi è stata arricchita riportando le criticità evidenziate da accademici e professionisti, in particolare nel

secondo capitolo. Inoltre, la complessità della materia ha richiesto un'analisi della letteratura sociologica e politica, principalmente filosofia del diritto, sociologia, scienze politiche e antropologia. Tale metodo di ricerca ha fornito alla tesi un'analisi interdisciplinare dovuta al carattere multidimensionale della materia. Per quanto riguarda il terzo capitolo, la ricerca è stata condotta durante uno stage presso il Consolato Generale d'Italia a Córdoba in Argentina, attraverso un'analisi dei dati e dei manuali forniti dal consolato.

Per concludere, questa tesi mira a far luce sulle implicazioni transnazionali della cittadinanza. Non è più possibile inquadrare questa materia esclusivamente come una materia di dominio riservato. Stabilire un legame tra cittadinanza e diritto internazionale rappresenta una sfida per gli studi sulla cittadinanza e per il diritto stesso. Sulla base del sistema di Westfalia, per cui la sovranità territoriale richiedeva l'elemento della popolazione, la cittadinanza è stata regolata dal diritto nazionale. Tuttavia, i fenomeni contemporanei della globalizzazione e delle migrazioni hanno avuto un grande impatto sul concetto. La richiesta di un sistema di sovranità post-Westfalia ha influenzato la comunità internazionale e il nuovo concetto di sovranità delegata o condivisa. Per questo motivo, da una questione esclusiva di diritto interno la cittadinanza è diventata una questione con implicazioni transnazionali. Sia il diritto internazionale pubblico che il diritto internazionale privato sono stati necessari per spiegare alcune realtà, tra cui il diritto alla protezione diplomatica, i casi di cittadinanza multipla e l'apolidia. In questo contesto, vi è una richiesta di strumenti giuridici internazionali più specifici, in quanto l'attuale legislazione offre solo trattati non specializzati. Sebbene questa tesi abbia l'intento di dimostrare tale questione, ulteriori ricerche sono necessarie. Certamente, il diritto internazionale sulla nazionalità può essere arricchito per colmare le lacune su questioni che non sono ancora regolamentate. Sono necessari strumenti giuridici più forti, in particolare per eliminare casi di privazione arbitraria della cittadinanza ed evitare l'apolidia, come già stabilito dalla comunità internazionali. Inoltre, si rende necessario una regolamentazione più efficace per includere il diritto universale alla nazionalità come parte dei diritti umani fondamentali, in quanto l'attuale diritto internazionale dei diritti umani è vago in materia di nazionalità.

INTRODUCTION

Only during the 1990s did citizenship studies emerge as a *de facto* field within social sciences. The delay in the emergence of citizenship studies is connected to the spreading of phenomena such as globalization and post-modernity. Although citizenship studies cannot be considered an institutionalized field yet, the concrete reinforcement of international and intergovernmental institution, along with the creation of new global social movements and their struggle to be recognized, have induced academics to reevaluate the need for investigating such issue. Until then, in particular, citizenship had been investigated extensively as a national matter embedded within domestic frameworks. Though, since the 2000s, academics and scholars have been considering the new dimension of citizenship also at a transnational and global level. In this sense, many social issues, such as the status of immigrants, environmental sustainability, the recognition of minorities, or diasporic phenomena, should be interpreted in the light of citizenship rights and obligations.

Not only is citizenship a challenging issue as socially constructed concept, but it is also historically contingent. Over time, citizenship has evolved from being strictly connected to the concept of membership to a community, to being linked to political participation and democratic decision-making power. The effects of restricting the right to citizenship affect not only academic research but also population firsthand. Since the highly contentious *Citizenship Amendment Act* was approved by the Parliament in December 2019, amending the *Citizenship Act* of 1955, and even before then, India has been upset by protests, involving hundreds of thousands of people opposing the anti-Muslim policy operated by the Bharatiya Janata Party.[1] The Act facilitates the recognition of Indian citizenship for those Hindus, Parsis, Buddhist, Christians, Sikhs, and Jains who arrived in India within 2014 from Muslim-majority States, i.e. Pakistan, Bangladesh, and Afghanistan. For this reason, the Amendment paves the way for non-Muslim immigrants, whereas Islam-practicing individuals emerge as unfairly disadvantaged. In this sense, the newly approved citizenship is perceived as discriminatory and unconstitutional by

[1] Shankar, S. (2020). India's Citizenship Law, in Tandem with National Registry, Could Make BJP's Discriminatory Targeting of Muslims Easier. Retrieved 31 January 2020, from https://theintercept.com/2020/01/30/india-citizenship-act-caa-nrc-assam/

Muslims and the poorer share who cannot access valid proofs of citizenship and who could be deprived of their citizenship status and put into detention camps.

The study of citizenship matters cannot be limited to the exclusive sphere of social studies. On the contrary, if the aim is making such research more effective, it is necessary to analyze it from a legal perspective. Concerning the regulation of citizenship, the concept has been regulated since Ancient Greece and the Roman empire. On the one hand, academics have tried to develop and evaluate the validity of different interpretations. On the other hand, currently States have abundantly legislated on the matter within their domestic jurisdiction. Also, the legal instruments adopted at international and, mostly, at regional level are abundant. Nonetheless, the international legal framework regulating nationality issues cannot be considered enough for satisfying the necessities of the current situation.

As a matter of fact, many gaps in the regulation of citizenship still exist. In 2018, the UNHCR the registered amount of stateless people around the world was 2,820,348, with a considerable majority in Asia and the Pacific region, counting 1,197,766 stateless people.[2] However, millions of unregistered individuals worldwide are denied a nationality. This means that they often are not allowed some basic rights, such as the right to education, the right to access to medical services, or the right to vote. The UNHCR campaign #IBELONG has promoted a three-day competition and conference in March 2020 in Zimbabwe with the theme "1961 Convention on the Reduction of Statelessness." Also, in October 2019, States, international and regional organizations, and the civil society submitted 360 pledges. The aim of the international community is ending statelessness by 2024 by setting a guiding framework constituted by concrete and effective actions, such as ensuring that no child is born stateless or facilitating the naturalization of stateless migrants.

For this reason, besides identifying the transboundary aspects of citizenship, this final thesis aims to investigate the normative gaps of international law concerning the matter. Traditionally, citizenship has been considered a matter of *domaine réservé*. However, the changes in the society and the world order have also influenced the discourse around citizenship law. In practice, citizenship will be conceptualized in its

[2] UNHCR. (2020). Ending Statelessness. Retrieved 30 January 2020, from https://www.unhcr.org/ending-statelessness.html

multiple characteristics and its modes of attribution. More specifically, the focus of this present study is to shed light on the inadequacy of the international legal instruments for regulating citizenship.

In order to analyze these aspects, in the first chapter the description of the historical evolution of the concept of citizenship is essential. The explanatory theories of political and social academics are fundamental for defining the changes that have led to the current multifaceted notion of citizenship. For this purpose, a comparison between the two concepts of citizenship and nationality is necessary before proceeding further. Not only do the recognition of citizenship convey practical consequences, but it also assumes an emotional meaning for individuals. In this sense, subsequently, the chapter analyzes the main theories of citizenship developed over time, which can be distinguished into normative and empirical theories. To this end, the focus is to be put on the possibility of identifying citizenship rights and whether citizenship itself can be defined as the right of having rights. Conversely, the next paragraph deals with a counterposed theory that highlights the practical and philosophical question of participation and the duties and obligations deriving from the citizenship status. Finally, the chapter concludes with an analysis of the advantages and the criticism of the four main modalities of acquisition of citizenship, i.e. *jure soli*, *jure sanguinis*, by marriage, and by naturalization. In this sense, the dissertation moves from a political and social analysis of the notion of citizenship as a right to a legal analysis of its attribution.

Subsequently, in the second chapter the dissertation continues with the analysis of the notion by enlarging the application field from national to international. In practice, the concept of citizenship is investigated in its cross-border dimension. After briefly presenting the distinction between dominant and secondary nationality in the international law framework, the *Nottebohm Case* is used as a turning point to illustrate the evolution of the nationality framework and the principle of fair cooperation within the international community. Firstly, the cases of multiple citizenship are confronted with the ambiguous definition of the right to nationality. Secondly, another problematic issue to be analyzed is the deprivation of nationality by States, which can be voluntary or involuntary. Also, this issue must be connected to the problem of statelessness and the international legal instruments existing in the contemporary international community. In addition to those matters, the diplomatic and consular protection is an important part of customary

international law, representing a right of States starting from the *Mavrommatis Case* in 1924 to recent development. To the aforementioned issues, it must be added the matter of discriminatory acts concerning citizens and non-citizens and the international legislation on discriminatory practices. Finally, starting from the context of the international community, the decentralization process conferred a new form of citizenship emerging at regional level, namely the European Union and MERCOSUR citizenship.

The third chapter provides the reader with an example of citizenship issues within the international legal framework, namely the specific case of the recognition by birth *jure sanguinis* of Italian descendants living in the Argentine Republic. The first paragraph is necessary to provide an overview of the evolution of the Italian national legislation about citizenship. Then, in order to have a comprehensive understanding of the Italian regulatory framework on citizenship law, it is essential to add multilateral and bilateral conventions in force. Progressively, the phenomenon of Italian emigration and the phases of Italian emigration, with a specific reference to the migration wave of Italians to Latin America and Argentina, is explored. Finally, the problems of return immigration from Argentina and the implications of holding an Italian citizenship are investigated and provided as an example of transboundary issue.

To conclude, the fourth and final chapter offers an overview of the normative gaps within the citizenship framework, which cannot overlook the fundamental notion State sovereignty. Firstly, it is necessary to define the extent of the consequences of the State sovereignty doctrine affecting the framing of nationality legislation. In this sense, Westfailure and the notion of post-Westphalian alternatives must be connected to citizenship. Firstly, the creation of an international human rights law has influenced also nationality matters, a notion that has always been in contrast with the universal impact of human rights. Then, the development of the globalization process must be analyzed along with its effects on citizenship and political communities. Finally, the notion of nationality as means of mobility will be connected the topic of globalization and the phenomena of mobility and internationalization.

Concerning the methodology applied, in order to provide the answers to the research questions the analysis of international and regional legal instruments has been fundamental and it has been enriched by reporting the common critics highlighted by academics and professionals, in particular in the second chapter. Additionally, with

respect to the first chapter and fourth chapter, the complexity of the issue has required the study of literature of social and political academic disciplines, mainly philosophy of law, sociology, political science, and anthropology. Such research method has provided the dissertation with an interdisciplinary analysis due to the multi-dimensional thematic character of the matter. Also, concerning the third chapter, the research has been conducted during an internship at the Consulate General of Italy in Córdoba, Argentina, through an analysis of data and handbooks provided by the consulate.

To conclude, by analyzing the evolution of the notion of citizenship and nationality, the dissertation examines the cross-border dimension of citizenship law. As a result, after having presented the theoretical framework, the present study takes into account the effects of the Italian migration movement towards Argentina. In this sense, considering the evolution of Italian national legislation about nationality and the implication of acquiring the Italian citizenship, the present dissertation sheds light on the recognition of Italian descendants living in the Argentine Republic. Therefore, this final thesis concludes by taking up the international citizenship law framework. It will be argued how the current citizenship regimes presents a normative gap. As a result, it is no longer possible to consider nationality as the core of the sovereign state. Nowadays, the concept of citizenship has evolved internationally with the other branches of international law. Globalization processes have directly affected the concept of nationality, bringing it to deal with the constraints of international law. Indeed, citizenship has acquired several implications with international human rights law.

CHAPTER I

The Concept of Citizenship as a Right

1. The Evolution of the Concept of Citizenship and the Concept of Nationality

Throughout history, not only has citizenship always been connected to the concept of membership of a certain community, but it has also been linked to the idea of political participation in making collective decisions concerning democracy, such as the right to vote.[1] According to CliohRes.net, nowadays, "we are faced with the challenge of thinking about citizenship beyond national boundaries."[2] The history of citizenship has been explored extensively within domestic frameworks. Nonetheless, since the early 2000s, scholars have started analyzing a new aspect of citizenship at a transnational and global level. Defining citizenship is a challenging issue since it is a socially constructed concept, and hence historically contingent.[3] Indeed, in this paragraph, it will be tackled the historical evolution of the concept of citizenship since historians have often relied on the explanatory theories by political scientists. The concept will be analyzed starting from ancient times, up to the affirmation of the modern conception of nation-State and the related notion of nationality. Thus, the two concepts of citizenship and nationality will be confronted under the legal point of view within the international law framework.

In the Western conception of citizenship, the analysis is commonly focused on the contrast between the ancient and modern – namely, post-medieval – models.[4] At the same time, citizenship can be considered as a fundamental but elusive concept, which can be supplied with two complementary meanings.[5] On the one hand, it confers one's political

[1] Bellamy, R. (2008). *Citizenship: A Very Short Introduction*. New York: Oxford University Press. pp.1-2.
[2] The CliohRes Project started in June 2005 and ended in November 2010. The acronym stands for "Creating links and innovative overviews for a new history research agenda for the citizens of a growing Europe." Waaldijk, B. Citizenship and History. In Ellis, S. G., Hálfdanarson, G. & Isaacs, A. K. (2006). *Citizenship in Historical Perspective*. Pisa: Edizioni Plus, Pisa University Press. p.62.
[3] Wegner, K. L. Can There Be a Global Historiography of Citizenship?. In Isin, E. F., & Nyers, P. (2014). *Routledge Handbook of Global Citizenship Studies*. Oxon - New York: Routledge. pp.139-140.
[4] Burchell, D. Ancient Citizenship and its Inheritors. In Isin, E. F., & Turner B. S. (2002). *Handbook of Citizenship Studies*. London: SAGE Publications. p.89.
[5] *See* Giddens, A. (2000). *Il mondo che cambia*. Bologna: Il Mulino. p.41.

and social rights determining how people are involved in the State activity, whereas on the other, it defines their membership in a political community.[6] Moreover, being granted or being deprived of one's nationality[7] conveys significant practical as well as emotional consequences for the individual.[8]

Theories of citizenship have been developed over time. They fall into two types: the normative theories attempt to set out all the rights and duties that a citizen ideally should have, whereas empirical theories explain how citizens came to possess those rights and duties. In different but connected ways, those types of theory equally appeal to history. Normative theories explore in history the idea of a good citizen. Inevitably, former ways of conceiving citizenship have shaped our perspective about being a citizen. Those theories try to provide a "scrapbook" of ideas about the attributes and advantages of being a citizen, the kind of contribution to the State and other citizens, and what citizens can expect of them and when. Conversely, empirical theories explore the social, economic, and political processes that have shaped the idea of citizenship over times and places under given circumstances and how it has been granted to individuals.[9]

The origins of the concept of citizenship can be traced back to Ancient Greece and the Roman empire.[10] Both the civilizations were clear examples of imperfect democracy, in which only the virtuous and wise men are entitled to govern, creating in this way an inner circle of selected governors.[11] It is possible to draw the Greek model from Aristotle's writings and the knowledge of political systems in Athens and Sparta during the 5th and 4th centuries BC.[12] According to Aristotle, the citizen is the one who actively participates and takes care of the *polis* (*πόλις*).[13] Following this theory, citizenship is

[6] Ellis, S. G., Hálfdanarson, G., & Isaacs, A. K. (2006). p.XI.
[7] In this chapter the differences between the two terms have been taken into consideration, although the terms "nationality" and "citizenship" have been interchanged as synonymous throughout the thesis.
[8] Boll, A. M. (2007). *Multiple Nationality and International Law*. Leiden: Martinus Nijhoff Publishers. p.11.
[9] Bellamy, R. (2008). pp.27-28.
[10] "Research on Athenian democracy can help contemporary scholars identify the qualities of citizenship needed for and moral foundations of effective political speech." In Barker, D. W. M. (2009). *Tragedy and Citizenship: Conflict, Reconciliation, and Democracy from Haemon to Hegel*. Albany: State University of New York Press. p.11.
[11] *See* Peyrou, F. Citizenship and History: Historiographic Approaches to Citizenship. In Ellis, S. G., Hálfdanarson, G. & Isaacs, A. K. (2006). pp.1-23.
[12] Bellamy, R. (2008). p.29.
[13] *See* Radulović, I. Citizenship in Ancient Greece -Athens and Sparta: Terms and Sources. In Ellis, S. G., Hálfdanarson, G. & Isaacs, A. K. (2006). pp.25-33.

considered as a privilege instead of an inalienable right.[14] As Alfred M. Boll[15] stated, "in ancient Greek cities […], concepts of citizenship revolved around political and economic rights at the local level, in addition to religious privileges and duties. Only in later times did the concept expand to rights within a wider community."[16] Indeed, the Ancient Greek concept of citizenship was strictly connected to the rights of individuals within a community, as well as to the relationship among citizens as members of the *polis.*[17] The Greek term for "citizen" was *politeia* (*πολιτεία*), usually translated into "constitution" but carrying a wider meaning. More specifically, it defines the right of citizenship; indeed, the citizen (*polites, πολίτης*) was a member of the community, which was fit to govern.[18]

The Roman concept of *civitas*, which dates to the Republican era and the Empire, was an ancestor of the current "citizenship." In the Latin political and juridical conception, the term referred to the "city-state"[19] was an evolution of the Greek concept of *polis.*[20] With *civitas,* they also indicated the totality of the citizens.[21] In 212, the Roman citizenship was officially broadened with an edict issued by Emperor Caracalla (formally called *Constitutio Antoniniana*). Free men in the Roman Empire were given full Roman citizenship, whereas all free women were given the same rights as Roman women.[22] Formerly, only inhabitants of the current Italian territory and colonies enjoyed full Roman citizenship. Until then, provincials were not Roman citizens, although some of them held Latin Rights.[23] Over time, citizenship started losing its exclusiveness with the practical aim of increasing the number of people who could be taxed.[24] In that context, it took place the well-known episode of Saint Paul of Tarsus, who claimed to be a Roman citizen in order to avoid being tortured and probably killed.[25]

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[14] For instance, foreigners were excluded from the life of the *polis.*
[15] Alfred M. Boll is a PhD. in "Juridical Studies" at the University of Sydney.
[16] Boll, A. M. (2007). p.61.
[17] *Ibid*. p.61.
[18] Radulović, I. In Ellis, S. G., Hálfdanarson, G. & Isaacs, A. K. (2006). p.26.
[19] Civitas in Vocabolario - Treccani. (2019). Retrieved 20 August 2019, from http://www.treccani.it/vocabolario/civitas/
[20] *See* Radulović, I. In Ellis, S. G., Hálfdanarson, G. & Isaacs, A. K. (2006). pp.25-33.
[21] In this manner, it could be distinguished very clearly from the term *urbs*, which indicated instead the city as a complex of buildings and walls.
[22] *Ibid*. pp.31.
[23] Latin Rights were a set of legal rights originally granted to the Latins under Roman law.
[24] *See* Adams, S. A. (2009). Paul the Roman Citizen: Roman Citizenship in the Ancient World and Its Importance for Understanding Acts 22:22–29. *Paul: Jew, Greek, and Roman*. doi: 10.1163/ej.9789004171596.i-370.87
[25] Boll, A. M. (2007). p.63.

> Paul had arrived at Jerusalem and had nearly finished the rite of purification, when some Jewish people from the city saw Paul at the temple and began to stir up the crowd. While they were beating him, the Roman commander heard about the commotion and interrupted them and had Paul bound and taken to the barracks. However, before he entered the barracks he asked for permission to speak to the crowd stating that he was a Jew from Tarsus in Cilicia. […] However, before he was beaten he asked the centurion "is it legal for you to flog a Roman citizen who has not even been found guilty?". The centurion reported this to his commander, who said to Paul "tell me, are you a Roman citizen?" Paul responded "Yes, I am."[26]

However, as far as for the Roman classification of individuals, the categorization was beyond the division between citizens and non-citizens. Romans were divided into free persons and slaves: slaves had no legal rights, whereas not all free persons held citizenship. They, in turn, were divided into other categories: "citizens, Latins, foreigners, or *dediticii* ("foreigners who had fought against the Romans and surrendered")."[27]

Modern societies have partially inherited concepts of citizenship from Ancient Greece and Rome, such as the sense of belonging to the State, respecting obligations under the same laws, being granted some rights, living together and creating a common culture and society.[28] An important step towards the evolution of the attribution of citizenship was the *Edictum Rothari*, which was the first written document to collect Lombard law. The edict - codified and promulgated in 643 by King Rothari - was only valid for the Italian population of Lombard origin. On the contrary, the Roman population that was subjected to the Lombard rule continued being regulated by Roman law dated back to 533.[29]

In his *Summa Theologica*, St. Thomas Aquinas, commenting on the concept of citizenship explored in Aristotle's *Politics*, stated:

> "As the Philosopher [Aristotle] says (*Polit*. III, 3), a man is said to be a citizen in two ways: first, simply; secondly, in a restricted sense. A man is a citizen simply if he has all the rights of citizenship, for instance, the right of debating or voting in the popular assembly. On the other hand, any man can be called citizen, only in a restricted sense, if

[26] Adams, S. A. (2009). pp.323-324.
[27] Boll, A. M. (2007). p.64.
[28] Brambilla, E. and J. Carvalho. Religion and Citizenship from the Ancien Regime to the French Revolution. In Ellis, S. G., Hálfdanarson, G. & Isaacs, A. K. (2006). p.31.
[29] A more recent example similar to the *Edictum Rothari* was the *Code de l'indigénat*, a set of laws applied exclusively to the subjected populations in the French colonies from 1887 to 1947, which created an inferior legal status for the colony natives.

> he dwells within the State, even common people or children or old men, who are not fit to enjoy power in matters pertaining to the common weal."[30]

When distinguishing two kinds of citizenship, Aquinas was influenced by the Aristotelian work. The State attributed the first, and it was similar to the classical concept of politeia: it conferred the full exercise of political rights.[31] On the contrary, the second was based on residence and conferred by Church with baptism, on the basis of territorial constituencies in which the universal Catholic Church was divided. This type of citizenship was very similar to the existing one attributed by birth.[32] Also, it was more limited because it did not attribute political rights, but simultaneously it was more extensive. Indeed, it was conferred to the whole population residing in a territory of the State, including the ones excluded from political rights. The role of the Church was very influential since it was able to both confer and suppress civil rights. However, there was no separation between the citizen and the believer: baptism was not limited only to the adult males like it was for citizenship until then. Instead, it was extended to all human beings.[33]

The separation between State and Church was introduced only with the creation with a plurality of system of Churches (Catholic, Lutheran, Calvinist, etc.), each one with its system and rules of baptism. In the Catholic Church, for example, there was not a consistent dissenting minority to be excluded from civil or political rights. Conversely, the Protestant Church did not exclude dissenters from civil rights, but it denied political ones. Instead, Calvinists considered baptism as an a-confessional rite, independent from the civil or political sphere. According to the scholars Brambilla and Carvalho, "only after the introduction of its lay registration, and its separation from Catholic sacramental registers, did *legal equality* become possible among religious groups, and full *civil rights* and citizenship could also be conferred on confessional minorities."[34]

However, the process of secularization of the citizenship consolidated with the French Revolution (1789-1799). The oldest models of citizenship were diametrically different from the ones emerging from the new nation-States, which had developed since

[30] Brambilla, E. and J. Carvalho. In Ellis, S. G., Hálfdanarson, G. & Isaacs, A. K. (2006). p.43.
[31] *Ibid*. p.36.
[32] The recognition of citizenship by birth (*jus soli*) will be better examined in the paragraph 4 of this chapter.
[33] Brambilla, E. and J. Carvalho. In Ellis, S. G., Hálfdanarson, G. & Isaacs, A. K. (2006). pp.37-39.
[34] *Ibid*. p.42.

the late 18th century and which are still providing a primary context for citizenship nowadays.[35] Since Westphalia Peace in 1648 and consequently the emergence of the modern system of sovereign States, it started being introduced a model of multiethnic State[36] – an example was Germany – which was an aggregation of autonomous ethnic and religious communities and in which equal rights were to be grant to all. Before the Westphalia Treaty, neither the Romans nor the feudal system held the idea of sovereign and equal States. This could also be asserted for Asia and other parts of the world: in those places various kingdoms and political entities did not conceive their political position vis-à-vis other such entities and rarely saw them as equals.[37]

Sociologists suggest two models of modern States: in the first model, States are seen as sums or aggregations of autonomous ethnic-religious communities, whose ministers have the task to register membership in cultural and religious terms. However, this system does not provide a clear definition of citizenship and citizens' rights. There is no civil registry that is separated from the religious registry of baptism. The second model is inspired by the classical liberal tradition: it is an assimilative and inclusive model, whose basic principle is equality of citizens before the law and which is based on an independent definition of citizenship. In this manner, citizenship becomes secular and neutral, and a new system of the public legal registry and separate rites needs to be created.[38] In France, it was the *Declaration of the Rights of Man and of the Citizen* in 1789 to promote this latter model. The State itself encouraged the process of integration and secularization. Both in French and Italian revolutionary assemblies and constitutional declarations, the Catholic registers of baptism - also regulating marriage and death - that defined lay citizenship were declared null and replaced by municipal registers that would certify not only civil status but also civil and political citizenship. Legal quality became possible, but at the same time registration by territory that had been in use for baptism was maintained. The principle on which it had been based until then was the *jus loci* (on the basis of geographical birth as baptism was compulsory) and not the *jus sanguinis* (depending on blood relations and family descent). At the time, a law to redefine divisions of the territory was essential before introducing a new register. This model of modern

[35] Bellamy, R. (2008). p.2.
[36] Also defined as federation or multi-denominational State.
[37] Boll, A. M. (2007). p.67.
[38] Brambilla, E. and J. Carvalho. In Ellis, S. G., Hálfdanarson, G. & Isaacs, A. K. (2006). p.42.

citizenship is in sharp contrast with the ancient one. In ancient times citizens were both rulers and ruled in turn, so politicians were simply custodians of the authority.[39] In modern times, citizens are subjected to a supreme sovereign ruler, and this relationship of subjection constitutes a limit to their political autonomy.

Currently, it is possible to distinguish four meanings of citizenship.[40] The first is the seminal meaning, which is probably the most familiar one. A citizen is a person with political rights, who participates in the process of self-governance through the right to vote, to hold government offices, and to participate in the public debate. The second meaning is citizen as legal status, namely the legal recognition as a member of a sovereign political community. In this meaning, citizenship possesses the same value of nationality. A third definition of citizenship is as a sense of belonging to a human association as a political community or any other group. The last meaning attaches to the third one the compliance of certain standards of conduct by implying that only good citizens are genuinely citizens.[41]

In 1835, the French word *nationalité* appeared for the first time in the *Dictionnaire de l'Académie Française.*[42] For that reason, a distinction between nationality and statehood on one hand and nationality and ethnicity on the other is necessary to be made. Since they are both used as synonyms in ordinary speech, the first distinction should be made to avoid the confusion between nation and State. Certainly, in order to clarify the principle of nationality, it must be considered precisely the relationship between nations and States, in particular, by answering the question of whether each nation has a right to exist in its own State. In the first place, the word nation refers to a "community of people with an aspiration to be politically self-determining."[43] Differently, the word State refers to the "set of political institutions that they may aspire to possess for themselves."[44] For example, the Soviet Union was a State; however, the people it governed were openly of different nationalities (more than one hundred officially recognized). Nevertheless, it was much less common the case of the two Germany States before the reunification of 1990,

[39] Burchell, D. In Isin, E. F., & Turner B. S. (2002). p.89.
[40] Smith, R. M. Modern Citizenship. In Isin, E. F., & Turner B. S. (2002). p.105.
[41] *Ibid*. pp.105-106.
[42] Koessler, M. (1947). 'Subject,' 'Citizen,' 'National,' and 'Permanent Allegiance'. *Yale Law Journal,* vol. 56, 58–76, 61. In Boll, A. M. (2007). p.65.
[43] Miller, D. (1995). *On Nationality*. Oxford: Clarendon Press. p.19.
[44] *Ibid*. p.19.

in which for historical reasons a single nation was divided between two States. Another example is the current position of the Kurds and the Palestinians when people of one single nationality are displaced in different States, in which they are considered a minority. Conversely, the confusion between nationality and ethnicity is more understandable. Indeed, both nations and ethnic groups are people bound together by "common cultural characteristics and mutual recognition."[45] Generally, nations are linked to the concept of national identity, which has five essential features. National identities are constituted by shared belief and mutual commitment, so their existence depends on a shared idea that its members shared the wish to continue their life in common. Nations have developed in history, and hence they embody historical continuity. Their character is active: they are communities that act together, make decisions, and achieve some results. Nations are related to a specific territory: a group of people is connected to a geographical place. Here it is possible to confront a problematic issue: there is a neat contrast with most ethnic groups affirm. Having sacred sites or places of origin is different from having a homeland. Lastly, they can be distinguished from other communities by their public culture. For this reason, immigration should not constitute a problem based on the fact that immigrants share a common national identity, to which they keep on contributing.[46]

Subsequently, nations typically emerge from ethnic communities that provide a distinct identity. Ethnicity continues to be a possible source of new national identities: especially in case an ethnic group's legitimate political aspirations were denied, ethnical groups would be incentivized to think of itself as a nation and to express those aspirations also in nationalist terms. Though, the opposite situation could also happen. Sometimes even nations with an exclusive ethnic character may embrace a multitude of different ethnicities. The clearest example is that of Italian-Americans, an ethnic group that has developed a national identity separate from other Americans'. In this case, ethnicity and nationality co-exist without mutually threatening.[47]

This leads to the difference between citizen-state and nation-state. For example, with the term United Kingdom, reference is made to the State that includes England, Scotland, Wales, and Northern Ireland. However, the four territories constitute the so-

[45] Miller, D. (1995). p.19.
[46] *Ibid*. p.25-27.
[47] *Ibid*. p.26.

called Home Nations of the State. Among them, Northern Ireland is the only nation that does not belong geographically to Great Britain. Due to the coexistence of four nations within the State, it is difficult to identify a unique and shared idea of a nation. As a matter of fact, a big part of the British population prefers to identify themselves as English, Scottish, Welsh, or Irish, rather than properly British.

Many contemporary political theorists and historians has also recognized an apparent decline in participative citizenship. They have distinguished two different conceptions: a liberal conception, that can be traced back to the 17th century starting from John Locke and the American Revolution, and a republican conception, dated back to the 18th century from Rousseau's writings (or even from Machiavelli's and Aristotle's). The former one presents citizenship as a civic membership emphasizing the pursuit of economic, religious, and familial fulfillment. Instead, the latter focuses on the rights and practices of political participation in order to achieve common goods. Currently, there is a trend towards a more liberal conception of citizenship, shelving the republican one. Nonetheless, a pure liberal or republican idea of citizenship is still difficult to find, since elements of civic and ethnic nationhood have always been mixed.

Sociologists and social studies researchers started to express interest in citizenship studies only after World War II. Before that time, citizenship was analyzed only under a philosophic and juridical point of view to distinguish citizens from foreigners. The starting point was T.H. Marshall's work on social citizenship,[48] which was depicted during a commemorative lecture in 1949 for the English economist Alfred Marshall's work on the issue of social equality. The work has been so influential – especially in Europe – that citizenship is still considered to be linked with the full possession of three types of rights: civil, political, and social.[49] His theory developed in the affirmation of secondary education and national health care: those facts changed the relationship between the State and its population.[50] However, Marshall has been criticized for not explaining women and ethnic discriminations in his theoretical framework.[51] Despite criticism, Marshall's English model has been a starting point for many scholars.[52]

[48] *See* Marshall, T.H. (1950). Citizenship and Social Class. *Citizenship and Social Class and Other Essays*. Cambridge: The Cambridge University Press. pp.1-85.
[49] *Ibid.*
[50] Isin, E. F., & Nyers, P. (2014). p.141.
[51] *Ibid.*
[52] *Ibid.*

Nevertheless, according to the author Paul Weis, from a purely legal point of view, nationality is a political and legal term used denoting membership of a State and should be distinguished from nationality as a historical and biological term denoting membership of a nation.[53] Conceptually and linguistically, the terms nationality and citizenship specify two different aspects of the same notion, namely State membership. Whereas nationality stresses the international aspect, citizenship stresses the national aspect.

Theoretically, all the issues concerning nationality fall within the domestic jurisdiction of the States. Though, since States' internal decisions can be limited in their applicability by the similar actions of other States and by international law, citizenship should also be analyzed under the international aspect.

As it is Stated in the 1923 *Advisory Opinion on the Tunis and Morocco Nationality Decrees* by the Permanent Court of International Justice, "the question whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative question; it depends on the development of international relations."[54] This confirms that any inconsistencies between national jurisdiction and other States' must, nonetheless, respect their obligations under international law. The majority of the States interpreted 1923 advisory opinion as a restriction on the applicability of a State's nationality-related decisions outside that State provided that they conflict with nationality-related decisions taken by other States.

The first attempt to ensure every individual a nationality was the *Hague Convention on Certain Questions Relating to the Conflict of Nationality Law* of 1930. In Article 1 of the Convention, it is stated that "it is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality."[55] In this manner, States' decisions on nationality should conform to the relevant provisions under international law. The aim was to favor human rights over claims of State sovereignty.

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[53] Paul Weis was an Austrian lawyer, survivor of the persecution by the Nazis, and co-author of the *Convention Relating to the Status of Refugees*. Weis, P. (1979). *Nationality and Statelessness in International Law*. Alphen aan den Rijn: Sijthoff & Noordhoff. pp.3-5.

[54] Permanent Court of International Justice. (1923). *Advisory Opinion No. 4, Nationality Decrees Issued in Tunis and Morocco*, Advisory Opinion No. 4.

[55] Assembly of the League of Nations. (1930). *Convention on Certain Questions Relating to the Conflict of Nationality Law*, League of Nations Treaty Series No. 4137.

Article 15 of the 1948 *Universal Declaration of Human Rights* clearly reported: "(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."[56] This right was confirmed by the Judgment of the well-known *Nottebohm Case* by the International Court of Justice in 1955, which established that nationality is a legal bond with its basis in a genuine connection of existence, interest, sentiments, reciprocal rights and duties with a State.[57]

At the regional level, this so-called "genuine or effective link" was also reflected in Articles 2 and 3 of 1997 *European Convention on Nationality* by the Council of Europe: ""nationality" means the legal bond between a person and a State and does not indicate the person's ethnic origin."[58] Moreover, "each State shall determine under its own law who are its nationals."[59] In 2019 the Convention had been signed by 29 countries but had been ratified by only 21 of them. Even the Inter-American Court of Human Rights deals with the topic of nationality with the *Castillo-Petruzzi et al v. Peru* Judgment in 1999, stating that "the political and legal bond that links a person to a given State and binds him to it with ties of loyalty and fidelity, entitling him to diplomatic protection from that State."[60]

Therefore, battles that have been fought centuries ago assume importance in contemporary topics. States are forced to confront "ethnic conflicts between groups who throughout recent history had lived side by side in apparent harmony."[61] By means of considering and comparing historical narratives in the international context, it has been possible to describe a global historiography of citizenship with the aim to improve the current comprehension of the notion of citizenship and nationality. Inevitably, investigating citizenship involves a comparative study of the rights and duties of citizens across different States.

[56] United Nations General Assembly. (1948). *Universal Declaration of Human Rights,* Resolution 217 A. Art. 1.
[57] Liechtenstein v. Guatemala, Nottebohm Case (second phase), Judgment of April 6th, 1955, [1955] ICJ 1, 1955.
[58] Council of Europe. (1997). *European Convention on Nationality*, ETS No. 166.
[59] *Ibid.*
[60] *Castillo-Petruzzi et al v. Peru,* Judgment of May 30th, 1999, IACHR, 1999, [ser.C] No. 52.
[61] Miller, D. (1995). p.1.

2. The Rights Deriving from the Citizen Status

Besides membership and obligations, also rights can be considered as a basic notion for citizenship. As it has been stated in the previous paragraph, individuals should be attributed the substantive and social rights, which derive from what it is believed to be ethical and moral. In this paragraph, an attempt to outline whether it is possible to identify which right should be considered the main features of the notion of citizenship. For this purpose, the analysis of successful theories about nationality and citizenship is required. Then, by investigating the criticisms of more international dimensions of the right of having rights.

Citizenship could be seen as an effort to deal with the question of participation in its many philosophical and practical types. The different theories provide different answers, which sometimes can be proved to be wrong or contradict themselves. To some degree, contradictions depend on the context and circumstances to which the different nationality theories are opposed. The three main theories of citizenship are liberal citizenship, communitarianism, and republicanism.[62] Liberal citizenship had developed in the 16th and 17th centuries in opposition to absolutism. It was a more legal theory since its aim was to promote such membership by providing equal rights to all. Communitarianism could be seen as a reaction to the social cohesion problems that began in the 1960s and 1970s.[63] The focus was on duties instead of rights. However, these obligations can only be felt by a pre-existing community. If there is no such culture or shared identity, there will be no duty on individuals to fulfill the duties deriving from citizenship.[64] Modern republicanism is in many ways a response to the perceived decline in civic involvement.[65] This theory was more centered on virtue being a mix of political and social theories, but simultaneously it was critical of both liberalism and communitarianism. Nevertheless, in this paragraph, the first theory will be analyzed, whereas the remaining two will be examined in depth in the next paragraphs.

[62] Lister, M., & Pia, E. (2008). *Citizenship in Contemporary Europe*. Edinburgh: Edinburgh University Press. p.15.
[63] *Ibid*. p.8.
[64] *Ibid*.
[65] *Ibid*.

Liberal democracy, as such, has an egalitarian spirit at its heart and, in some cases, it becomes a target of its own achievements.[66] Individuals are entitled to equal treatment by right. For this reason, it has become so entangled in the political culture that it has also been criticized.[67] In 1944, in his *General Theory of Law and State*, Hans Kelsen developed some reflections around the concept of citizenship. After asserting that citizenship, which he considers as a synonym of nationality, consists of a "personal status" that involves reciprocity of rights and duties provided by a State order, Kelsen dispatches the question of duties quickly enough.[68] As for the rights, which he distinguishes in civil and political, Kelsen says that political rights are much more important than civil ones, and hence they are attributed to foreigners with prudence and parsimony.[69] Usually, certain freedoms guaranteed by the Constitution are also considered as political rights, such as religious freedom, freedom of speech and the press, the right to hold and carry arms, the right to security of one's person, etc. The freedoms he enunciates are rights in the legal sense only if the subjects have the possibility of appealing against the acts of the State from which the provisions of the constitution have been violated, in order to have them annulled.[70] Such rights are not necessarily limited to citizens; on the contrary, they can also be granted to non-citizens. According to Kelsen, citizenship assumes importance only in the field of inter-State law, since it serves to protect individuals from every State abuse structured differently from that to which they are subjected.[71] When a State law does not contain any rule which, according to international law, is applicable only to citizens, citizenship itself is a legal institution lacking importance.[72] Kelsen's ideas emerged in the middle of World War II, and hence they should be contextualized.

However, the weakening of the classical concept of citizenship seems to re-evaluate Kelsen for three reasons. Firstly, some rights - such as the right to a healthy environment - can no longer be protected by a status of citizenship that is limited to

[66] Lister, M., & Pia, E. (2008). p.16.
[67] *Ibid.*
[68] Lanaro, S. La cittadinanza tra semantica e storia. In Sorba, C. (2002). Cittadinanza. Individui, diritti sociali, collettività nella storia contemporanea. Atti del convegno annuale SISSCO. Padova, 2-3 dicembre 1999. Roma: Ministero per i beni e le attività culturali. pp.3-4.
[69] *Ibid.*
[70] *Ibid.*
[71] *Ibid.*
[72] *Ibid.*

national belonging.[73] Secondly, the powerful migratory waves and the birth of multi-ethnic societies determine the obsolescence of the traditional requisites of citizenship, namely the concepts of jus sanguinis or jus soli.[74] Lastly, since the mid-1970s in the Netherlands, Denmark, Sweden, and Norway, the granting of civil welfare benefits and the right to local voting is an example of dissociation between citizenship and nationality.[75] T.H. Marshall's *Citizenship and Social Class* is the most advanced and influential work concerning this form of liberal citizenship. It also reflects the definition of the classic positive democratic citizenship by promoting participation via equal and universal rights.[76] Marshall divided citizenship into three elements, namely civil, political and social. The civil element is composed of "the rights necessary for individual freedom-liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice."[77] This is the democratic or universal character of citizenship, which arose from the idea that citizenship itself was the status of freedom and from the 17th-century idea that all men should be free.[78] When freedom became a universal condition, citizenship enhanced from local into national institutions. The political element consists of "the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body."[79] Citizenship was universal in the form of civil rights in the 19th century, but the political franchise was not one of citizenship rights.[80] It was the luxury of a limited economic class, with subsequent changes expanding its limits.[81] Nonetheless, citizenship was not politically meaningless in this time, although the principle of universal political citizenship was not recognized until 1918.[82] Lastly, the last social element includes the "range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society."[83] In the 18th and early 19th centuries, social rights

[73] Lanaro, S. La cittadinanza tra semantica e storia. In Sorba, C. (2002). pp.4-5.
[74] *Ibid.*
[75] *Ibid.*
[76] Lister, M., & Pia, E. (2008). p.12.
[77] Marshall, T.H. (1950). p.10.
[78] Lazar, S. (2013). *The Anthropology of Citizenship: A Reader*. Hoboken: Wiley-Blackwell. p.54.
[79] Marshall, T.H. (1950). p.11.
[80] *Ibid.*
[81] *Ibid.*
[82] *Ibid.* p.28.
[83] *Ibid.*

were on the point of disappearing. They started to be reintroduced with the creation of a system of public primary education, but it was only in the 20th century that they achieved an equal partnership with the other two elements of citizenship.[84]

Critics have largely criticized Marshall's notion of citizenship. The first criticism is that Marshall ignores other forms of exclusion. He addresses the issue of class inequalities, but he also ignores other forms, such as gender and race.[85] Furthermore, scholars have argued that his notion of citizenship is almost "apolitical"[86] since citizens are passive individuals who have been granted rights. Marshall clearly abandoned the idea of citizenship as a product of political struggle. Thirdly, Marshall assumes that citizenship rights and provisions are provided only by the State.[87] However, nowadays, State power has "passed upwards to supranational institutions like the EU, downwards to local and devolved assemblies, citizenship rights are provided by sources other than the State."[88]

Nevertheless, political rights still constitute a fundamental element of the modern idea of citizenship. An example can be the right to vote, which can be restricted on the basis of an individual's nationality. Even so, an exception to the traditional idea of the right to vote depending on citizenship is represented by the European Union system. In this case, there is no need for an effective connection between holders of political rights and the exercise of political power. In European Union States, "the rights to vote and to stand as a candidate both in municipal and European elections granted to every EU citizen resident in a Member State (even if different from their own State of nationality) is not considered a real political right, but rather a 'legal status' accorded to EU citizens in order to facilitate freedom of movement and establishment and to implement the principle of non-discrimination."[89] With regard to nationality and the right to vote, the ECHR specifically distinguishes between citizens' and foreigners' positions for political participation and the right to elective representation. In this regard, the right to free elections guaranteed by Article 3 of Protocol No. 1 is given a prominent position. The

[84] Marshall, T.H. (1950). p.28.
[85] Lister, M., & Pia, E. (2008). p.14.
[86] *Ibid.*
[87] *Ibid.*
[88] *Ibid.*
[89] Rudan, D. Nationality and Political Rights. In Annoni, A., & Forlati, S. (2013). *The Changing Role of Nationality in International Law*. Oxon – New York: Routledge. pp.117-118.

provision establishes that "the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."[90] Though, the notion of persons is neither explained by the ECHR nor examined by the ECtHR. Political rights can only be conferred to residents, although every State is free to grant non-citizens political rights. According to the principle of the most favorable treatment[91] within many human rights treaties, a State cannot appeal to the norms of a specific convention to limit or prohibit the application of rights recognized in its national legislation or other rights defined by international law. Hence, "nothing in the ECHR prevents States parties from establishing a most favorable condition for non-citizens by granting them the right to vote and to stand for election within their State of residence."[92] The Judgment delivered by the European Court of Justice (ECJ) in *Spain v. United Kingdom* is an important step towards the granting of political rights for aliens. The ECJ held that, in accordance with European Union law, designing persons entitled to vote and candidate for elections to the European Parliament falls within the competence of each Member State.[93] In fact, the EC Treaty did not preclude Member States from granting the right to vote and to stand as a candidate to the ones who are not nationals of the Member State or EU citizens residing in their territory.[94]

Since rights are an important element within the notion of citizenship, contemporary political philosophers have tried to identify them by adopting two main approaches. The first approach attempts at recognizing certain rights that people should consider in addressing each other as free individuals capable of equal treatment and respect.[95] On the other hand, the second approach seeks merely to recognize which freedoms are required to engage in free and equal democratic decision-making. Nonetheless, both approaches show criticisms.[96] Most committed democrats generally accept the legitimacy of citizens having rights as coherent with the very idea of

[90] Council of Europe. (1952). Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 005.
[91] The "Most-Favored-Nation" ("MFN") treatment was born as a bedrock principle of the WTO. It requires members to accord the most favorable regulatory treatment given to the any member to other members.
[92] Rudan, D. In Annoni, A., & Forlati, S. (2013). p.119.
[93] *Spain v. United Kingdom*, Judgment of September 12th, 2006, C-145/04, European Court of Justice, EC Reports, 2006, I-07917.
[94] Rudan, D. In Annoni, A., & Forlati, S. (2013). pp.119-120.
[95] Bellamy, R. (2008). p.14.
[96] *Ibid*

democracy. Yet, they have come to very different conclusions about which rights that either method can produce. Such discrepancies reflect the different ideological tensions that form the foundation of politics.[97] For example, for neoliberals, the free market is likely to be sufficient to demonstrate equality and freedom for individuals ' social and economic interests.

It is also possible to identify a conflict between rights and nationality. If citizenship is the status of having rights that are universal and belong to all human beings, then there is a potential conflict between being a member of a specific State and upholding rights.[98] Justice demands that an equal treatment of all human beings equally, but if rights are different from State to State, there could be a variance with the treatment of one's fellow citizens. Then, whereas there is a growing consensus on the idea of human rights, there is disagreement over which rights properly embody these ideals and the political implications they derive from them.[99] Within the majority of States, citizenship connotes full membership, and it includes the possession of political rights. However, some States distinguish between different members: subjects and nationals.[100] In fact, it is possible to identify different levels of having rights among different States. An example is British citizenship, which is defined by the variety of rights associated with the different policies concerning who is a citizen and to what they are entitled.[101] The *British Nationality Act 1981*, still in force, establishes the current system of attribution of citizenship. With this act, a distinction was made for the first time among six different "classes", which represent the different types of British nationality. All classes have the right to hold a British passport and to receive assistance at U.K. embassies, but there are other important differences to be highlighted. British citizens and British Overseas Territories citizen are active categories of citizenship since they can be acquired by any eligible person. Moreover, British citizens, British Overseas Territories citizen, and British subjects with the right of abode are the only categories exempt from U.K. immigration control and possessing EU citizenship.[102]

[97] Bellamy, R. (2008). p.14.
[98] *Ibid.* pp.79-80.
[99] *Ibid.*
[100] Weis, P. (1979). p.5.
[101] British Nationality Law: Discussion of Possible Changes. 1977. London: H.M. Stationery Office.
[102] *Ibid.*

Democratic citizenship has offered a possible solution, namely recognizing citizenship as the "right to have rights."[103] Firstly, States should seek to reach a global justice between States by interacting with each other. Governments act as representatives of their countries. Such international agreements should serve a two-fold purpose. On the one hand, they should try to secure collective goods from which the citizens of all countries will benefit.[104] Then, they should try to prevent activities of one country that could interfere with those of another.[105] Indeed, many agreements involve both these elements: the collective peace is promoted both by non-aggression pacts and collaboration in collective security arrangements.[106] A second aspect of the international dimension of the right to have rights is that the right to self-determination should be extended to political communities. This suggests that efforts should be made to devolve authority and establish power-sharing agreements where demand for self-government is expressed, otherwise it might be a symptom of a dictatorial regime.[107] It is essential that prospective residents indicate a degree of loyalty to their adopted State, typically by a reasonable residency requirement, in order to operate as full members of their new country, such as reaching a standard of fluency in the new language.[108] Furthermore, States have an international duty to uphold individuals' civil freedoms. This also means not endorsing governments that oppress their people. Such duty may theoretically promote humanitarian intervention in another State's affairs in order to prevent genocide and the mass killing of civilians. That behavior must, however, always be weighed on a situation.[109]

Hence, a strong theory of citizenship that defines exactly related rights is not necessary. Rather, a merely indicative definition, which dispenses with prejudicial assertions, should be found.[110] Promoting citizenship merely based on rights means promoting a "passive" or "private" notion of citizenship, in which there is no obligation to participate in public life. The notion of citizenship as the right of having rights does

[103] Bellamy, R. (2008). pp.79-80.
[104] *Ibid.*
[105] *Ibid.*
[106] *Ibid*. pp.92-94.
[107] *Ibid.*
[108] *Ibid.*
[109] *Ibid*. p.95.
[110] Costa, P. Il discorso della cittadinanza in Europa: ipotesi di lettura. In Sorba, C. (2002). Cittadinanza. Individui, diritti sociali, collettività nella storia contemporanea. Atti del convegno annuale SISSCO. Padova, 2-3 dicembre 1999. Roma: Ministero per i beni e le attività culturali. pp.20-21.

not exhaust the whole concept of membership and commitment on its own. In fact, the exercise of political citizenship is easily pursued at domestic level without negating the idea of inter-national citizenship.

3. The Obligations Related to Citizenship

In analyzing the notion of citizenship, much importance has been attributed to rights and membership. However, a relevant consideration should also concern the topic of duties and obligations. According to many scholars, a balance should be found between the attribution of rights and obligations to the individual. The aim of this paragraph will be analyzing the role of obligations within the concept of citizenship. Firstly, a distinction will made within the broader notion of obligations in order to distinguish the different types of duties, namely moral, legal, civic, and social obligations.. Then, it will be introduced the notion of community in order to explain in detail the theory of communitarianism. After defining active citizenship and participation as one of the main features of the notion of citizenship, it will be investigated the issue of what is thought to constitute a normal level of participation in society and the role of the State itself.

The idea that rights should be balanced by obligations is largely a result of cultivating the faith in the so-called civil society, the network of families, charitable and unofficial organizations, which all promote a decent society. This belief stems in part from a reaction to Thatcher years' rampant individualism and the vulnerabilities of Eastern Europe's former communist systems, regimes in which there were no intermediate barriers between the State and the person.[111]

A distinction has to be made within the broader notion of obligations. As a matter of fact, it is possible to distinguish four different types of duties: moral, legal, civic, and social obligations. Moral obligations are the ones that people should do because they owe such actions to others or themselves.[112] Therefore, there is a moral obligation to speak the truth or to help people in need, and there is not a written law. In many countries, this kind

[111] Harrison, K., & Boyd, T. (2018). Rights, Obligations and Citizenship. *Understanding Political Ideas and Movements*. doi: 10.7765/9781526137951.00010. p.126.
[112] *Ibid*.

of duties cannot be enforced by law, but moral obligations often become the foundation for legal obligations. On the contrary, legal obligations are the ones that people have to do since they are enforceable in the courts, such as paying taxes or driving only when holding a legitimate driving license.[113] These obligations are closely related to the sovereignty of the State. Citizens and other people living in a State's jurisdiction have an obligation to obey the State's laws.[114] Civic duties are acts that should be paid as a tribute as part of the political society for the rights people own.[115] An example is the right to vote, which is connected to the obligation to vote. As a matter of fact, social obligations are very strictly linked to civic duties, since the definition is broadly similar, but they have a broader scope. These include the responsibilities that it is owed to communities that contribute to the overall benefit.[116] These roles are only linked to specific rights. One could assert, for instance, the right to have kids and to decide about their right to education. The responsibility would be to properly educate them as good citizens, integrate them into their society's community, and teach them right from wrong. Such duties can be fulfilled on an individual and personal basis.[117]

Together with the writings of the Roman republic's analysts, the Greek model, and its Roman republican variations have inspired all those citizenship theories that emphasize political participation as their defining element.[118] According to the historian of medieval and modern law Pietro Costa, in order to define the notion of citizenship, it is necessary to assume a new point of observation: the subject.[119] Analyzing citizenship means looking at the constitution of order and structuring oneself of the political community from the bottom up, from the subject to the objective structure: the point of view of citizenship is the point of view of the subject, from the subject on the politically ordered community.[120] In this context, the notion of community assumes a significant relevance.

Although held inside normative political theory, the communitarian discourse on citizenship has recently taken on a more legislative role within difficult public policy

[113] Harrison, K., & Boyd, T. (2018). p.127.
[114] *Ibid*.
[115] *Ibid*.
[116] *Ibid*.
[117] *Ibid*.
[118] Bellamy, R. (2008). p. 29.
[119] Costa, P. In Sorba, C. (2002). p. 24
[120] *Ibid*.

debates. In these very nuanced debates, however, some simple assumptions can be discerned. When analyzing liberal citizenship, the question was to determine whether future citizens were aware of their rights and that the component of rights cannot be denied. For example, "immigrants are often unaware of their rights and what is to be done when these rights are violated."[121] In the liberal view, certainly normative values, such as loyalty, patriotism, and identity should be encouraged. Nevertheless, the State cannot impose such an expectation on individuals but rather let those values "come with time."[122] Instead, in a neo-communitarian concept of citizenship, not only are citizens both right-bearing individuals, but they are also persons who must assume responsibilities toward each other and towards the community.[123] Since the 1980s, the controversy on citizenship has been revived with the rise of communitarianism around a more contextualized definition of citizenship as an expression of a community. The differences between communitarians and liberals must not be emphasized. What has often been called into question are fewer substantive differences than discrepancies. For this purpose, the stance is perhaps better referred to as "liberal communitarianism."[124] For communitarians, a liberal definition of group membership based mainly on rights is too rigid since it is neglecting the concrete aspects of identification and active participation. Liberal communitarianism attempts to stabilize the political community in a former cultural framework based on the actual ties that bind community members together.[125] The form of collectivism promoted is collectivism of ethics, which is not individualistic. This diverges from the socialist conception of collectivism in that the ideals drawn by the group are primarily cultural rather than economic.[126] Communitarians distinguish between the State and the society – also called "community." The concept of nation is considered marginal, and the term merely refers to a community invested in a State. According to neo-communitarianism, individuals are invested by responsibilities that are due not only to the political entity of State by respecting State laws.[127] Responsibilities

[121] Etzioni, A. (2011). Citizenship in a Communitarian Perspective. *Ethnicities*, *11*(3), 336-349. doi: 10.1177/1468796811407850. p.344.
[122] *Ibid*.
[123] *Ibid*.
[124] *Ibid*.
[125] Delanty, G. Communitarianism and Citizenship. In Isin, E. F., & Turner B. S. (2002). p.163.
[126] *Ibid*.
[127] *Ibid*.

are also due to the national community by supporting its core of shared values.[128] Under a communitarian perspective, citizenship tests are helpful not only to test the knowledge of an individual's rights but also checking whether the individual is ready to commit and assume responsibilities. With regard to immigration to the United States, the American and German-born sociologist Amitai Etzioni states that he cannot find any reasons for which it should be necessary to assimilate immigrants into one indistinguishable American blend: "there is no need for Greek Americans, Polish Americans, Mexican Americans or any other group to see themselves as plain Americans without any particular distinction, unique ethnic history or subculture."[129] It is more important that they accept the core of shared values and institutions, whereas they are free to diverge on other less relevant matters. Hence, a proper citizenship test could be a useful instrument to establish whether they are cultured on certain key aspects and are fully aware of their right to maintain their distinctions in many other fields of nationality.[130]

However, when determining which citizens' obligations and responsibilities should be, many questions arise: for example, whether obligations to society are the same as responsibilities to the State. Nevertheless, such conflict emerges only if erroneously State and nation are conferred the same meaning. For instance, when in 1940 Germany defeated France, the French government resigned and requested the cessation of hostilities by its armed forces.[131] Though, many Frenchmen, including General Charles de Gaulle in the well-known "appeal of 18 June," considered this to be the French State deception by the French nation. According to them, this betrayal absolved him of all loyalty to Marshal Philippe Pétain's (admittedly legal) government that emerged after the fall of France.[132] De Gaulle and his supporters felt that they had the duty to continue not only the war, but also a moral responsibility to do so.[133]

The idea of active citizenship and participation as one of the main features of the notion of citizenship has raised the question of how this participation should be made possible.[134] Some factors include the "opportunity to work, and to contribute to society,

[128] Etzioni, A. (2011). p.345.
[129] *Ibid.*
[130] *Ibid.*
[131] Harrison, K., & Boyd, T. (2018). p.129.
[132] *Ibid*.
[133] *Ibid*.
[134] *Ibid*.

a reasonable level of income, access to public authorities and channels for the expression of views."[135] Within society, many individuals are excluded from such opportunities, such as second-class citizens.[136] Recently, government efforts have been centered on rehabilitation programs, skills training, social welfare services to bring these people into society's functioning by making also socially excluded more citizens.

One problem with this approach is what is thought to constitute a normal level of participation in society. Moreover, there is also the practical issue of the cost of such initiatives. A criticism is that the ones who benefit of such State intervention are made more dependent on the State instead of being more empowered. Nevertheless, in response to the notion of' social citizenship, in which the government intervenes to incentivize a positive contribution to society by hard work and participation in numerous voluntary events. On the other hand, there are more problems. In fact, all voluntary bodies being dependent by the State can deprive such bodies of the ownership of the community members. The teaching of citizenship in schools can be problematic, as it might create a sterile and conformist idea of the citizenry, making it deprived of critical analysis and effective impact. It is worth underlying that such voluntary activities were largely promoted by the twentieth-century totalitarian regimes. Additionally, one might claim that the State places all responsibilities on its citizens' shoulders, devolving the function of the State itself, for example, elderly care or street crime reduction.[137]

A balance between the attribution of rights and obligations is clearly necessary. For this purpose, the citizenship discourse is not separable by the notion of community participation. Defining the conditions for active citizenship and what constitutes the role of the State are also strictly interconnected issues. Citizenship is a concept that allows us to formulate a series of questions by insisting on the premise that there is an essential connection.[138] It is difficult to define what citizenship is from the outset. Still, dealing with the notion of citizenship means dealing at the same time with the subject, its rights and its burdens, and its obligations towards the political community. Such premises assume more or less importance depending on the context in which they are set.

[135] Harrison, K., & Boyd, T. (2018). p.131.
[136] In the fifth paragraph of the second chapter, discriminations connected to the citizenship status will be analyzed in more details.
[137] Harrison, K., & Boyd, T. (2018). pp.131-132.
[138] Costa, P. In Sorba, C. (2002). p. 24.

4. The Application: Modes of Attribution

Citizenship is an important political guiding concept. It is a classification that establishes a relationship between persons and a State that grants some rights and obligations to these people. According to the regional *Montevideo Convention* of 1933,[139] States require not only a defined territory, a government, and the ability to enter negotiations with other States, but they also require a permanent population.[140] To underly the value of citizenship, governments grant rights to a protected class of individuals, the most important of which is the right to entry and residence in the jurisdiction of the State. This constitutes a privileged status for people since it represents their significance within a State's community. In this paragraph, the four main modalities of acquisition of nationality will be analyzed by examining both the positive and the negative sides.

Citizenship laws do not regulate only immigrants' participation within the political community. On the contrary, such laws are designed for multiple purposes and can be deduced from the underlying principles of civic and ethnic inclusion. For this purpose, it is necessary to investigate which schemes can be empirically differentiated on the basis of a comprehensive analysis of the aims and requirements of the laws on citizenship. In the first paragraph of the current chapter, it has been confirmed that each State designates its citizens under its national law. Nationality can be attributed in different ways, among which the most known are commonly *jure soli*, *jure sanguinis*, by marriage, and by naturalization.

At birth, the two main principles on which nationality is traditionally based are "descent from a national (*jus sanguinis*) and birth within State territory (*jus soli*)."[141] More recent developments have included giving men and women equal status in determining citizenship and providing enhanced guarantees against statelessness. Multilateral treaties reinforce both of those purposes. With the exception of the rule of statelessness - where *jus soli* is fundamental and still applies in case of doubt -, it is wrong

[139] Even if it involves a limited number of States at regional level, the convention is still useful for the analysis. *See* Seventh International Conference of American States. (1933). *Montevideo Convention on the Rights and Duties of States*, League of Nations Treaty Series No. 3802.

[140] Vink, M., & Bauböck, R. (2013). Citizenship Configurations: Analysing the Multiple Purposes of Citizenship Regimes in Europe. *Comparative European Politics*, *11*(5), 621-648. doi: 10.1057/cep.2013.14. p.622.

[141] Crawford, J. (2012). *Brownlie's Principles of Public International Law* (8th ed.). Oxford: Oxford University Press. p.511.

to consider the two concepts as mutually exclusive.[142] In fact, most States apply a mixture of both. For example, a common special provision is that children born to non-national members of diplomatic and consular missions do not acquire the nationality of the host State. Moreover, many European States emphasize the transfer of nationality on the basis of descent (*jure sanguinis*), but they use territorial access to citizenship to avoid the stateless phenomenon.[143] This is the case of newborns on the territories of a State whose descent cannot be identified, i.e. foundlings. Many countries prefer birthright citizenship, as in the case of the United States of America or most American States. However, at the same time, such States tend to enforce rules that allow people born outside the State's jurisdiction to transfer nationality to their descendants, who would be subject to different restrictions.[144] In addition to birthright citizenship, States often retain several guidelines for obtaining citizenship after birth, such as via naturalization or transmission of the citizenship status to spouse or individuals who hold a cultural affinity with the political community.[145] In some exceptional cases, "where apparent conflict may arise, as in the case of birth on a foreign ship in territorial waters, it seems clear that the child does not in principle acquire *ipso facto* the nationality of the littoral State."[146]

Luxembourg can be a useful case to be analyzed since it is one of the richest countries in the world. The country is also well-known for opening its doors to refugees searching for work.[147] National identity moves between three national languages effortlessly, indicating linguistic fluidity and accessibility to foreigners.[148] Luxembourg continues to be considered as one of the most exclusive national democracies in the world. However, "according to 2013 OECD data, after 10+ years in the country, LU citizenship had been granted to only around 20% of the foreign-born, including among the non-EU-born, who are generally most likely to naturalise and see the benefits."[149] Nonetheless, it should be understood that many people in Luxembourg are worried that a significant

[142] Crawford, J. (2012). p.511.
[143] *See* Vink, M. Comparing Citizenship Regimes. In Shachar, A., Bauböck, R., Bloemraad, I., & Vink, M. (2017). *The Oxford Handbook of Citizenship.* Oxford: Oxford University Press. pp. 221-244.
[144] *Ibid.*
[145] *Ibid.*
[146] Crawford, J. (2012). p.511.
[147] Turner, Z. (2015). Soon There Will Be No More Luxembourg. Retrieved 20 October 2019, from https://www.politico.eu/article/luxembourg-migration-crisis-eu-asylum-refugees/
[148] *Ibid.*
[149] Luxembourg | MIPEX 2015. (2019). Retrieved 21 October 2019, from http://www.mipex.eu/luxembourg

expansion of nationality could lead to radical changes due to demographic shifts. Limiting access to nationality could be a key strategy in slowing down and handling this crisis, whereas migration is still facilitated.

Historically, the choices of States on citizenship modes of attribution have depended mostly on mass movements. After World War I, the world faced an increase in the migratory wave due to the globalization process or to population displacements, and the following great number of war refugees.[150] A large number of people who lost or had been deprived of their citizenship – i.e. stateless persons – appeared.[151] In this sense, naturalization laws were only able to regulate small migratory masses. Moreover, by the end of the 1940s, massive denationalization was operated in many parts of the world. In 1948, the Palestinian conflict and the creation of Israel led to a diaspora mostly towards the Middle East States.[152] Similarly, another diaspora occurred up to the Chinese revolution of 1949.[153] In many States, ethnic minorities were expelled from the newly created nation States. For instance, a large part of refugees and displaced individuals came from the Soviet Union and those satellite States whose policies were largely influenced by Soviet policies.[154] An example was the expulsion of the Poles from the former inter-war Polish State to those areas that were later acquired from Germany.[155] Stateless people were often considered unwelcomed in almost every country, but they also could not remedy their illegal position. Their country had deprived them of their nationality or had forced them to leave, but at the same time they had not been naturalized in the host country. The consequence was the stateless status for which many individuals had become invisible to the law. For this purpose, *jus soli* was considered a possible solution.

To that issue, it must be added another wave of international migrations that involved those moving for economic and political reasons and constituting a new category of migrants.[156] Such kind of migration wave was generally viewed positively by sending

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[150] UN High Commissioner for Refugees. (1997). Statelessness and Citizenship. *The State of the World's Refugees. A Humanitarian Agenda*. Retrieved 30 October 2019, from https://www.unhcr.org/3eb7ba7d4.html. p.4.

[151] Naturalization | World Problems & Global Issues | The Encyclopedia of World Problems. (2019). Retrieved 13 November 2019, from http://encyclopedia.uia.org/en/problem/136245

[152] UN High Commissioner for Refugees. (1997). p.5.

[153] *Ibid.*

[154] Ginsburgs, G. (1957). The Soviet Union and the Problem of Refugees and Displaced Persons 1917-1956. *The American Journal Of International Law*, *51*(2), 325-361. p.325.

[155] UN High Commissioner for Refugees. (1997). p.5.

[156] *Ibid*.

and receiving countries.[157] This was mainly due to the economic benefits. For instance, in the Mediterranean region, those migratory waves contributed to alleviate pressures on the labor market.[158] For this reason, many States modified their citizenship laws to facilitate migrants to acquire their citizenship after birth, such as by marriage to a national or by naturalization.[159] Though, in many countries, despite the regularization, a large part of immigrants to be in an illegal position,[160] in a similar way to what occurred with the regularization made by José Luis Zapatero's Spanish government.[161]

4.1. Jus Soli

Jus soli is the principle for which a "person's nationality at birth is determined by the territory within which he or she was born."[162] In contrast to *jus sanguinis*, *jus soli* has usually been considered to be part of the English common law. In fact, it is predominant in the American continent, whereas rarely is it applied elsewhere. Since 2004, no European country grants citizenship via unconditional *jus soli*.[163]

An example of a country that adopted unrestricted jus soli is the United States of America. The Fourteenth Amendment reads that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside."[164] Such citizenship law has created many so-called accidental Americans, namely individuals born in the U.S. with U.S. citizenship but "lacking meaningful social connections to the United States in adulthood."[165] The United Kingdom Prime Minister Boris Johnson was born in New York City in 1964 to British

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[157] Van Mol, C., & de Valk, H. Migration and Immigrants in Europe: A Historical and Demographic Perspective. In Garcés-Mascareñas, B., & Penninx, R. (2016). *Integration Processes and Policies in Europe*. IMISCOE Research Series. Springer, Cham. p.32.
[158] *Ibid.*
[159] Naturalization | World Problems & Global Issues | The Encyclopedia of World Problems. (2019).
[160] *Ibid*.
[161] Following the terrorist attacks of March 2004, the legalization of around 600,000 immigrants was enabled by the Zapatero's government, dramatically increasing the number of workers registered in the social-security system. *See* Monras, J., Vázquez-Grenno, J., & Elias, F. (2017). *Understanding the Effects of Legalizing Undocumented Immigrants*. Bonn: IZA – Institute of Labor Economics.
[162] Jus soli Definizione significato | Dizionario inglese Collins. (2019). Retrieved 22 October 2019, from https://www.collinsdictionary.com/it/dizionario/inglese/jus-soli
[163] The last State granting citizenship via unconditional *jus soli* was the Republic of Ireland. In 2004, the 27th Amendment of the Irish Constitution was enacted changing Irish citizenship law.
[164] *See* Constitution of the United States of America, 1789, Amendment XIV, Section I, Clause I.
[165] Spiro, P. (2017). Citizenship Overreach. *Michigan Journal of International Law*, *38*(2). p.167.

parents, but he moved from the country when he was five. As a U.S. citizen, Johnson was subject to capital gains taxes regardless of the place of residence. He publicly stated in 2014 that the U.S. required him to pay taxes for selling of his townhouse in Islington, in the North of London. In 2014, it was announced that Johnson might owe more than $50,000 in U.S. tax on the profits from his home sale.[166] Many Americans reject birthright citizenship since they see it as unmerited or they think it encourages women to enter the country illegally to give birth. In 2010, Senator Lindsey Graham stated that "people come here to have babies. They come here to drop a child. It's called 'drop and leave'."[167]

Birthright citizenship is indeed considered one of the major causes of illegal immigration via cases of "maternity tourism" (especially from China). Newborn citizens may sponsor their parents' legal admission when the citizen is over 21. Thus, the woman who illegally enters the U.S. to have a baby must wait twenty years before her baby can sponsor her for legal admission. Nevertheless, illegally residing parents can join some benefits and be able to avoid the deportation process. The aim of the parents is not clear. As a matter of fact, in the U.S., the average cost for delivering a baby varies from a minimum $10,808 to $30,000 in the case in which care is provided before and after pregnancy.[168] This phenomenon is called "anchor babies,"[169] a term that conveys a negative acceptation. It might be pure self-interest due to the benefits deriving from U.S. citizenship. However, many scholars seem very questionable that this is the only decisive factor in many cases.

Nowadays, many countries, especially outside the American continent, have adopted a restricted *jus soli*. Such countries have restricted citizenship law by requiring at least one of the parents to be a citizen or legally permanent resident of the State. This is the case of European Union countries, which do not grant automatic and unconditional citizenship to children born into their territories to foreign citizens.[170] A common

[166] Wintour, P. (2017). Boris Johnson Among Record Number to Renounce American Citizenship in 2016. Retrieved 20 October 2019, from https://www.theguardian.com/politics/2017/feb/08/boris-johnson-renounces-us-citizenship-record-2016-uk-foreign-secretary

[167] The Times Editorial Board. (2014). Editorial: The 'Birthright Citizenship' Debate. Retrieved 20 October 2019, from https://www.latimes.com/nation/la-ed-birthright-citizenship-20141026-story.html

[168] Hoffower, H. (2018). How Much It Costs to Have A Baby in Every State, Whether You Have Health Insurance or Don't. Retrieved 20 October 2019, from https://www.businessinsider.com/how-much-does-it-cost-to-have-a-baby-2018-4?IR=T

[169] Flores, R. (2015). Donald Trump: "Anchor Babies" Aren't American Citizens. Retrieved 20 October 2019, from https://www.cbsnews.com/news/donald-trump-anchor-babies-arent-american-citizens/

[170] Mentzelopoulouand, M., & Dumbrava, C. (2018). Acquisition and Loss of Citizenship in EU Member States. *Members' Research Service*, *PE625.116*. pp.2-3.

condition is the parents' legal residency permit in the country for a consistent period of time. The parental residence required in the EU States varies from 3 – in Ireland and Portugal – to 10 years – in Belgium.[171] Two countries, namely Belgium and Portugal, apply conditional *jus soli*, i.e. requiring permanent residence status for parents, and conditional double *jus soli*, i.e. requiring at least one of the parents born in the country.[172] In Germany a different citizenship policy, for which individuals are entitled to receive German citizenship after residing and attending school in the country for a certain period of time.[173]

The benefits of *jus soli* are several. First of all, it provides children with security with the aim of guaranteeing a child national citizenship independently from the actions of their parents.[174] Moreover, children born with an automatically recognized citizenship could reduce separations in immigrant families, since it provides an umbrella of family rights. Contrarywise, citizen newborns could be placed in foster care due to their parents' illegal status.[175] Also, without the recognition of birthright citizenship, there are circumstances in which a child could have no legal citizenship at all. In many cases it could help prevent statelessness. The countries that have acceded to the 1961 *Convention on Statelessness Reduction* must give citizenship to individuals born in their territories if otherwise, they would become stateless.[176] Furthermore, the *American Convention on Human Rights* reads that "every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality."[177]

[171] Mentzelopoulouand, M., & Dumbrava, C. (2018). pp.2-3.
[172] *Ibid*.
[173] *Ibid*.
[174] The Times Editorial Board. (2014).
[175] Stanton, R. (2012). Undocumented Immigrants Losing Fight to Keep Children Who Are U.S. Citizens. Retrieved 12 November 2019, from http://www.annarbor.com/news/undocumented-immigrants-losing-the-fight-to-keep-their-us-citizen-children/
[176] United Nations General Assembly. (1961). *Convention on the Reduction of Statelessness*, UNTS No. 14458.
[177] Organization of American States. (1969). American Convention on Human Rights, "Pact of San Jose", Costa Rica.

4.2. Jus Sanguinis

Conversely, *jus sanguinis* indicates the principle that "a person's nationality at birth is the same as that of his or her natural parents."[178] The majority of States in Europe, Asia, Africa, and Oceania grant citizenship at birth not on the basis of the *jus soli* principle but based upon the principle of the "right of blood." In this case, citizenship is inherited by parents, and it does not depend on the birthplace. *Jus sanguinis* provisions are also problematic because in some cases establishing the descent could be difficult. For instance, this is the case of children born out of marriage or the case of citizenship transmitted along "artificial" bloodlines, such as for children born from medically assisted reproductive techniques that force States to redefine the notion of descent.[179]

Countries that adopt the *jus sanguinis* principle provide citizenship on preferential terms to individuals with which they have ethnic ties. With respect to European countries, it has been said that countries apply the *jus sanguinis* principle in their nationality law. For instance, according to Italian nationality, there is no limit on generations for transmitting citizenship via blood.[180] However, citizenship is still linked with the creation of the Italian State. In fact, the first citizens must have been alive on March 17th in 1861 when the State was officially formed. For this purpose, descendants of Italian ancestors could pass citizenship to the next generation only if this descendant was alive after the birth of the Italian State.

Two interesting examples are the cases of the State of Israel and the Republic of Armenia, whose nationality law takes into consideration individuals' ethnic ties due to historical reasons. With regard to Israel, the attribution of the citizenship relies on multiple principles. Citizenship can be attributed by return, by residence in Israel, by birth, by birth and residence in Israel, by naturalization, or by grant.[181] The approval of the 2018 Bill has contributed to establish Israel as the nation State of the Jewish people.[182]

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[178] Jus sanguinis Definizione significato | Dizionario inglese Collins. (2019). Retrieved 22 October 2019, from https://www.collinsdictionary.com/it/dizionario/inglese/jus-sanguinis

[179] Vink, M., & de Groot, G. (2010). Birthright Citizenship: Trends and Regulations in Europe. *EUDO Citizenship Observatory*. p.7.

[180] The Italian nationality law will be examined in the third chapter.

[181] Israel: Nationality Law, 5712-1952. (1953). Retrieved 3 November 2019: https://www.refworld.org/docid/3ae6b4ec20.html

[182] Weiss, M. (2019). Israel's Nationality Law: What, Exactly, Does It Say? Retrieved 3 November 2019, from http://www.israelnationalnews.com/News/News.aspx/249673

For this reason, the bill has been criticized as discriminatory towards the status of the Arabs in Israel.[183] Additionally, the so-called "law of return"[184] offers citizenship to any Jewish person who wants to immigrate.[185] The only exceptions consist of individuals who are suspected to be a threat to the security of the State. Moreover, Israeli citizenship law recognizes as citizens the first generation of descendants of Israeli emigrants living abroad.[186] On the contrary, for individuals who are not Jewish, citizenship can only be obtained via naturalization after five years of residency and after testing basic knowledge of Hebrew.[187] Regarding Armenia, Article 14 of the 1995 Constitution reads that individuals of Armenian origin can be recognized citizenship via a simplified procedure.[188] As a matter of fact, all the children born from Armenian parents living abroad are entitled to be citizens of the Republic of Armenia.[189] Conversely, if only one of the parents holds the Armenian citizenship and the other parent is not stateless or unknown, the child's citizenship depends on a written agreement of both parents.[190]

4.3. Jus Matrimonii

Many countries have a specific process for individuals married to citizens and requesting the recognition of nationality. This process can be typically found in the countries that are destinations for immigration. Such countries, such as the United Kingdom, the United States, or Canada, allow citizenship *jure matrimonii*, i.e. by marriage, only after a period of permanent residency of the foreign spouse. In other cases, for instance, in Switzerland or Italy, citizenship is attributed only after a period of marriage and after testing the language skills and the level of cultural integration.

The phenomenon of "sham marriages," i.e. cases in which a citizen marries a non-citizen without any existing genuine relationship for the purpose of evading immigration

[183] Weiss, M. (2019).
[184] Israeli nationality law is partially based on the 1950 Law of Return, which gives Jewish people the right to live in Israel and to acquire Israeli citizenship. The First Section of the Law of Return reads that "every Jew has the right to come to this country as an *oleh*," i.e. immigrant.
[185] Lawand, K. (1996). The Right to Return of Palestinians in International Law. *International Journal Of Refugee Law*, *8*(4), 532-568. pp.541-542.
[186] Israel: Nationality Law, 5712-1952. (1953). Retrieved 3 November 2019: https://www.refworld.org/docid/3ae6b4ec20.html
[187] *Ibid.*
[188] *Constitution of the Republic of Armenia*. (1995).
[189] *Ibid*.
[190] *Ibid*.

controls,[191] is very common. Under the EU law, marriages of convenience are connected to the right of free movement established under *Directive 2004/38/EC,* since people into sham marriages have the only purpose of obtaining both the right of free movement and the right of residence.[192] Thus, the countries affected by such issue often have certain regulations to detect those cases. In 2013 the British Home Office estimated that "between 4,000 and 10,000 of the marriages every year involving a non-EEA national were sham unions aimed at enhancing applicants' immigration status."[193] As a result, the normal practice for planned marriages or civil partnerships involving individuals with limited or no immigration status is referring to the department for further checking. However, even though they could be referred to as "sham marriages," the union continues to be valid if it complies with the legal requirements within the jurisdiction.[194] Still, in some countries, it constitutes a violation of the law. This phenomenon is very similar to the one previously mentioned of the "anchor babies" and the related chain migration.

4.4. By Naturalization: the Denizenship

Naturalization is defined as "the act of investing an alien with the status of a national in a given State; it may be accomplished as the result of voluntary application, special legislative direction, marriage to a citizen, or parental action"[195] by a formal act. Moreover, naturalization may also occur when "one's home territory is annexed by a foreign power, to which one transfers one's citizenship."[196] Even if international law imposes some restrictions on the State's maneuver, the conditions under which naturalization is granted depends on each State's domestic law. The conditions tend to vary, but residence for a certain period of time seems to be a fairly universal requisite[197].

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[191] Criminal Investigation: Sham Marriage. (2019). Retrieved 15 November 2019, from https://www.gov.uk/government/publications/criminal-investigation-sham-marriage

[192] McGill & Co Solicitors. (2015). Sham Marriages & The Immigration Act 2014. Retrieved 23 October 2019, from https://www.mcgillandco.co.uk/blog/immigration/sham-marriages-the-immigration-act-2014.html

[193] Taylor, D., & Perraudin, F. (2019). Couples Face 'Insulting' Checks in Sham Marriage Crackdown. Retrieved 23 October 2019, from https://www.theguardian.com/uk-news/2019/apr/14/couples-sham-marriage-crackdown-hostile-environment

[194] Criminal Investigation: Sham Marriage. (2019). Retrieved 20 October 2019, from https://www.gov.uk/government/publications/criminal-investigation-sham-marriage

[195] Naturalization | Definition & Facts. (2019). Retrieved 23 October 2019, from https://www.britannica.com/topic/naturalization

[196] *Ibid*.

[197] Crawford, J. (2012). p.512.

Moreover, naturalization is generally based on an "explicit voluntary act of the individual or of a person acting on his behalf."[198] The great majority of States usually require also the intention to reside permanently, a minimum age, good character, mental health, a sufficient knowledge of the language, a proven source of income, taking an oath of allegiance, etc. It could be done automatically by the State or, more probably, it could involve an application that must be approved by legal authorities. For instance, in Canada naturalization requires a permanent resident status and having lived in Canada for 1095 days in the five years preceding the application date.[199] Also, tax obligations on the income of three tax years are required and checked. In addition, it is necessary to speak proficiently English or French and to pass a citizenship test about national history and rights.

The already mentioned case of Luxembourg can be helpful in demonstrating the differences between immigration and the naturalization process. Luxembourg is a country open to economic migrants, who usually live in the country and enjoy property rights and legal due process. However, they lack the rights to political participation, which constitutes the basis for citizenship status. Still, immigrants usually maintain legal relationships by signing contracts with their employers and landlords. At the same time, also Luxembourg voters are aware of the disadvantages of putting an end to the mutually beneficial relations with immigrants.[200] Nevertheless, the use of the old slogan of "taxation without representation" or the term *disenfranchisement*, i.e. "withholding the right to vote or of the diminished social or political status of a marginalized group,"[201] is recurrent.

In this context, an important relevance is assumed by the term *denizenship*. This term indicates a sort of intermediate status between that of citizen and foreigner. Denizens enjoy civil and social rights in conditions of substantial equality with citizens, whereas they are generally excluded from political rights.[202] This status is completed through the granting of a permanent residence permit, which eliminates the periodical request of its

[198] Crawford, J. (2012). p.512.
[199] Young, O. (2018). 5 of the Easiest Countries to Become a Citizen. Retrieved 23 October 2019, from https://www.businessinsider.com/5-of-the-easiest-countries-to-become-a-citizen-2018-9?IR=T
[200] Luxembourg | MIPEX 2015. (2019).
[201] Definition of DISENFRANCHISE. (2019). Retrieved 23 October 2019, from https://www.merriam-webster.com/dictionary/disenfranchise
[202] Denizenship in "Lessico del XXI Secolo". (2019). Retrieved 21 October 2019, from http://www.treccani.it/enciclopedia/denizenship_%28Lessico-del-XXI-Secolo%29/

renewal.[203] The denizenship means extending the membership to a country to long-time resident migrants, by recognizing their contribution to society and economy.[204] Nevertheless, this process can lead to widening the gap between the holding of nationality and the enjoyment of privileges connected to citizenship. For instance, in the U.S.A. the phenomenon of denizenship could be well represented by the relative presence of the "dreamers," individuals who were brought in the United States unlawfully before their 16th birthday. The presence of the dreamers on the U.S. territory was the subject of the Development, Relief, and Education for Alien Minors (DREAM) Act and the Deferred Action for Childhood Arrivals (DACA) policy. The DREAM Act aimed to "provide children of undocumented immigrants who meet certain eligibility and performance requirements the opportunity to attend college and eventually gain permanent residency and citizenship in the United States."[205] Conversely to the DREAM Act, the DACA policy does not provide a procedure to acquire citizenship for recipients. Both the Act and the policy have been debated without meeting a definitive solution to settle the legal position of those individuals, who are currently living in a limbo as denizens.

[203] Denizenship in "Lessico del XXI Secolo". (2019).
[204] *Ibid*.
[205] Lee, Y. (2006). To Dream or Not to Dream: A Cost-Benefit Analysis of the Development, Relief, and Education for AlienMinors (Dream) Act. *Cornell Journal of Law and Public Policy*, *16*(1), 231-261. p.234.

CHAPTER II

The Cross-Border Dimension of the Concept of Citizenship

1. The Principle of Fair Cooperation Within Case Laws and the Application of the Genuine Link

Since the access to nationality is a fundamental prerequisite for enjoying rights, it is necessary to determine under which legal rules the acquisition of nationality occurs.[1] The issue of acceding to citizenship status is no longer a matter that concerns only the domestic law. On the contrary, a sense of responsibility binding international actors often emerges. In this paragraph, it will be analyzed the distinction between dominant and secondary nationality by examining the connection between nationality and some secondary features, such as residence and domicile criteria. The *Nottebohm Case* will be used as a watershed to illustrate the existence of differences in the legislative framework within the international community. Lastly, it will be introduced the notion of economic citizenship connected to the general principle of fair cooperation.

In the first chapter, citizenship has been defined as a complex concept combining three different components: the acquisition of a legal status, the enjoyment of rights and obligations, and the allegiance and membership to a State. Holding a nationality means that individuals are recognized by States as part of their national population, constituting their territorial sovereignty. As a result, nationality law is considered part of domestic legislation. However, this prescription does not imply that the international community cannot intervene in nationality questions applying criteria of international law.[2] As a matter of fact, sovereignty of States cannot be limited within an international community dealing with other sovereign State. For this purpose, the idea of the existence of a dominant and secondary nationality has been accepted for a long time. This is the case of the 1963 regional treaty of the Council of Europe concerning the reduction of cases of multiple nationality.[3]

[1] Mentzelopoulouand, M., & Dumbrava, C. (2018). p.1.
[2] Crawford, J. (2012). p.510.
[3] *See* Council of Europe. (1963). *Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality*, ETS No. 043. Chapter II, Art. 5 and 6.

The 19th and early 20th centuries offered a number of international claims relating nationality issues. Such claims often emerged based on the conventional basis of the right of diplomatic protection, like during the 1939 *Panevezys-Saldutiskis Railway Case* before the PCIJ.[4] In the practice, the central issue of the claims concerned the process and the manner of conferral of the nationality status. It was important to delimitate the boundaries of recognition of nationality by other States. Within the international legal framework, nationality is not a matter to be confined to the reserved domain or the realm of State relations.[5] The 1955 *Nottebohm Case* has served as a watershed moment in the manner of conceiving nationality from the international legal perspective.[6]

1.1. Pre-Nottebohm: The Link and Dominant Nationality

A significant number of claims were related to the exercise of the right of a tribunal to determine the extent of domestic jurisdiction. Often, they had to consider the residence or domicile requirement, particularly in the law on naturalization. An example was the *Flutie Cases* before the American-Venezuelan Mixed Claims Commission constituted between the U.S. and Venezuela under the Protocol of February 17th, 1903.[7] Mr. Flutie and his wife Ms. Flutie claimed that the nationality of the wife depended on that of her husband. As U.S. citizens, they claimed against Venezuela for their losses of property and ill-treatment that they experienced during the Venezuelan revolution in 1900-1901. The issue was to ascertain whether Flutie was a U.S. citizen since Article 1 of the Protocol conferred jurisdiction over claims by U.S. citizens against Venezuela that have not been settled by diplomatic agreements.[8] Ms. Flutie, who was a native of Syria, came to the U.S. in 1892 and was naturalized as U.S. citizen in 1900. However, Section 2170 of the Revised Statutes of the U.S. provides that an alien can become U.S. citizen only after five years of continue residency. Since Ms. Flutie had not complied with the provision, the naturalization was improperly granted. As a direct consequence, the

[4] *Panevezys-Saldutiskis Railway (Estonia v. Lithuania)*, Judgment of February 28th, 1939, P.C.I.J. (ser. A/B) No. 76.
[5] Crawford, J. (2012). p.510.
[6] *Liechtenstein v. Guatemala, Nottebohm Case (second phase)*, Judgment of April 6th, 1955, [1955] ICJ 1, 1955.
[7] *Flutie Cases*, February 17th, 1903, Reports of International Arbitral Awards, Volume IX, 148-155.
[8] *Ibid.*

tribunal declared Ms. Fluties' connection with the U.S. inadequate on the grounds of domestic law.[9]

Similarly, the issue of the bond between citizenship and domicile in general was debated in some domestic courts. In some cases, domestic courts favored nationality, whereas in others domicile.[10] An example is the *Laurent Case,* a claim concerning British-born subjects resident in Mexico for twenty years. During the 1847 Mexican War, the U.S. entered Mexico and confiscated money to residents. The claimants, as British subjects, claimed compensation. The court held that, since the Laurent family had expatriated to Mexico with the intention to settle, the claim was to be rejected. The justification was that the law of war recognizes certain cases in which an individual may acquire the character of the country of residency.[11] However, in the *Marcos Schraber v. Mexico Case*, it has been argued against the decision held in the *Laurent Case*. As a matter of fact, domicile and citizenship were not considered strictly interconnected, as domicile could exclude the citizenship status. Domicile could determine nationality character only in case of practical purposes. For instance, in the *Laurent Case*, the problem did not involve British subjects domiciled in the U.S., but it concerned British subjects domiciled in Mexico.[12]

In some cases, the decisions of international tribunals are necessary to legislate on the concept of nationality, whereas in other cases tribunals could apply the domestic legislation on nationality and check to what extent the residence requirement determines the applicable law. As a result, there have been two important cases in which the principle of "effective nationality" was dealt in two opposite manners by international tribunals. The first was the *Canevaro Case* between Italy and Peru on behalf of Napoleon Carlos and Rafael Canevaro. The issue was the request of payment of a sum by the Government of Peru according the provisions of the 1880 *Law of Internal Revenue*. Messrs. Canevaro were both Italian subjects, but the Government of Peru contested the Italian nationality of Rafael Canevaro. In 1912, the arbitrators claimed that he was a Peruvian national by birth according to Article 34 of the Constitution *jure sanguinis.* The reason was that he had stood for a seat in the Senate, privilege usually reserved only to Peruvian nationals,

[9] Donner, R. (1994). p.35.
[10] *See* Nadelmann, K. (1969). Mancini's Nationality Rule and Non-Unified Legal Systems: Nationality versus Domicile. *The American Journal Of Comparative Law, 17*(3), 418. doi: 10.2307/839220
[11] Donner, R. (1994). p.37.
[12] *Ibid.*

and he had also accepted the functions of Consul-General of the Low Countries. A new element was then introduced: in case of dual nationality since birth, the dominant nationality could be determined by courts by examining the individual's intentions and actions.[13] The second was the *Salem Case*, in which the Arbitral Tribunal rejected the *Canevaro* decision. In that case, the U.S. acted against Egypt on behalf of George J. Salem. Mr. Salem was born in Egypt and naturalized in the U.S. The Government requested an indemnity, but it was rejected since the principle of the so-called "effective nationality" was not sufficiently established in international law. Although the principle was applied in the *Canevaro Case*, such decision had to remain isolated. Indeed, an argument was that Salem's intention was to settle as an American citizen in the U.S. However, the court did not consider as fraudulent Salem's actions. The same concept of dominant or effective nationality was also applied in cases of dual citizenship, as it will be examined in the next paragraph.

With the aim of codifying accepted rules in international law concerning matters that had still not been addressed, a conference was held in The Hague in 1930, i.e. the League of Nations Codification Conference. One of the main achievements was the conclusion of the already mentioned 1930 *Convention on Certain Questions Relating to the Conflict of Nationality Law*.[14] During the Preparatory Committee of the Hague Codification Conference the German government declared that a State had not the power to confer its nationality on another States' inhabitants or on all foreigners entering its territory.[15] In the event that a State confers its nationality on other States' nationals without their consent, States have the possibility not to recognize such naturalization if the person has no particular connecting factors, such as origin, domicile, or birth.[16] Generally, States' legislations refer to the existence of a bond based on residence or domicile, immigration with an intent of permanent settlement, and membership to certain ethnic groups. Upon the principle of effective link, international law has rested for a long time, especially when it had to deal with situations in which a State had no nationality legislation or jurisdiction, or in some cases in which certain national groups fell outside

[13] Donner, R. (1994). p.40.
[14] Assembly of the League of Nations. (1930). *Convention on Certain Questions Relating to the Conflict of Nationality Law,* League of Nations Treaty Series No. 4137.
[15] League of Nations. (1929). *Bases for Discussion Drawn up for the Conference by the Preparatory Committee,* 13. Conference for the Codification of International Law, 1.
[16] *Ibid.*

the scope of such legislation.[17] In this respect, the approach adopted by the International Court of Justice in the *Nottebohm Case* seemed to be perfectly logical.

1.2. Post-Nottebohm: The Fair Cooperation

It is on the existence of a special bond between nationals and the State that the decision of *Nottebohm Case* was based. As a matter of fact, the decision of the *Nottebohm Case* reflects the fundamental idea that nationality is a vital concept that has implications for the international community, especially for matters concerning State responsibility or diplomatic protection.[18] The general rule for nationality provides for domestic law to determine whether an individual must be grant the citizenship status. However, since the *Nottebohm Case*, the doctrine of the "genuine link" has been recognized and reflected by decisions of national courts, commonly by linking it to cases of dual nationality, but also to other applications.

The *Nottebohm Case (Liechtenstein v. Guatemala)* is often erroneously cited as a case related to multiple nationality or, more generally, conferment of nationality generally. As a matter of fact, the International Court of Justice applied the principle of the effective or genuine link for nationality, generally applied in cases involving multiple nationality. Mr. Friedrich Nottebohm was a German national by birth who had lived in Guatemala for 34 years. Before the outbreak of World War II, he took a trip in Europe and acquired the nationality of the Principality of Liechtenstein by naturalization in 1939. Such nationality was acquired on the basis of the payment of a substantial fee and an annual tax, and after swearing Liechtenstein oath of allegiance. After acquiring Liechtenstein nationality, he had also lost his German nationality. When Nottebohm returned to Guatemala holding a Liechtenstein passport, he was considered a German national or "enemy alien" due to the war, his property was seized, and he was interned in the U.S from 1943 to 1946.[19] Liechtenstein was neutral during the war. Nevertheless, this happened due to a previous war agreement between the Government of the U.S. and the Government of Guatemala.

[17] Crawford, J. (2012). pp.513-514.
[18] Dixon, M. (2013). *Textbook on International Law* (7th ed.). Oxford: Oxford University Press. p.269.
[19] *Liechtenstein v. Guatemala, Nottebohm Case (second phase)*, Judgment of April 6th, 1955, [1955] ICJ 1, 1955.

The claim against Guatemala concerned the purportedly illegal confiscation of Nottebohm's property and how he had been treated.[20] The ICJ held that Guatemala might not recognize Nottebohm's Liechtenstein nationality and, hence, might not recognize Liechtenstein's claim on behalf of Nottebohm.[21] The justification was that it was lacking a genuine or effective link apart from Nottebohm's naturalization.[22] The Court held that "nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties."[23] The ICJ did not rule that Liechtenstein was not entitled to protect Nottebohm generally, but only internationally, and did not enquiry the validity of Nottebohm's naturalization under international law. For that reasons, the *Nottebohm Case* cannot be considered as a case of dual nationality. Conversely, the matter was whether a State, Guatemala, had the right not to recognize another State's attribution of nationality. That would have implied the exclusion of the right of diplomatic protection.[24] Therefore, the Court dismissed the case based on the supposed absence of any diplomatic negotiation, and hence on the fact that Nottebohm did not exhausted local remedies in Guatemala.[25]

The well-known reference of the judgment constitutes a theory that is *dicta*. However, in a legal system that is not formally based on the principles of the precedent or the *stare decisis*, there is no common law distinction between what a dictum is and holding. Nevertheless, the *Nottebohm Case* did not provide any evidence that nationality that cannot be opposed to other States of nationality under international law is not to be considered a proper nationality. Such holding has also been reinforced by current State practice dealing with cases of multiple nationality. The main issue was the opposability vis-à-vis other States, and not the issue of attribution, which is irrelevant in terms of opposability at the international level.[26]

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[20] Dixon, M. (2013). p.269.
[21] *Liechtenstein v. Guatemala, Nottebohm Case (second phase),* Judgment of April 6th, 1955, [1955] ICJ 1, 1955.
[22] Boll, A. M. (2007). p.110.
[23] *Liechtenstein v. Guatemala, Nottebohm Case (second phase),* Judgment of April 6th, 1955, [1955] ICJ 1, 1955.
[24] *Ibid*. p.111.
[25] Sloane, R. D. (2008). Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality. *Harvard International Law Journal*, *50*(1, Winter 2009). p.13.
[26] Boll, A. M. (2007). p.297.

Strictly connected to the issue of international opposability of nationality is the issue of economic citizenship, also known as citizenship by investment, which consists in conceding citizenship through an immigrant investor program. Such programs are specifically designed with the aim of attracting foreign capital by providing the right of residence and nationality in return. For that reason, they are also known as "citizenship-by-investment programs" or "golden visa".[27] Each country has different procedures and programs, and time for completing the procedure also depends on the time that applicants need to complete the documentation. Such time can vary: Cyprus requires only 90 days, whereas Malta and Antigua and Barbuda require from three to six months. For instance, this is the case of Malta nationality law, which is relatively young since it was established after Malta's independence from the U.K. in 1964 and amended in 1989, 2000, and 2007. In 2014, the Government of Malta launched a program[28] that allows individual to obtain Maltese citizenship without residing in the country by making financial contributions to the National Development and Social Fund, buying or renting properties, or investing in Maltese companies.[29] Nevertheless, the European Commission raised a number of concerns since the change in Maltese citizenship legislation would affect directly EU population and policies. Any change in domestic nationality law should be conducted in a spirit of "genuine" or "fair cooperation."[30] Citizenship should be granted on the basis of the existence of a genuine link between nationals and Malta. As a result of negotiations, the Maltese government added the requirements of twelve-month residency for obtaining citizenship through naturalization.[31]

The principle of fair cooperation has been explicated under different denominations, such as "the duty of genuine cooperation,"[32] "the obligation to cooperate

[27] 23 Countries Where Money Can Buy You a Second Passport or 'Elite Residency'. (2019). Retrieved 8 November 2019, from https://www.businessinsider.com/countries-where-you-can-buy-citizenship-residency-or-passport-2018-9?IR=T

[28] Government of Malta. (2014). *Maltese Citizenship Act*, Legal Notice 47 of 2014, Individual Investor Programme of the Republic of Malta Regulations. Chap. 188, Art. 4.

[29] Malta Citizenship by Investment 2019 - Licensed Agent. (2019). Retrieved 21 November 2019, from https://immigrantinvest.com/en/malta-citizenship-by-investment/

[30] *See* Van Elsuwege, P. (2019). The Duty of Sincere Cooperation and Its Implications for Autonomous Member State Action in the Field of External Relations. *Between Compliance And Particularism*, 283-298. doi: 10.1007/978-3-030-05782-4_13

[31] Buttigieg, E., & DeBono, D. (2015). Country Report on Citizenship Law: Malta. *EUDO Citizenship Observatory, Robert Schuman Centre For Advanced Studies*. doi: 10.13140/2.1.4088.9125. p.9.

[32] *Commission of the European Communities v. Federal Republic of Germany*, Judgment of July 14th, 2005, C-433/03, European Court of Justice, EC Reports, 2005, I-06985. Par. 64.

in good faith,"[33] and "the principle of the duty to cooperate in good faith."[34] This duty of cooperation has gradually evolved to be the key mechanism on which the EU's external representation is based. And hence, *mutatis mutandis*, the principle of fair cooperation can determine the scope for the actions of each Member State in foreign policy.[35] As a matter of fact, the *Nottebohm Case* and Maltese nationality law have demonstrated the reasons for which States are no longer able to determine who are its nationals only on the basis of its domestic laws. For this purpose, the international community should provide a coherent set of binding international norms concerning the regulation of the attribution and withdrawal of nationality, which should comply also with human rights.[36]

Following international decisions have expanded the theory of the genuine link deriving from the *Nottebohm Case*. However, despite a Nottebohm-following majority supporting the genuine link theory, the ICJ practice had little to do with genuine links. As a matter of fact, the theory of the genuine link theory "fails to capture both the social context and political dynamics that animated the opinion, and it disregards the ICJ's self-conscious effort to narrowly circumscribe the scope of its holding."[37] Although the *Nottebohm Case* has been used as a departure point for over six decades, the international community is facing new challenges and is entering a field of global migration law, which is putting under an increasing pressure the Nottebohm system and which should incentivize a change within the international framework.

2. The Cases of Multiple Citizenship

The debates around the notion of multiple citizenship grew with some fundamental changes in the structure of society, such as the advent of the nation-State and

[33] *European Commission v. Kingdom of Sweden*, Judgment of April 20th, 2010, C-246/07, European Court of Justice, EC Reports, 2010, I-03317. Par. 77.
[34] *Segi, Araitz Zubimendi Izaga and Aritza Galarraga v. Council of the European Union*, Judgment of February 27th, 2007, C-355/04, European Court of Justice, EC Reports, 2007, I-01657. Par. 52.
[35] Such mechanism will be analyzed in more details in the last paragraph of the chapter. *See also* Van Elsuwege, P. (2019). p.283.
[36] Macklin, A. (2017). Is It Time to Retire Nottebohm? *American Journal of International Law Unbound*, 111, 492-497.
[37] Sloane, R. D. (2008).

the consequent development of international law. As described in the first paragraph of the chapter, multiple citizenships, i.e. the status of being recognized more than one citizenship under the law of different States, has ancient origins. For instance, the debate raises the question of the legitimacy of Saint Paul of Tarsus's double citizenship being a citizen of both Tarsus and Rome. In the narrative, not only did Paul twice claim that he was a Roman citizen, but he once claimed that he was a Jew from Tarsus of Cilicia, a citizen of "no mean city."[38] In this paragraph, it will be analyzed the evolution of the discussion concerning multiple citizenships on the international law level. First, it will be studied Article 15 of the 1948 *Universal Declaration of Human Rights* and the ambiguous definition of the right to nationality. Thus, the development from the tendency of eliminating such a legal phenomenon to progressive recognition will be examined in more detail.

The discussion about the recognition of multiple nationalities cannot be isolated from the interpretations of nationality itself and its implications. As a matter of fact, such discussion represents the central issues of States' power over their citizens and in their reciprocal interactions with each other. International relations between States can be assumed to be in continue evolution so that the treatment of multiple nationalities by States will also continue to change. Nevertheless, the different degrees of recognition for multiple nationalities should be analyzed and it is important that some assumptions would be provided depending on the globalization process and its consequences.[39]

The emergence of the nation-State led to the birth of a territorial link between individual and sovereign State. The allegiance of an individual to the State was one of the consequences of such territorial connection. Though, as analyzed in the first paragraph, nowadays, the notion of nationality has changed. Still, the leftovers of the obligations deriving from personal allegiance to the State persist in the absence of specific legal provisions.[40]

Nevertheless, it is necessary to determine when such issues have begun to be discussed on the international law level. Historically, multi-national attitudes and traditions seem to fall into two main categories, those that consider the recognition of another nationality as irrelevant to the relationship between the individual and the

[38] Adams, S. A. (2009). p.321
[39] Boll, A. M. (2007). pp.173-174.
[40] *Ibid*. p.174.

government, and those that regard it as important.[41] A change in the latter perception appears to have taken place in the late 19th and early 20th century in the context of criticism of multiple nationalities and their consequences. Thus, such efforts to eliminate them have become a problem of international law. According to Alfred M. Boll, considering multiple nationality as irrelevant to the individual's relationship to the State should consist of a denial of its existence or the idea that multiple nationality is a legal impossibility under national law. Yet, such assertion demonstrates that there is still a certain level of recognition of foreign nationality, which has some effects on a country's national laws. The State denying the existence of an individual's double citizenship merely insists that it will not recognize any relations between the foreign State and the individual it considers its national. However, such approach is an implicit recognition of multiple nationalities.[42] Another case is the State regarding multiple nationality as relevant to its relations to natural persons and to other States. Tolerant or approving practices occur when the State practice facilitates the lives of the individuals affected. Conversely, such practice can be an intolerant or disapproving attitude if the State considers it necessary to "eliminate the status itself by the unilateral withdrawal of its own nationality."[43] For instance, the tolerant State is the one that does not withdraw its nationality in the case of dual nationality, but it instead deals with the consequences. On the contrary, in the case of intolerant States that do not grant consular or diplomatic protection to their nationals in foreign countries in which they hold dual citizenship, they also do not assist their dual citizens.

In Article 15 of the 1948 *Universal Declaration of Human Rights* it is clearly reported: "everyone has the right to a nationality."[44] The article generally refers to the right to hold "a nationality," which has raised some questions about the possibility that the Universal Declaration could refer to only one nationality or whether it is possible to be granted more than one. Such theory would be supported by the previous 1930 *Convention on Certain Questions Relating to the Conflict of Nationality Law*, in which the Preamble reads that "every person should have one nationality and one nationality

[41] Boll, A. M. (2007). p.179.
[42] *Ibid*. p.180.
[43] *Ibid.*
[44] United Nations General Assembly. (1948). *Universal Declaration of Human Rights*, Resolution 217 A. Art. 15.

only,"[45] and Article 5 reads that "within a third State, a person having more than one nationality shall be treated as if he had only one."[46] From the sociological perspective, such legal assertions in the treaties were based on the doctrine of the exclusiveness of territorial sovereignty, which consequently requires the idea of a single nationality.[47] However, this interpretation is not part of the current international law of nationality.

With the aim of regulating the status of individuals holding dual citizenship, many bilateral treaties have been concluded. According to the scholar Ruth Donner, such treaties all follow a standardized pattern: they were all concluded before the dissolution of the Soviet Union in December 1991.[48] They were also concluded with the main purpose of the elimination of dual nationality and to prevent the creation of such cases in the future. In such cases, individuals should decide which citizenship they intend to maintain, and hence they will be considered citizens of the only Contracting Party whose citizenship has been voluntarily chosen via a formal declaration. In some cases, the right of option should be exercised within a certain time limit. For instance, since the entry into force of a convention, there could be a one-year time limit for the person to decide to maintain the citizenship of the State in which he was permanently resident, or, if resident in a third State, of that Contracting Party in whose territory he was permanently resident before his departure abroad. Those conventions did not contain any provision conferring jurisdiction to an international tribunal for dispute settlement. Yet, some established that disputes should be settled through the diplomatic channel.

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[45] Assembly of the League of Nations. (1930). *Convention on Certain Questions Relating to the Conflict of Nationality Law*, League of Nations Treaty Series No. 4137.

[46] *Ibid.*

[47] Donner, R. (1994). *The Regulation of Nationality in International Law* (2nd ed.). Irvington-on-Hudson, New York: Transnational Publishers. p.201.

[48] As a matter of fact, in the Article 8 of the Soviet Law of December 1978 dual citizenship is expressly prohibited. *See also* "the Convention between the U.S.S.R. and the Federal People's Republic of Yugoslavia, signed 1956, 259 *U.N.T.S.* 155; the Convention between the U.S.S.R. and the Democratic People's Republic of Korea, signed in 1957, 292 *U.N. T.S.* 107; the Convention between the U.S.S.R. and Bulgaria, signed in 1957, 302 *U.N.T.S.* 3; the Convention between the U.S.S.R. and the Hungarian People's Republic, signed in 1957, 318 *U.N.T.S.* 35; the Convention between Poland and the U.S.S.R., signed in 1958, 319 *U.N.T.S.* 277; the Convention between Czechoslovakia and the U.S.S.R., signed in 1957, 320 *U.N.T.S.* 111; the Convention between the U.S.S.R. and the Mongolian People's Republic, signed in 1958, 322 *U.N.T.S.* 201; the Convention between Romania and Bulgaria, signed in 1959, 387 *U.N.T.S.* 61; the Convention between Czechoslovakia and Hungary, signed in 1960, 397 *U.N.T.S.* 277; the Convention between the U.S.S.R. and Albania, signed in 1957,307 *U.N.T.S.* 251; the Convention between Poland and Hungary, signed in 1961, 437 *U.N. T.S.* 13, and that between Hungary and Bulgaria, 477 *U.N.T.S.* 321." In Donner, R. (1994). p.202.

Not all treaties concerning the regulation of dual nationality provide provisions for the elimination of the phenomenon. As a matter of fact, some treaties provide for the principle of dominant nationality. This is the case of the regulation of the military service served by dual nationals, as the 1963 regional treaty of the Council of Europe reads.[49] The *Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality* was ratified by twelve member States. Yet, a Protocol Amending the Convention and an Additional Protocol have been ratified by respectively eight and four members since November 24, 1977. A Second Protocol amended the Convention and has been signed by only two States since February 2, 1993, namely Italy and the Netherlands since France denounced in 2008. The Second Protocol constitutes an important in the policies concerning dual nationality cases. The Protocol modifies the Convention in order to allow dual national status in two specific conditions: in order to pursue the unity of nationality within the same family, or the integration of migrant workers, especially for second-generation migrants. In fact, the Preamble of the Convention reads: "Considering that cases of multiple nationality are liable to cause difficulties and that joint action to reduce as far as possible the number of cases of multiple nationality, as between member States, corresponds to the aims of the Council of Europe."[50] Conversely, the Preamble of the Second Protocol states: "Considering that conservation of the nationality of origin is an important factor in achieving these objectives..."[51] During two meetings in November 1987 and March 1988, a European Committee on Legal Co-operation (CDCJ) preceded the drafting of the Second Protocol and continued its work after presenting this draft resulting in an Explanatory Memorandum. The problematic issues concerning dual nationality involved spouses of mixed marriages holding different European nationalities. The conclusion of the Committee was considering such cases as an exception to the "one nationality only" principle, affirming "that renunciating the previous nationality will be the only element

[49] See Council of Europe. (1963). Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, ETS No. 043. Chapter II, Art. 5 and 6.
[50] *Ibid.*
[51] Council of Europe. (1963). Second Protocol amending Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, ETS No. 043.

that will be taken out of the prerequisites which a country sets out for permitting the 'naturalization' or accepting the 'declaration' of a foreign person."[52]

Furthermore, many treaties even encourage dual nationality. An example consists of bilateral treaties between Spain and some States of Latin America, in which States applied the principle of *semel civis, semper civis*, with the aim to increase the number of their nationals.[53] Such treaties present some provision for which nationals of one contracting party resident in the territory of the other party may acquire its citizenship and retain the original citizenship. In the case in which an individual holds the nationality of both contracting parties and resides in a third State's territory, the individual remains subject to the laws of one of the two contracting parties in which they had the last residence. Facilitating the possession of dual Spanish and Latin American nationalities is a specific policy that is also expressed in the Spanish Constitution. The Constitution states that "the State may negotiate dual nationality treaties with Latin-American countries or with those which have had, or which have special links with Spain. In these countries, Spaniards may become naturalised without losing their nationality of origin, even if said countries do not recognise a reciprocal right to their own citizens."[54] As a result, the Spanish government has the capacity to negotiate bilateral or multilateral treaties relating dual nationality with the Latin America States or with those with which it has or had a special connection. For instance, almost identical treaties of dual nationality were concluded by Spain with Bolivia, Guatemala, and Nicaragua in 1961, with Costa Rica and Ecuador in 1964, with Honduras in 1966, with the Dominican Republic in 1968, with Argentina in 1969, and with Colombia in 1979. They all established that the two concurrent nationalities were not of equal validity, but they coexisted as a "full" nationality and a secondary "dormant" nationality.[55] In such treaties, the dominant nationality was that of the country of domicile. In case of returning to the country of origin with the intent of permanent residence, the nationality of origin would be the new dominant nationality. It was with the introduction of the status of equality in the 1971 treaty between Brazil and Portugal that there was a legal innovation. In that case, the

[52] Council of Europe Parliamentary Assembly, 40th Ordinary Session. (1988). *Explanatory Memorandum: document 5901*, Paragraph 9.
[53] Boll, A. M. (2007). p.191.
[54] *See* Part I, Chapter I, Article 11(3) of the Spanish Constitution, 1978.
[55] Donner, R. (1994). p.204.

national of one of the two countries could enter the other country with the aim to establish their residence and exercise civil and political rights also in the second country.

In 1992, at a regional level, the well-known Micheletti Judgment arose in the ECJ a practical issue concerning double nationality.[56] The case involved an individual holding dual Argentinean and Italian nationality, who had asked for a permanent residence card in Spain as a citizen in the EEC. In such cases of dual nationality, Spanish law gives priority to the nationality of the last residence, which in the *Micheletti Case* was the Argentinian citizenship. Thus, the question was referred by the *Tribunal Superior de Justicia* of Cantabria for the interpretation of some provisions of the EEC Treaty, which was later absorbed in the EC and EU framework legislation. The final Judgment of the ECJ reads that "under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality. However, it is not permissible for the legislation of a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty."[57]

In 2009, during the *Hadadi Case*, the ECJ confronted conflict of law issues in family law between the EU Member States. Mr. Hadadi and Mrs. Mesko in Hadadi had both French and Hungarian nationality, but they emigrated soon after their marriage to France. In 2002, Mr. Hadadi obtained a divorce Judgment in Hungary, while Mrs. Mesko tried to continue the proceedings started in France. The Paris Court of Appeal confirmed the admissibility of the proceedings started by Mrs. Mesko, so Mr. Hadadi's proceeding was inadmissible in France. He appealed against the decision before the French *Cour de Cassation*, which asked the ECJ to interpret Article 3.1 (b) of Brussels II Regulation. The ECJ held that the two nationalities of the spouses were equivalent for the purpose of jurisdiction.[58] In that sense, the Member States can attribute nationality without the

[56] De Vido, S. (2012). The Relevance of Double Nationality to Conflict-of-Laws Issues Relating to Divorce and Legal Separation in Europe. *Cuadernos De Derecho Transnacional*, *4*(1), 222-232. p.224.
[57] *Mario Vicente Micheletti and Others v. Delegación del Gobierno en Cantabria,* Judgment of July 7th, 1992, C-369/90, European Court of Justice, EC Reports, 1992, I-04239.
[58] *Laszlo Hadadi (Hadady) v. Csilla Marta Mesko, épouse Hadadi (Hadady),* Judgment of July 16th, 2009, C-168/08, European Court of Justice, EC Reports, 2009, I-06871.

European Union interfering since acquiring the nationality of an EU Member State cannot prescind from acquiring some rights and guarantees derived from European Union law.[59]

In 2000, when considering the application of the principle of effective link related to multiple nationals, the International Law Commission remarked that "dual nationality conferred a number of advantages on those who held two nationalities and the question was raised why they should not suffer disadvantages as well."[60] Over the last 60 years, the legislation concerning dual nationality has evolved from the reduction of cases of multiple citizenship to the regulation of an unavoidable legal phenomenon. It is impossible to suppress dual nationality and the naturalization processes since it would exclude a great number of territorial residents and it would deprive them of the whole range of citizenship rights.[61] For this purpose, not only is acceptance of dual nationality consistent but also demanded.

3. The Loss of Citizenship and the Statelessness Status

In the same manner in which nationality can be recognized and attributed to an individual according to the domestic law of a State, the State has the discretionary right to withdraw its nationality. By doing so, in certain limited cases, the individual who has been deprived of their nationality can become stateless, namely an individual who has no nationality. Such cases constitute a problematic issue in individuals' interactions, both in the national and in the international sphere. In this paragraph, the differences between voluntary and involuntary loss of nationality will be examined and a particular link to cases of expulsion or deportation will be also made. Hence, the issue of statelessness will be explained by analyzing the main causes, among which large scale deportations. Finally, reference will be made to the international legal instruments existing in the contemporary international community.

[59] De Vido, S. (2012). p.226.
[60] United Nations General Assembly, International Law Commission. (2000). *Report of the International Law Commission to the General Assembly*, Supplement no. 10, A/55/10, 2000, United Nations General Assembly Official Records. p.167.
[61] Spiro, P. (1997). Dual Nationality and The Meaning of Citizenship. *Emory Law Journal*, *46*(4), 1411-1485. p.1416.

Along with the right of attribution of nationality, the right of a State to withdraw its nationality from its nationals is part of the discretionary power of States within the context of nationality matters. In the international relations framework, however, some disagreements have arisen, and States have found themselves to face the controversies over nationality conflicts. A distinction must be made between the two cases related to the loss of nationality. In the first place, it is necessary to examine the term used to refer to such phenomenon. The loss of citizenship is commonly referred to as "deprivation of nationality," "forfeiture of nationality," "denationalization" or "denaturalization."[62] The common background of the listed terms constitutes in the fact that nationality is withdrawn "involuntarily," namely without the individual requesting it or giving their consent. Such matter, i.e. whether involuntary deprivation of nationality can be considered legitimate, is a debated issue in public international law. Nevertheless, a more common case is the one of renunciation or relinquishment of nationality. Under such circumstances, there is the individuals' voluntary act of renounce to a nationality, meaning that the State does not force the loss of citizenship. The right to renounce to a nationality is provided for by the *Universal Declaration of Human Rights.* Article 13 of the declaration lists the right to leave any country: "(1) Everyone has the right to freedom of movement and residence within the borders of each State. (2) Everyone has the right to leave any country, including his own, and to return to his country."[63] In the same manner and more specifically, Article 15 also clarifies the right to change nationality: "(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."[64] From Article 13 and 15, it can be indirectly concluded that the right to renounce to a nationality is a consequence of the right to change nationality.

The case of voluntary loss of citizenship, namely the case of renunciation, is strictly connected to the case of multiple nationality. As a matter of fact, it can be particularly relevant after the automatic acquisition of additional citizenship in the cases in which it may be undesirable. For instance, the renowned poet T.S. Eliot renounced in 1927 to U.S. citizenship acquired at birth in 1888 to become a British subject, since he

[62] Donner, R. (1994). p.151.
[63] United Nations General Assembly. (1948). *Universal Declaration of Human Rights*, Resolution 217 A. Art. 13.
[64] *Ibid*. Art. 15.

had been living in the United Kingdom since 1914. In some cases, renouncing can be used only for actively exercising some right deriving from the newly-acquired citizenship, for instance for obtaining a foreign passport or avoiding compulsory military service. For the purpose of limiting these cases, some policies have been applied by many countries in order to limit negative consequences that can undermine States' security itself. An example of such a policy is applied in Mexico to all naturalized citizens. According to Article 19 of the *Ley de Nacionalidad,* a foreigner who applies for Mexican naturalization must formulate a formal renunciation of the citizenship of a previous country of origin.[65]

The case of involuntary loss of citizenship is clearly a more debated question in public international law. As already stated, when analyzing Article 15(2) of the *Universal Declaration of Human Rights*, "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."[66] Nevertheless, there are some cases in which the deprivation of citizenship is permissible, such as in the case of fraudulent naturalizations. The action of depriving an individual of their nationality is not arbitrary if "it: (1) serves a legitimate purpose; (2) is the least intrusive instrument to achieve the desired result; and (3) is proportional to the interest to be protected."[67] For instance, such cases comprehend the acquisition of citizenship obtained by fraud or illegal means. Another common case is the loss of citizenship due to fraudulent acts related to conducting after the individual being naturalized. Naturalization may also be considered fraudulent if, in case of war conflict, the naturalized individual does not abandon allegiance to the State of origin.[68] In the same manner, fraudulent naturalization occurs if the individual engages in "actions against the security of the nation."[69] The *Report of the United Nations concerning the Problem of Statelessness* presents five grounds for applying the withdrawal of nationality applied mainly to such nationals who have not acquired the country's citizenship at birth. Such grounds were the prolonged residence abroad, the participation in activities in a foreign country that are generally reserved to nationals of such foreign country, the fraudulent obtaining of the country's nationality,

[65] *Ley de Nacionalidad*, 1998, Secretaría de Relaciones Exteriores (updated in 2012).
[66] United Nations General Assembly. (1948). *Universal Declaration of Human Rights*, Resolution 217 A. Art. 15(2).
[67] UN Human Rights Council. (2013). Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary-General, 19 December 2013, A/HRC/25/28. Retrieved 31 October 2019, from https://www.refworld.org/docid/52f8d19a4.html
[68] Donner, R. (1994). p.151.
[69] *Ibid.*

the lack of good character proved by a criminal conviction, and any disloyal act towards the country.[70] Such grounds are applied to individuals being nationalized, but in some exceptional cases can be applied also to nationals by birth. For instance, under the Military Penal Code Belgian Law establishes the loss of nationality in case of a criminal conviction for specified crimes for all citizens.

Along with nationality, it comes the right of return[71] as stated in Article 13(2) of the *Universal Declaration of Human Rights*. For this reason, expulsion or deportation may be a direct consequence of denationalization, or they can be required expressly for some ex-nationals in order to limit their political rights. According to the UNHCR, the number of new displacements in 2018 was corresponding to an average of 37,000 people forced to leave their homes every day.[72] Cases of deportations related to nationality matters can be considered also as an abuse of the right. Though, there is still no legal certainty that such compulsory expatriations are illegitimate. In case deportation is also followed by deprivation of the nationality, leaving the individual stateless, i.e. leaving them without any other nationality, such deprivation can constitute abuse of rights.[73]

The issue of statelessness, namely not being recognized as a citizen under any State's law, is an important issue in international law connected with the issue of involuntary loss of citizenship. The Ph.D. in International Refugee Law and Human Rights Nafees Ahmad stated that "statelessness precludes people from relocating and proliferates their chances of arbitrary arrest, confinement or detention with no adequate answers. Succinctly averring, statelessness demotes and generates a state of irrelevance among the people with no hope of their condition ever improving, no possibility for a better future for themselves or their posterity."[74] Currently, the United Nations High Commissioner for Refugees has no reliable data on the global number of stateless persons, since only 75 countries have been analyzed, corresponding to less than the 50% of the

[70] United Nations Economic and Social Council, 14th Session. (1956). *The Problem of Statelessness - Consolidated Report by the Secretary-General*, A/CN.4/56. pp.150-169. and Donner, R. (1994). p.152.
[71] Forlati, S. La cittadinanza nel diritto internazionale. In Zagato, L. (2011). *Introduzione ai diritti di cittadinanza* (3rd ed.). Venezia: Cafoscarina. pp.71-74.
[72] Global Trends - Forced Displacement in 2018 - UNHCR. (2019). Retrieved 11 November 2019, from https://www.unhcr.org/globaltrends2018/#&_ga=2.107116932.747916505.1573498469-1058868107.1573498469
[73] Donner, R. (1994). p.153.
[74] Ahmad, N. (2017). Right to Nationality and the Reduction of Statelessness: The Responses of the International Migration Law Framework. *Groningen Journal of International Law*, *5*(1), 1-22. doi: 10.21827/59db69b590f71. p.1.

States.[75] Among the causes of stateless, there are large-scale deprivations of nationality, as happened with Soviet Russian denationalization decrees. In 1921, the decree issued by the All Russian Central Executive Committee and the Council of People's Commissars deprived 2 million people who were living outside Russia and who fell under certain categories of their Russian nationality, regardless of whether they would have remained stateless.[76] Another example was the mass denationalization made under the Nazi regime in Germany by the 1935 and 1941 decrees of the National Socialist Party, among which there were the so-called Nuremberg Laws. In that case, Jews were deprived of their citizenship.[77] After World War II, the issue before the courts was whether the decrees have a retroactive effect. According to the principle of the effective link and establishing that the legislation could act retroactively, the reintegration into the society of the former nationals who had been earlier excluded was possible. Another more recent example was the one of the South African Independent Homelands, which is connected to State succession. After Transkei in 1976, Bophuthatswana in 1977, Venda in 1979, and Ciskei in 1981 became independent, only the Republic of South Africa recognized such status. Even the General Assembly, the Security Council, and the President of the Security Council of the United Nations were not willing to recognize independence. The controversial question was whether they could recognize as legally valid the loss of South African citizenship and acquisition of the citizenship of a new State they did not recognize. However, there was "no right of option or election for those citizens of the four pre-independent States, who, regardless of whether they were physically present in the Republic concerned or not, or indeed had any effective connection with them, became aliens in the Republic of South Africa on the attainment of purported sovereign statehood."[78]

Within the international law framework, two complementary conventions address statelessness. The 1954 *Convention relating to the Status of Stateless Persons* offers

[75] UN High Commissioner for Refugees. (2018). Good Practices in Nationality Laws for the Prevention and Reduction of Statelessness, November 2018, Handbook for Parliamentarians N° 29. Retrieved 31 October 2019, from https://www.refworld.org/docid/5be41d524.html

[76] Donner, R. (1994). p.155. Stateless persons were given as travel documents Nansen passports, which were internationally recognized documents since they were issued by the League of Nations to stateless refugees from 1922 to 1938.

[77] *See* Regus, M. (2019). Statelessness: What Hannah Arendt Can Still Teach Us | The Mantle. Retrieved 1 November 2019, from https://www.themantle.com/international-affairs/statelessness-what-hannah-arendt-can-still-teach-us

[78] Donner, R. (1994). pp.158-159.

stateless persons a corresponding legal status that is not inconsistent with the human rights of the individual. It defines a stateless person as "a person who is not considered as a national by any State under the operation of its law."[79] The convention also attributes them a certain number of rights and tries to fill such gap that statelessness produces. In 1949, the International Law Commission had included statelessness among the relevant topics provisionally selected for codification. During the fourth, fifth, and sixth sessions between 1952 and 1954, this problem was addressed, and reports started to be drafted. On September 28, 1954, the Convention was signed, and on June 6, 1960, it entered into force. The 1961 *Convention on the Reduction of Statelessness* aims to limit the number of cases of statelessness occurring. It was opened for signature in New York on August 30, 1961 and entered into force on December 13, 1975. The main difference with the 1930 *Hague Convention on the Conflict of Nationality Laws* and the *Protocol relating to a Certain Case of Statelessness* is that the 1961 Convention creates the obligation for the contracting States to grant their nationality to stateless persons.[80] As a matter of fact, Articles 1, 2, 3, and 4 provide that a person should be granted the nationality at birth if they would otherwise be stateless. Moreover, Article 8(1) of the Convention is based on Article 15 of the Universal Declaration, dealing with the issue of deprivation of nationality: indeed, "a Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless."[81]

Since 1961 the problem of statelessness has been confronted only at the regional level. In 2006, the topic was discussed within the Council of Europe in the *Convention on the Avoidance of Statelessness in Relation to State Succession.*[82] The Explanatory Report of the Convention stated that "the definition in terms of binding legal obligation for the States concerned is thus limited to "*de jure* stateless persons", although the Final Act of the 1961 United Nations Convention on the Reduction of Statelessness recommends that persons who are "*de facto* stateless" should as far as possible be treated

[79] United Nations General Assembly. (1954). *Convention Relating to the Status of Stateless Persons*, UNTS No. 5158.
[80] *See* Batchelor, C., & Leclerc, P. (2005). *Nationality and Statelessness*. Geneva: Inter-Parliamentary Union.
[81] United Nations General Assembly. (1961). *Convention on the Reduction of Statelessness*, UNTS No. 14458.
[82] Council of Europe. (2006). Convention on the Avoidance of Statelessness in Relation to State Succession, CETS No. 200.

as "*de jure* stateless" to enable them to acquire an effective nationality."[83] Nevertheless, such Convention is only relevant for the cases of State succession in question, not covering already existent stateless persons or persons who became stateless as a consequence of State succession.

After a series of regional meetings, in June 2019, the Institute on Statelessness and Inclusion and partners held the World Conference on Statelessness. The Conference gathered more than 250 activists, academics, and diplomats to explore the challenges of the issue, including the use and misuse of deprivation of nationality, discussing the right of every child to a nationality, and building a global statelessness movement, by making a special reference to the mass exodus of Rohingya refugees from Myanmar to Bangladesh.[84]

Currently, statelessness is still an anomaly that leaves individuals into an officially sanctioned legal limbo. Although stateless individuals can be placed within an international framework in order to regulate their status, at the same time cases of statelessness may still exist. National courts should apply international laws that aim to avoid cases of statelessness by applying a principle that had become part of general international law. However, efforts should still be made by States not to denationalize their citizens depriving them of their link with the State and placing a burden on other States.

4. The Diplomatic and Consular Protection

In addition to the principle of multiple citizenship and the loss of nationality, the diplomatic and consular protection is the direct consequence of the State holding of an international legal personality.[85] According to customary international law, in case a State's national has been injured by acts contrary to international law, the State's government can intervene in local remedies have already been exhausted without positive

[83] Council of Europe. (2006). Explanatory Report to the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, CETS No. 200.
[84] UNHCR. (2019). Refworld | Campaign Update, April - June 2019. Retrieved 1 November 2019, from https://www.refworld.org/docid/5d356a927.html
[85] Donner, R. (1994). p.19.

results. Such right constitutes the right of diplomatic and consular protection, also known as the nationality of claims.[86] In this paragraph, diplomatic and consular protection will be legally defined and international treaties on the topic will be examined. Furthermore, the conditions to exercise the right to diplomatic and consular protection will be examined. Lastly, the evolution of case laws relating to the issue will be described starting from the *Mavrommatis Case* in 1924 to recent development.

In international law, an individual subjected to a violation of international law is not automatically entitled to the right to an international reparation by the other State.[87] As a matter of fact, the injure made to a State's nationals constitutes an indirect injure to the State itself. Hence, only the State can address a claim for reparations and exercise diplomatic protection. Despite the expression is informally used to indicate the informal assistance that diplomatic and consular missions provide to their nationals, formally with diplomatic protection reference is made to the "invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility."[88] As a matter of fact, the difference between formal and informal diplomatic protection must be underlined. The former is exercised by a State after the exhaustion of local remedies by one of its nationals. Conversely, the latter is a kind of protection exercised by diplomatic or consular agents in order to assist their nationals in accessing local remedies.[89] Nonetheless, both international and national jurisprudence agrees on the fact that only States are entitled to exercise the right to diplomatic and consular protection on their nationals.

The application of the diplomatic and consular protection depends on two *caveat*.[90] According to general principles of international law, States are not obligated to exercise the diplomatic protection. Conversely, it is States' discretion to decide whether it would be more or less convenient to exercise such right. Also, States, not citizens,

[86] Donner, R. (1994). p.19.
[87] Carreau, D., & Marrella, F. (2016). *Diritto internazionale*. Milano: Giuffrè Editore. p.504.
[88] United Nations General Assembly, International Law Commission, 58th Session. (2006). *Titles and Texts of the Draft Articles on Diplomatic Protection Adopted by the Drafting Committee on Second Reading*, A/CN.4/L.684.
[89] Denza, E. (2018). Nationality and Diplomatic Protection. *Netherlands International Law Review*, *65*(3), 463-480. doi: 10.1007/s40802-018-0119-4
[90] Carreau, D., & Marrella, F. (2016). p.509.

decides whether the offered reparation can be considered sufficient. As a matter of fact, in case of reparations, States are not obligated to transfer the compensation to the citizen. Furthermore, there are two necessary conditions related to the citizen. The first concerns the nationality of the individual on which the State exercise the right to diplomatic protection: the individual must hold the nationality of such State both at the time of the violation and during the dispute settlement. The second is related to the conduct of the individual, who must have clean hands and have exhausted all local remedies.[91]

Diplomatic protection finds its foundation in the 1924 *Mavrommatis Case*.[92] At that time, Greece requested the United Kingdom the reparations for the violation of one of its nationals in Palestine, which was still under British mandate. In 1914, the Greek nationals Mr. Mavrommatis was granted some concessions by the Ottoman authorities for public works in Palestine. After World War I, the United Kingdom, and consequently Palestine Government, refused to recognize concessions in Jerusalem and Jaffa and granted to Mr. Rutenberg some overlapping concessions. For that reason, Greece sought compensations from the United Kingdom and started being object of a dispute in front of the Permanent Court of International Justice. Article 26 of the Concessionary Mandate gives jurisdiction to the PCIJ to settle the dispute between the Mandatory State and the State Member of the League of Nations. The 1924 Judgment clearly reported that each State should protect its nationals in such cases in which they have been injured by another State acting against principles of international law. This constitutes an elementary principle of international law. In case nationals had not obtained satisfaction through the ordinary channels, the State has the right to ensure respect of such principles by requesting international legal proceedings or via other diplomatic means.[93] Moreover, in that case, the Court settled that "a dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons,"[94] which certainly suited the *Mavrommatis Case*.

[91] Carreau, D., & Marrella, F. (2016). pp.509-515.
[92] The Mavrommatis dispute concerned conflicting concessions for the water and electricity supply and economic and political control over Palestine in the period between World Wars. Jewish people need for water and electricity were essential in order to create a homeland there. See Waibel, M. Mavrommatis Palestine Concessions (Greece v Great Britain) (1924 – 27). In Bjorge, E., & Miles, C. (2017). *Landmark Cases in Public International Law*. Oxford: Hart Publishing.
[93] *Mavrommatis Palestine Concessions (Greece v. U.K.)*, Judgment of August 30th, 1924, P.C.I.J. (ser. B) No. 3. Par. 21.
[94] *Ibid.* Par. 19.

After the *Mavrommatis Case*, the Permanent Court of International Justice dealt with a certain number of cases concerning diplomatic and consular protection. The international jurisprudence consolidated, as it happened in the in the 1929 *Serbian Loans Case*[95] and in the 1939 *Panevezyz-Saldutiskis Railway Case*.[96] Furthermore, in the former case, according to the Court the dispute originated when the French and the Serb-Croat-Slovene government entered into diplomatic relations. Hence, the right to diplomatic protection did not start to be exercised when the case was brought before the Court, but when the French government advocated its nationals' claims.[97]

After the PCIJ, it was necessary to continue developing a more precise legal framework. In the League of Nations Third Session of the Committee of Experts held from March 22nd to April 2nd, 1927, a questionnaire was prepared concerning the *Revision of the Classification of Diplomatic Agents*. The replies were examined by the Committee during the Fourth Session in June 1928. Such report of the League of Nations stated that the Committee opinion found that they could not declare an international regulation on the matter to be realizable, meaning that the attempt to find a common ground on the issue resulted in a failure[98]. In 1955, a Seventh Session was held in Geneva to review the issue on the basis of the rules of jus cogens within national and international law. The session resulted in a 1961 *Draft Articles on Consular Relations* with commentaries by Member States. Such draft was strictly connected to the 1961 *Vienna Convention on Diplomatic Relations*,[99] which represented an important step in the regulation of diplomatic relations between independent countries and in the definition of diplomatic missions and immunities, and which currently has 192 State Parties.

A Conference was held in 1963 resulting in the *Vienna Convention on Consular Relations*,[100] which contained a detailed catalogue of consular functions aimed at protecting the State's interests within the territory of the receiving State within the limits permitted by international law. In more details, Article 5 of the 1963 Convention specifies

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[95] *Payment of Various Serbian Loans Issued in France (France v. Kingdom of the Serbs, Croats and Slovenes),* Judgment of July 12th, 1929, P.C.I.J. (ser. A) No. 20.
[96] *Panevezys-Saldutiskis Railway (Estonia v. Lithuania)*, Judgment of February 28th, 1939, P.C.I.J. (ser. A/B) No. 76.
[97] Künzli, A. (2006). Exercising Diplomatic Protection. The Fine Line Between Litigation, Demarches and Consular Assistance. *Heidelberg Journal of International Law, 66,* 321-350.
[98] League of Nations. (1928). *Questionnaire on the Revision of the Classification of Diplomatic Agents*, Document A.15.1928. 04.05.1928. p. 6
[99] United Nations. (1961). *Vienna Convention on Diplomatic Relations*, UNTS No. 7310.
[100] United Nations. (1963). *Vienna Convention on Consular Relations*, UNTS No. 8638.

the consular functions, which consist in: assisting nationals of the sending State; safeguarding the interests of nationals of the sending State, such as minors and those lacking full capacity; assisting nationals in obtaining practices and procedures in the receiving State; representing nationals before tribunals and other authorities; applying measures for the preservation of nationals' rights and interests in case they are unable to defend their rights and interests by themselves.[101]

Not only did the PCIJ provide a legal foundation, but also the International Court of Justice consolidated the international legal framework on diplomatic protection within the *Nottebohm Case*, the *Barcelona Traction Case*, and within the more recent *LaGrand Case* and *Avena Case*.[102] Those ICJ decisions and opinions contributed with the judicial proceedings to deal with diplomatic protection. In the 1955 *Nottebohm Case*, the Court distinguished diplomatic protection from the protection via other international judicial proceedings.[103] Also, the 1970 *Barcelona Traction Case* specified that a State can exercise its diplomatic protection within the limits prescribed by international law by whatever means it considers appropriate,[104] in accordance with the possibility of choice of means in case of dispute settlement. In 2001, during the *LaGrand Case* the Court held that the 1963 *Vienna Convention on Consular Relations* granted rights to individuals that could not be limited by domestic laws, and it also stated that its provisional measures were legally binding.[105] At first glance, the 2004 *Avena Case* could remind of the earlier *LaGrand Case*: both LaGrand brothers and the Mexican nationals were deprived of their right to consular assistance and were not informed of this right. Consequently, both Mexico and Germany were deprived of its rights to offer consular assistance. Mexico requested the right to exercise diplomatic protection, however, states protests against the treatment of their nationals does not directly imply a violation of international law. As a matter of fact, the ICJ cannot be used to appeal for a judgment even though the deprivation of consular assistance has influenced the domestic trial. For instance, in the *Avena Case*

[101] United Nations. (1963). *Vienna Convention on Consular Relations*, UNTS No. 8638. Art. 5.
[102] Carreau, D., & Marrella, F. (2016). p.504.
[103] *Liechtenstein v. Guatemala, Nottebohm Case (second phase),* Judgment of April 6th, 1955, [1955] ICJ 1, 1955.
[104] *Belgium v. Spain, Barcelona Traction, Light and Power Company, Limited (New Application: 1962),* Judgment of February 5th, 1970, [1970] ICJ 1, 1970.
[105] *LaGrand (Germany v. United States of America),* Judgment of June 27th, 2001, ICJ Reports 2001, General List No. 104.

it could not decide whether death sentence for Mexican nationals depended on the lack of consular assistance.[106]

In 2007, based on the draft articles on diplomatic protection,[107] the General Assembly presented two resolutions 62/67 of December 6th, 2007, and 65/27 of December 6th, 2010. In those resolutions, the issue of diplomatic protection was addressed to the attention of governments and invited them to submit comments in order to elaborate a convention based on such articles. In 2013, in the provisional agenda of its 68th Session of the General Assembly, the topic of diplomatic protection was inserted with the aim of taking appropriate action on the issue by drafting a convention or elaborating an effective legal instrument.

The issue of diplomatic protection has been debated over years. The exercise of such right not always end with satisfying the citizens subjected to a violation. Moreover, as it happened with the Calvo Doctrine in Latin-American countries,[108] and as it is still happening since XIX century, the right can be exercise by States in a dangerous manner. As a matter of fact, the diplomatic protection has been used sometimes as pretext for intervening in the domestic affairs of the State that committed the violation. Nevertheless, despite some exceptional cases, the positive side of such institution cannot be denied, especially when it is used as a filter to promote only disputes that are juridically founded.[109]

5. The Principle of Non-Discrimination Applied to the Right of Citizenship

As it has been examined in the first chapter, the terms citizenship and nationality are used interchangeably depending on the circumstances to refer to the same legal notion. describing an individual's status and relationship to the State. Nonetheless, it must still

[106] *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America),* Judgment of March 31st, 2004, ICJ Reports 2004, 12, General List No. 128.
[107] United Nations General Assembly, International Law Commission, 58th Session. (2006). *Draft Articles on Diplomatic Protection with Commentaries*. Yearbook of the International Law Commission, 2006, vol.II, Part Two.
[108] Conforti, B. (2015). *Diritto internazionale* (10th ed.). Napoli: Editoriale scientifica. p.254.
[109] Carreau, D., & Marrella, F. (2016). p.510.

be reminded the origin of such terms, deriving from other cultural notions, such as "nation" or "ethnicity". For those culture-based reasons, the notion of citizenship has always tended to be affected by discriminatory behaviors. In many countries, those behaviors still apply without an effective preventive legal framework, especially in places where the right to citizenship was extended to include individuals with different ethnicities or nationalities. In this paragraph, firstly, it will be examined the international legislation on civil, political, economic, and social rights with regards to the issue of discriminatory practices. Then, a distinction will be made by States between discriminatory acts between nationals and non-nationals, and those made among nationals of the same State. Lastly, gender-based discriminations within nationality framework and the existence of non-discriminatory instruments will be examined. Also, the related notion of sexual citizenship will be introduced.

Guaranteeing political and social rights to every individual without any discrimination, such as "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status,"[110] means changing laws and policies that permits discriminatory practices. Nationality might not be explicitly mentioned among the prohibited grounds of discrimination. For instance, reference must be made to the adoption of the UN *International Bill of Human Rights*, namely the UDHR and two international treaties: the *International Covenant on Civil and Political Rights* (ICCPR) with two Optional Protocols, and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). In 1976, both covenants entered into force. Articles 24, 26 and 27 of the 1966 *International Covenant on Civil and Political Rights* build the foundations to non-discrimination.[111] Article 24 states that every child shall have the right to measures of protection without any discrimination based on "race, colour, sex, language, religion, national or social origin, property or birth,"[112] and that "every child has the right to acquire a nationality."[113] Therefore, the Convention restricts the recipients of the provision of Article 15 of the UDHR from "everyone" to "every child." However, Article 26 reminds that all persons are equal before the law and must be equally and effectively protected without any discrimination "on any ground such as race, colour, sex,

[110] Annoni, A. Nationality and Social Rights. In Annoni, A., & Forlati, S. (2013). p.136.
[111] United Nations General Assembly. (1966). *International Covenant on Civil and Political Rights*. UNTS No. 14668.
[112] *Ibid.*
[113] *Ibid.*

language, religion, political or other opinion, national or social origin, property, birth or other status."[114] Concerning the discrimination of minoritarian groups, Article 27 reaffirms that in States in which there is a presence of ethnic, religious, or linguistic minorities, individuals belonging to such minorities "cannot be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."[115] Although there is no direct mention to the concept of nationality, such reference can be deducted from the so-called "other status". This can be considered a flexible definition to include such conditions in which individuals are treated in a discriminatory manner on the basis of their nationality both within the jurisdiction of their State and within the one of another State.[116] Therefore, in addition to eliminating formal discriminations by abrogating laws, States must address substantive discriminations by adopting effective strategies to eliminate any situation which may disclose any difference in the enjoyment of rights by certain categories. States can achieve such goal by involving their citizens in changing their cultural attitude towards foreigners and by adopting strategies addressed to solve also their specific problems.[117]

Nonetheless, not all types of differentiations constitute discriminatory acts. In order to evaluate the compliance of the 1966 *International Covenant on Economic, Social and Cultural Rights*,[118] the Committee on Economic, Social and Cultural Rights meets in Geneva twice per year and analyzes the reports submitted by UN Member States every five years. As a matter of fact, according to the Committee, differential treatments are not considered discriminatory if there is a reasonable and objective justification for such differentiation. Hence, in order to be lawful, differential treatments must pursue a legitimate aim producing proportioned effects to that aim.[119]

As a matter of fact, nationality legislation is not completely extraneous to the non-discrimination rule. Directly or indirectly, citizenship can relate to with the non-

[114] United Nations General Assembly. (1966). *International Covenant on Civil and Political Rights*. UNTS No. 14668.
[115] *Ibid.*
[116] Annoni, A. Nationality and Social Rights. In Annoni, A., & Forlati, S. (2013). p.136.
[117] *Ibid.*
[118] United Nations General Assembly. (1966). *International Covenant on Economic, Social and Cultural Rights*. UNTS No. 14531.
[119] Annoni, A. Nationality and Social Rights. In Annoni, A., & Forlati, S. (2013). p.136.

discrimination rule in two contexts.[120] In the first case, provisions of a legislation could be discriminatory in themselves when they deprive individuals of their nationality based on discriminatory assumptions or when they prevent persons from acquiring it. That was the case of deprivation of nationality, already explored in the previous paragraphs. The second case of discrimination linked to nationality occurs when the lack of nationality is used as a basis for discrimination.[121] In fact, also non-nationals enjoy human rights. Within such legal framework, in some cases, States have the power to differentiate among nationals and non-nationals, or among categories of non-nationals in a legitimate manner.

States cannot limit the rights of a restricted category of individuals unless their intention is to promote democratically the general welfare. However, another restriction is that the measures adopted cannot exclude any individual from the very core application of such rights and cannot avoid the application of fundamental human rights already determined by other treaties.

5.1. Discrimination Between Nationals and Non-Nationals

According to Article 1(1) of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), "racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."[122] Nevertheless, Article 1(2) of the ICERD states that distinction made on the basis of citizenship are allowed since the Convention is not applicable to those distinctions and restrictions that a State makes between citizens and non-citizens."[123] However, if distinctions between nationals and non-nationals are unreasonable or contrary to international obligations, they are still considered discriminatory acts.

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[120] Ziemele, I. (2007). *A Commentary on the United Nations Convention on the Rights of the Child. Article 7. The Right to Birth Registration, Name and Nationality, and the Right to Know and Be Cared for by Parents.* Leiden: Martinus Nijhoff. p.17.
[121] *Ibid.*
[122] United Nations General Assembly. (1966). *International Convention on the Elimination of All Forms of Racial Discrimination*. UNTS No. 9464.
[123] *Ibid.*

In 1993, with the *General Recommendation No. 11 on Non-Citizens* the ICERD affirms that Article 1(2) do not reduce the rights and freedoms recognized by other legal instruments, such as the UDHR, the ICESCR, and the ICCPR.[124] In 2005, the *General Recommendation No. 30 on Discrimination Against Non-Citizens* reaffirmed that discrimination in the enjoyment of rights and freedoms based on citizenship or immigration status is unlawful.[125] Any differential treatment concerning the enjoyment of rights must pursue a legitimate aim, so it must be strictly necessary in the interest of the state. For instance, such limitations can be justified in case States need to ensure the security of the nation. However, such exclusion must be proportionate and limited to grounds strictly connected to preserve a national interest, such as foreign nationals employed in public services.[126]

Moreover, Article 1(3) of the ICERD states that "nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality."[127] As a matter of fact, originally, the ICERD aim was not the application to domestic nationality laws – such as naturalization process – with the only exception concerning State discrimination against a particular nationality.[128] Since 1966, the international framework concerning discrimination has evolved. Paragraph (d) of Article 5 of the ICERD adds that, in compliance with ICERD Article 2, States Parties must eliminate racial discrimination in guaranteeing the right to equality before the law to everyone and in the enjoyment of the determined rights, among which there are also civil rights, citing "in particular: (iii) The right to nationality."[129]

[124] ICERD, 42nd Session. (1993). *General Recommendation No. 11 on Non-Citizens*. Document A/46/18.
[125] ICERD, 65th Session. (2005). *General Recommendation No. 30 on Discrimination Against Non-Citizens.*
[126] Annoni, A. Nationality and Social Rights. In Annoni, A., & Forlati, S. (2013). pp.137-138.
[127] United Nations General Assembly. (1966). *International Convention on the Elimination of All Forms of Racial Discrimination.* UNTS No. 9464.
[128] Annoni, A. Nationality and Social Rights. In Annoni, A., & Forlati, S. (2013). pp.137-138.
[129] United Nations General Assembly. (1966). *International Convention on the Elimination of All Forms of Racial Discrimination.* UNTS No. 9464. Article 5(d)(iii).

5.2. Discrimination Among Nationals

Non-discrimination measures can be considered temporary in character. As a matter of fact, once equality is formally achieved there must be a continuous application of specific measures. For instance, States have to adopt provisions in their nationality law to re-integrate individuals from different ethnic or linguistic groups from the ones identified with the State. Nevertheless, if States continue to use language requirements as a naturalization requirement, to a certain extent such practices could still be considered discriminatory.[130]

At regional level, in the 1997 *European Convention on Nationality* Article 5 affirms that State Parties nationality law cannot contain distinctions or discriminatory practices on the grounds of sex, religion, race, color, or national or ethnic origin, and States must follow the principle of non-discrimination between theirs nationals, whatever means of attribution of nationality has been used.[131] So, referring to language or origin prerequisites in attributing nationality is permitted in domestic laws since the ECN does not refer to language as one of the possible general grounds of discrimination. Still, different preferential treatments between groups based on ethnic or linguistic grounds is still questionable and it can introduce an element of inequality.

The interrogation on the applicability of equality considerations in granting nationality is a recent issue that it has not been resolved within the international law debate.[132] The issue involves also other categories, such as the one of second-class citizens, namely "a citizen, especially a member of a minority group, who is denied the social, political, and economic benefits of citizenship."[133] An example of second-class citizens are Hong Kong citizens.[134] Differential treatments still exists. Although Hong Kong is no longer a British colony since 1997, the principle of "one country, two systems" still applies creating differences in treatments from the ones reserved for citizens of Mainland China.

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[130] Ziemele, I. (2007). pp.17-20.
[131] Council of Europe. (1997). *European Convention on Nationality*, ETS No. 166.
[132] Ziemele, I. (2007). pp.17-20.
[133] Definition of second-class citizen | Dictionary.com. (2019). Retrieved 12 November 2019, from https://www.dictionary.com/browse/second-class-citizen
[134] Moy, P. (2013). We're Second-Class Citizens in Mainland China, Says Hong Kong Lawyer Thomas So. Retrieved 13 November 2019, from https://www.scmp.com/business/economy/article/1274787/were-second-class-citizens-mainland-china-says-hong-kong-lawyer

5.3. Gender-Based Discrimination and Sexual Citizenship

Changes in the nationality framework and changes in gender and sexual orientation recognition are mutually relevant. Practices of citizenship discrimination based on gender is persistent. For instance, despite substantial developments, many states do not guarantee women an equal citizenship status.[135] Currently, women and men still enjoy different political rights deriving from citizenship.

A convention on the nationality of women had been necessary to assure women equality with men, especially for regulating cases of multiple citizenship or statelessness. Article 1 of the 1933 *Convention on the Nationality of Women* by the Pan American Union clearly affirms that no distinction based on sex as regards nationality both in their legislation and in practice is permitted.[136] The Convention application was limited to the American continent. The 1933 Convention was the precursor to the United Nations study concerning nationality, which resulted in the 1957 *Convention on the Nationality of Married Women*. Articles 1 and 2 of the Convention affirms a woman's nationality cannot be affected by her marriage to a foreigner. Moreover, both holding the original nationality and being recognized an additional nationality of a spouse are permitted,[137] which results in the abolition of the concept of dominant and secondary nationality already explained in the first paragraph of the chapter.[138] Article 9 of the 1979 *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) reiterates such right. States must grant equal rights for women and men to acquire, change or retain their nationality. For this purpose, States must ensure that "neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband."[139] Also, the article includes the respect of the women nationality with regards to her children's nationality.

It is interesting to remember the *Genovese v. Malta Case*, which was prior to the 2014 Individual Investor Programme of the Republic of Malta Regulations already

[135] Friedman, M. (2005). *Women and Citizenship*. New York: Oxford University Press. pp.3-4.
[136] Organization of American States. (1933*). Convention on the Nationality of Women*.
[137] United Nations General Assembly. (1957). *Convention on the Nationality of Married Women*. A/RES/1040. UNTS No. 4468.
[138] Donner, R. (1994). pp.208-209.
[139] United Nations General Assembly. (1979). *Convention on the Elimination of All Forms of Discrimination Against Women.* UNTS No. 20378.

mentioned in the first paragraph of the chapter. The complaint was made on behalf of a British citizen, who did not obtain Maltese citizenship by registration due to the fact that he was born out of wedlock to a Maltese father and a British mother. After 2007 Maltese amendments concerning gender discrimination, section 5(2)(b) of the Maltese Citizenship Act provided that any child born to a Maltese parent would acquire Maltese nationality. Nevertheless, section 17(1)(a) has not been amended since it states that a child born out of wedlock to a Maltese father, according *Maltese Citizenship Act*, is considered a Maltese national only if they have been legitimated.[140] The Court decreed that it was a violation of Article 14 of the ECHR concerning the prohibition of discrimination and of Article 8 concerning the right to family life.[141] The case is considered a landmark case since it was the first time the ECtHR had explicitly ruled that nationality fall within the scope of protection as part of a person's social identity and private life. Therefore, even if citizenship is not explicitly a Convention right, under some circumstances the denial or deprivation of nationality can be associated to the right to a family life.[142]

Despite citizenship should transcend the characters of body and sexuality, recently the concept of sexual citizenship has appeared in the literature. According to Ruth Lister, it is an umbrella term used to refer to citizenship as gendered concept, which connects the notion of citizenship and the related allocation of rights to individuals' sexuality.[143] For instance, discriminations on the grounds of sexual orientation or choices within the intimate sphere affects the extension of sexual and reproductive rights, such as the right to a legal and safe abortion, or the right to access good-quality reproductive health-care. Connected to the notion of sexual citizenship is the existence of less-than-whole citizens, or fragmented citizens, a concept developed by Stephen Engel.[144] This category of citizens emerges from the analysis of the idea of an existing American fragmented policy. Engel's starting point was to evaluate the manner in which inequalities for LGBT+ citizens still exist in the U.S.A., despite laws on equal treatment have been enacted and

[140] Government of Malta. (2014). *Maltese Citizenship Act*, Legal Notice 47 of 2014.
[141] Council of Europe. (1952). *Convention for the Protection of Human Rights and Fundamental Freedoms*, ETS No. 005.
[142] Buttigieg, E., & DeBono, D. (2015). p.27.
[143] Lister, R. Sexual Citizenship. In Isin, E. F., & Turner B. S. (2002). p.192.
[144] Stephen Engel is a Professor and Chair of Politics at Bates College and an Affiliated Scholar of the American Bar Foundation.

enhanced. Nonetheless, the analysis can be applied to the entire category of the less-than-whole citizens.

As a matter of fact, it is still necessary to develop an effective legal framework not only to recognize socially-discriminated categories as full citizens but also any other category that is at risk of not having full legal protections from discrimination.[145] Practical solutions to such obstacles are necessary for those categories to fully enjoy political, civil, social, and economic rights. If citizenship should represent the full membership of individuals into the community, then it is important to develop such areas of culture and society to build a more effective legal framework.[146]

6. The Regional Integration

Usually, citizenship has been considered a matter regulated by domestic law and an exclusive domain of States. Nonetheless, some processes, such as decentralization and globalization, have consistently changed State structures. Consequently, the concept of nationality must be re-conceptualized across territorial levels.[147] Especially within the context of the international community, a decentralization process conferred regions the power over a broader range of areas that were once controlled by the state, such as welfare, education, and cultural integration. A new form of citizenship has emerged at regional level, which maintains the same foundations on rights, participation, and membership but it involves a broader structure. In this paragraph, it will be analyzed the close connection among regional and supranational citizenship and their differences. Then, some examples, namely the European Union and MERCOSUR citizenship, will be examined in more details. The focus will be the comparison among those types of citizenship, which presents very different features.

[145] *See* Engel, S. (2016). *Fragmented Citizens*. New York: New York University Press.
[146] Friedman, M. (2005). pp.3-4.
[147] *See* Hepburn, E. (2010). 'Citizens of The Region': Party Conceptions of Regional Citizenship and Immigrant Integration. *European Journal of Political Research*, *50*(4), 504-529. doi: 10.1111/j.1475-6765.2010.01940.x

In the last decades, studies have examined the emergence of a new idea of nationality above the level of the state.[148] The idea of regional citizenship, such as the European citizenship, differs from the more general concept of supranational citizenship and the idea of global or cosmopolitan citizenship. The processes of supranational integration and globalization have transferred powers of States upwards. Supranational citizenship is still semantically connected to the notion of regional citizenship, and hence both terms are often used interchangeably in literature. Nevertheless, regional citizenship is still a too narrow concept that it cannot exhaust the notion of supranational, and global citizenship is still too broad to be strictly adhesive.[149]

The decentralization, the international unification, and globalization have demanded a new concept of nationality, as sovereignty is fragmented, roles are distributed, and political rights and participation are distributed through various regional scales. It has been pointed that the European Union is "the most advanced supranational citizenship project in the world"[150] so far. In 1992, the Treaty of Maastricht[151] introduced the European citizenship to all nationals of EU Member States. As a matter of fact, there is no other continent like European to have anything even remotely resembling to a continental citizenship. The most similar institutions are the North American Free Trade Agreement, the MERCOSUR, or the Economic Community of West African States, all of which had a very limited number of rights to nationals of their State Parties. Yet, such rights are still very far from granting the extensive equality promised by the European Union citizenship, which has been thought to remove EU member governments' authority to privilege their own citizens over those from other EU member states.[152]

Literally, since supranational indicates something that extends beyond or free of the political limitations determined by a State, supranational citizenship designates a notion of citizenship that goes beyond the State.[153] It is in this respect that it shares some grounds of global citizenship, but at the same time it lacks the background of many

[148] *See* Nita, S., Pécoud, A., De Lombaerde, P., de Guchteneire, P., Neyts, K., & Gartland, J. (2017). *Migration, Free Movement and Regional Integration*. Paris: UNESCO – UNU-CRIS.
[149] Strumia, F. (2017). Supranational Citizenship. *The Oxford Handbook of Citizenship*, 668-693. doi: 10.1093/oxfordhb/9780198805854.013.29
[150] Hepburn, E. (2010). p.507.
[151] European Union. (1992). *Treaty on European Union*, Official Journal C 191, 29/07/1992, P. 0001 – 0110.
[152] Maas, W. European Union Citizenship in Retrospect and Prospect. In Isin, E. F., & Nyers, P. (2014). p.409.
[153] Strumia, F. (2017). p.1.

intellectual projects on citizenship beyond the state, which usually adopt a moral viewpoint or focus on more institutional dimensions.[154] Moreover, in a different manner from cosmopolitan citizenship, supranational citizenship depends on a supranational entity that have a collective purpose and have set some boundaries. For that reasons, sometimes supranational citizenship is interchanged with regional citizenship more than global citizenship.

Although EU citizenship can be considered the most advanced instance of supranational citizenship, there are other transnational arrangements that can be compared, for instance involving the right of free movement. Nevertheless, not all transnational arrangements determine the construction of a supranational citizenship. Based on supranational citizenship capability, currently regional agreements can be classified into three groups.[155] Similarly to EU, these agreements usually use national citizenship as a way to obtain supranational rights of movement and, in some cases, the status of supranational citizenship.

The first is a low-capability group, which provide for sectoral and limited free movement rights, and includes NAFTA and ASEAN. Agreements in the first group provide only limited movement rights, which are very far from rights deriving from a citizenship status. The NAFTA example, signed by Canada, the United States, and Mexico, allows only temporary movement of business travelers among State Parties. The Association of Southeast Asian Nations is a similar example. Initially, in 1967 it was just a regional cooperation project in Southeast Asia, but later in 1992 it became into a free trade area in and in 2015 into an economic community. Currently, the project is still merely economic, and it does not have any political aspirations to evolve from national citizenships to a common transnational one.[156]

The second intermediate group includes the Economic Community of West African States (ECOWAS) and the Andean Community. ECOWAS was established among 15 African States with the 1975 *Treaty of Lagos*.[157] The aim was granting the right of free movement of persons, and it was specifically codified in the founding treaty by creating the common citizens of the Community through the abolition of visas, right to

[154] Strumia, F. (2017). p.1.
[155] *Ibid*. p.12.
[156] *Ibid*. p.13.
[157] Economic Community of West African States. (1975). *Treaty of Lagos*. Art. 3.2(d)iii.

residence and right to establishment, detailed in a 1979 *Protocol on free movement*.[158] Nevertheless, ECOWAS supranational citizenship still makes a distinction between nationals of an ECOWAS country by birth and naturalized nationals, who can obtain ECOWAS community citizenship after a 15-year time of residency in an ECOWAS country.[159] On the contrary, the Andean Community, established between Peru, Bolivia, Colombia, and Ecuador, seems more promising than ECOWAS in terms of supranational citizenship.[160] With the 2003 *Instrumento Andino de Migración Laboral*, a general right to free movement for employment purposes was extended to nationals of all Member States. However, free movement is still considered an instrument for an economic project of common market.

The third group, which is also the more advanced, includes the Gulf Cooperation Council (GCC), the Caribbean Community (CARICOM), and the Common Market of the South (MERCOSUR). The Economic Agreement of the Gulf Cooperation Council aims to guaranteeing equal treatment to all nationals from Member States. Such treatment is not limited to free movement, residence, and work, but it also concerns economic activities, taxation, education, and welfare. As for the CARICOM, established with the 1973 *Treaty of Charaguamas*, free movement is the main objective connected to economic enhancement, and since 2007 it has evolved in the direction of creating a common citizenship. Citizens of Member States acquired the right to stay for six months in another community country, which constituted a central change in the communitarian project. Differently from European Union citizenship, citizens of a CARICOM State have the broader condition of "belonger,"[161] namely an individual who has a right to enter and reside in Caribbean countries, without being a citizen due to their close connection with the community.

Even without considering their realization stages, the great majority of the supranational citizenship projects challenge States' role as provider of citizenship, and hence, they problematize the monopolies on both territory and nationality. Nationality

[158] Economic Community of West African States. (1979). Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment, ECOWAS O.J. 1979/1.
[159] Economic Community of West African States. (1982). Protocol A/P.3/5/82 Relating to the Definition of Community Citizen.
[160] The Andean Community was established in 1969 with an agreement signed in Cartagena, but it developed into a common market in the 1990s.
[161] Strumia, F. (2017). p.15.

has to face an obstacle and an opportunity. During 21st century, nationality faced some political narratives that push for rebounding the nation state instead of opening it. Still, nationality is experiencing a challenge as these cultural sensitivities placed individuals' viewpoints at the frontline of international trade, globalization, and governance agendas. Therefore, supranational citizenship has a perfect theoretical resource to be used to redefine the position of citizenship.

6.1. The European Citizenship

European Union citizenship was one of the most significant changes introduced by the *Maastricht Treaty* in 1992. Article 9 of the Treaty on European Union states that every national of a Member State is a citizen of the EU and that EU citizenship is not an additional citizenship and does not replace national citizenship.[162] The new juridical status is regulated by Article 20 of the *Treaty on the Functioning of the European Union*, which establishes EU citizenship and resumes Article 9 of the TEU. Moreover, it adds that "citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. […] These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder."[163] Those rights are: the right to free movement within the territory of EU Member States, the right to vote and be voted in the European Parliament and in municipal election of the Member State of residence, the right to diplomatic protection in the territory of a third country in which the Member State of nationality is not represented, and the right to petition the European Parliament. The right to movement is one of the most desirable rights deriving from EU citizenship. As a matter of fact, after the 2016 referendum on Brexit, Britons living all around the world started requesting Irish citizenship passports to "safeguard their positions"[164] since their fear was to lose the right to live and work in the EU after U.K. withdrawal from the European Union.

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[162] European Union. (1992). *Treaty on European Union*, Official Journal C 191, 29/07/1992, P. 0001 – 0110. Art. 9.

[163] European Union. (2012). *Treaty on the Functioning of the European Union*. Official Journal C 326, 26/10/2012, P. 0001 – 0390. Part Two - Non-Discrimination and Citizenship of the Union, Art. 20 (ex Art. 17 TEC).

[164] Merrick, R. (2017). 'Extraordinary' Number of Britons Are Applying for Irish Passports Because of Brexit. Retrieved 2 September 2019, from https://www.independent.co.uk/news/uk/politics/brexit-latest-news-irish-passport-apllications-british-citizens-ireland-eu-rights-ambassador-daniel-a7876186.html

Differently from the nationality attributed from Member States, EU citizenship constitutes a dependent or derivative citizenship.[165] As a matter of fact, individuals gain access to the status of EU citizen by already having access to the status of national of a Member State. The automatic attribution of the EU citizenship to every nationals of a Member State exclude the existence of any criteria of attribution or loss autonomously defined by the Union. Member States still detain the power of regulating attribution and loss of the original citizenship, consequently determining also the attribution and loss of the EU citizenship. Indeed, in the *Declaration on Nationality of a Member State* attached to the *Treaty on European Union*, it is stated that "the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned."[166]

Concerning the issue of the impossibility of a Member State to question the modes of attribution of national citizenship of any other Member State, it is important to remember the 1992 *Micheletti Case*. The Court rejected Spanish position, which excluded that an individual holding dual citizenship - in that case Italian and Argentinian - could be considered Italian, hence, holding EU citizenship. As a matter of fact, Spanish law established that in case of dual citizenship it should prevailed the one of habitual residence according to an effectiveness criterion. In that case, the habitual residence was in Argentina. However, after examining the case, the Court stated:

> "Under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality. However, it is not permissible for the legislation of a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty.
> Consequently, it is not permissible to interpret Article 52 of the Treaty to the effect that, where a national of a Member State is also a national of a non-member country, the other Member States may make recognition of the status of Community national subject to a condition such as the habitual residence of the person concerned in the territory of the first Member State."[167]

[165] Villani, U. (2016). *Istituzioni di diritto dell'Unione europea* (4th ed.). Bari: Cacucci Editore. p.113. and Crawford, J. (2012). p.525.
[166] European Union. (1992). Declaration on Nationality of a Member State. *Treaty on European Union*, Official Journal C 191, 29/07/1992, P. 0001 – 0110.
[167] *Mario Vicente Micheletti and Others v. Delegación del Gobierno en Cantabria,* Judgment of July 7th, 1992, C-369/90, European Court of Justice, EC Reports, 1992, I-04239.

Therefore, from the Micheletti Judgment it is possible to deduct that there is a limit to the relevance of domestic law concerning the attribution of EU citizenship. As a matter of fact, the Court declared that States' jurisdictional competence must be exercised within communitarian law, i.e. currently union law. Consequently, any Member State's action that could remove an individual from their citizenship with the aim of impeding the exercise of deriving rights, such as the right of free movement, would be ineffective.

The orientation of European Union ruling in case of dual citizenship is confirmed by the 2010 *Rottman Case*. The case concerned an Austrian man naturalized German, who was deprived of the German citizenship, and consequently of the EU citizenship, by Germany due to his fraudulent conduct. The Court stated that EU law provisions cannot compromise the principle of international law according which Member States determine the conditions for the acquisition and loss of nationality. Rather, it protects the principle that such power can be judicially reviewed before the Court, in case it affects the rights protected by EU law, such as cases of loss of citizenship granted by naturalization.[168] Nevertheless, in the *Rottman Case*, the Court found the action of Germany lawful due to the fraud committed during the acquisition of German citizenship.

The Court underlined also the useful effect of the provisions concerning EU citizenship. For instance, it guaranteed the right to reside in the EU to a minor's parent during the 2004 *Zhu and Chen Case*. The Court had already guaranteed to any dependent relative in the ascending line of the individual holding the right of residence the right to install themselves with the holder of such right, regardless of their nationality. However, this was the opposite of the *Zhu and Chen Case*, when the Court stated that it should be the mother's right to reside in the U.K., otherwise the host Member State would deprive the child's right of residence of any useful effect.[169] As a matter of fact, a parent constitutes a minor's primary caregiver to reside with their child.

By creating the concept of European citizenship with Article 8(1), the 1992 TEU has constituted a big step in the history of the Westphalian political order. As a matter of fact, EU citizenship has contributed to the creation of a new design beyond the nation

[168] *Janko Rottman v. Freistaat Bayern*, Judgment of March 2nd, 2010, C-135/08, European Court of Justice, EC Reports, 2010, I-01449.
[169] *Kunqian Catherine Zhu and Man Lavette Chen v. Secretary of State for the Home Department*, Judgment of October 19th, 2004, C-200/02, European Court of Justice, EC Reports, 2004, I-09925.

State that challenges the exclusivity of national citizenship, a topic that will be better analyzed in the last chapter.[170]

6.2. The Citizenship of the MERCOSUR

MERCOSUR (in Spanish) or *MERCOSUL* (in Portuguese) is the unofficial name of the Southern Common Market, which is a South-American trade area established by the *Treaty of Asunción* in 1991[171] and *Protocol of Ouro Preto* in 1994.[172] Currently, MERCOSUR full members are Argentina, Brazil, Paraguay, and Uruguay, but there are also some associate countries, like Bolivia, Chile, and Colombia. As a matter of fact, Venezuela has been suspended since December 2016. However, the origins of MERCOSUR can be traced back to 1988 with the signature of the Argentina-Brazil Integration and Economics Cooperation Program, or PICE, by Presidents Raúl Alfonsín of Argentina and José Sarney of Brazil with the aim of creating a common market.

Though, after the constitutive *Treaty of Asunción* in 1991, people's mobility was introduced in function of improving market mechanisms, which were necessary to the free circulation of capital, goods, and services.[173] With the signature of the *Residency Agreement for Nationals of MERCOSUR Member States* in December 2002, migration policies of Member States were harmonized in order to reflect the political interest on creating an integration. For instance, the 2009 *Residency Agreement*, also signed by Bolivia and Chile, was aimed at redirecting social integration process to improve the previous market-centered approach.[174]

In the case of MERCOSUR, it can be said that supranational citizenship has gone beyond aspirations. As a matter of fact, it has been possible to put into effect concrete achievements to reconfigure national citizenships. The MERCOSUR citizenship project was also built by a 2010 action plan which aims to deepen the social and civic dimension

[170] Crawford, J. (2012). p.524.
[171] MERCOSUR. (1991). *Treaty Establishing a Common Market (Asunción Treaty) Between the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay*.
[172] MERCOSUR Council. (1994). *Additional Protocol to the Treaty of Asunción on the Institutional Structure of MERCOSUR*.
[173] Margheritis, A. (2015) Mercosur's Post-Neoliberal Approach To Migration: From Workers' Mobility To Regional Citizenship. *A Liberal Tide? Immigration and Asylum Law and Policy in Latin America*. London: School of Advanced Study, University of London. pp. 59.
[174] *Ibid.*

of MERCOSUR integration. The final achievement is the statute of common citizenship within 2021.[175] The plan puts the focus on implementing a regional free movement system and on equalizing the status of MERCOSUR nationals with regard to civil, social, cultural, and economic rights in order to grant an equal access to work, education, and social services.

Furthermore, the *Acta CRPM No. 03/18* institutes a Work Program that contemplates the development of a communicational action guided by two fundamental objectives. The first aim is to make available to all citizens of the States Parties the rights and benefits achieved within the MERCOSUR framework. This would be a crucial action not only to make more effective the exercise of such rights and benefits. Also, it is indispensable to create awareness and to instill a sense of belonging that transcends the nationalities of the States Parties in new generations. The second objective is to put the attention of administrations and the MERCOSUR civil servant on both the practical and symbolic importance of such process. The final aim is not only the realization of such multidimensional integration, but also the realization of the expectations of citizens of the States Parties in order to offer socially valuable results in terms of integration, which would result in more effective rights and benefits.[176] It is important to remind that the *Comisión de Representantes Permanentes del MERCOSUR* (CRPM) has worked on the *Cartilla de la ciudadanía del MERCOSUR*, which is the gathering of standards related to the citizens of MERCOSUR.[177]

The MERCOSUR is one of the most ambitious regional projects in which countries of the South America participate. Moreover, it is also one of the major processes of integration on the international stage, and the second most advanced after the European Union.[178] Initially, such regional bloc has emerged as an integration project economic. Nevertheless, currently, the MERCOSUR integration has advanced considerably to political, social, and cultural matters concerning citizenship and citizens, which have been considered necessary to consolidate since it could add an important contribution to the

[175] MERCOSUR Council. (2010). *Estatuto de la Ciudadanìa del Mercosur*. Plan de Acciòn, n. 64/10, December 2010. Art. 2.
[176] Devoto, M. (2018). Hacia una ciudadanía del MERCOSUR. *Revista MERCOSUR de Políticas Sociales*, *2*, 326-332. doi: 10.28917/ism.2018-v2-326. p.330.
[177] Cartilla de la ciudadanía - CRPM - MERCOSUR. (2019). Retrieved 5 September 2019, from http://www.cartillaciudadania.mercosur.int/website/es
[178] Devoto, M. (2018). p.331.

construction of a more wealthy, just, and peaceful community to which Member States' citizens could feel a sense of belonging. Such framework definitely fosters a positive outlook on the plan of political integration.

CHAPTER III

The Case of the Recognition *Jure Sanguinis* of Italian Descendants in Argentina

1. The Evolution of the Italian National Legislation about Citizenship

In the first two chapters, it has been fundamental to clarify the notion of citizenship in its main characteristics and within the international legal framework. This third chapter will be focused on the specific case of the recognition by birth *jure sanguinis* of Italian descendants in the Argentine Republic. For such purpose, in this paragraph, it will be necessary to analyze how the Italian national legislation about citizenship has evolved since the foundation of the Italian Republic. Moreover, the current Italian citizenship law will be explained in more details[1] and the aspects that still remains unsolved will be examined.

The *Statuto Albertino* was issued for the Kingdom of Sardinia in 1848 and it was the first fundamental rule for the Italian State formed in 1861. That was a first Constitution, establishing the fundamental principles of monarchy. In Article 24, it was stated that all the subjects of the Kingdom were equal before the law and that also civil and political rights were grant to every subject.[2] However, women depended on the authority of the *pater familias*. For this reason, such equality before the law must be applied only to men.[3] In this sense, due to this dependency of the woman and the children to her husband, any modification concerning the husband's citizenship status could influence the status of the whole family, directly affecting the citizenship status, e.g. in the event of naturalization in another country.[4]

[1] Cittadinanza. (2019). Retrieved 9 December 2019, from https://www.esteri.it/mae/en/ministero/normativaonline/normativa_consolare/servizicon solari/cittadinanza.html
[2] Article 24 from *Statuto Albertino*. (1848).
[3] Aucello, T. (2017). La cittadinanza italiana e la sua evoluzione. *Rivista di Diritto e Storia Costituzionale del Risorgimento, n. 1/2017*. pp.6-7.
[4] *Ibid*.

The matter of citizenship was dealt in the Civil Code of 1865, also known as *Codice Pisanelli*, which was the first civil code of the Kingdom of Italy, issued on April 2nd, 1865. It replaced the laws and civil codes that were in force independently in the Italian pre-unification States. In Title I "Della cittadinanza e dei diritti civili", Articles 4 to 15 of the 1865 Civil Code regulated the acquisition and the loss of Italian citizenship. Italian citizenship could be acquired *jure sanguinis*, meaning that a citizen is the son of a father who is a citizen.[5] If the father lost his citizenship before the birth of his child, the child is a citizen if he is born and resident in the Kingdom. Only in the event that the father is unknown, a child could acquire the citizenship status from a mother who is a citizen.[6] Moreover, it was considered a citizen the child born in the Kingdom from a foreign person who set the domicile there uninterruptedly for ten years. As for citizenship by marriage, a married woman could acquire the citizenship status from her husband and had the right to preserve it after her husband's death. Additionally, citizenship by naturalization could be grant by law or royal decree. Also, the 1865 Civil Code did not admit dual citizenship, which would have caused the deprivation of the Italian nationality.[7] Any loss of citizenship would also affect the wife' and the children's status in the event they had not kept their residency in the Kingdom. Moreover, a citizen woman who had married a foreign husband would automatically lose her husband's citizenship in the event he had acquired a foreign citizenship. In any case, the loss of citizenship did not exempt from military service or from penalties due to attacks to national security or lese-majesty.[8]

In Italy, the operating principle concerning the matter of citizenship is the *jus sanguinis*, which has been established with Law No. 555 of June 13th, 1912.[9] Such law has been fully applicable until Law No. 91 of February 5th, 1992.[10] The Law No. 555 of June 13th, 1912, "Sulla cittadinanza italiana," reiterated the dominance of the husband in

[5] Pepe, I. (2014). *Codice Civile (1865), Codice di Commercio (1882)* (4th ed.). Napoli: Edizioni Giuridiche Simone. pp.17-18.
[6] *Ibid*.
[7] *Ibid*.
[8] *See* Articles 11 and 12 in Pepe, I. (2014). p.18.
[9] Calvigioni, R., & Piola, T. (2017). *Il riconoscimento della cittadinanza italiana iure sanguinis*. Sant'Arcangelo di Romagna: Maggioli Editore. p.11.
[10] Cittadinanza. (2019). Retrieved 9 December 2019, from https://www.esteri.it/mae/en/ministero/normativaonline/normativa_consolare/serviziconsolari/cittadinanza.html

marriage and the subjection of his wife[11] and children to any matter that could involve men in relation to citizenship.[12] Furthermore, *jus sanguinis* was the operating principle, whereas *jus soli* was applicable only to residual hypothesis.[13] As a matter of fact, it was necessary to verify whether an individual was born Italian or whether citizenship was acquired at a later time according the criteria established by current law. Additionally, the children followed the citizenship of the father and only in the residual form the one of the mother.[14] Law No. 555 also sanctioned cases of multiple citizenship in Article 7, which had important relevance for the worldwide emigration of Italian nationals to many countries. The provision of such article disconnected the loss of Italian citizenship of the father from the status of the Italian citizenship of the minor born abroad. Indeed, in the event that the child from an Italian father had been born in a country that attributes citizenship *jure soli*, the child would have the Italian citizenship of the father and also the citizenship of the native country.[15] Hence, such child would hold dual citizenship. In that manner, children could maintain their double status in the event that the Italian father was naturalized at a later time. With Article 12, Law No. 555 also brought a provision with the effect that the children of Italian widows could maintain paternal Italian citizenship in the event of the mother's new marriage and the consequent acquisition of another citizenship.[16] In that regard, children might hold Italian citizenship even if they automatically acquire the new citizenship of the mother.

On January 1st, 1948, the Republican Constitution replacing the 1848 Constitution of the Kingdom of Italy. The fundamental articles that would put the basis for the development of a nationality law were Article 3 and Article 29.[17] Article 3 of the "Principi fondamentali" contains two important provisions. The first establishes the equality of all citizens before the law without any discriminatory distinction.[18] The second completes the first by stating that it is the Republic must remove any economic and social obstacles that could obstruct the full development of the individual and the active political,

[11] Aucello, T. (2017). p.7.
[12] Law No. 555 of June 13th, 1912.
[13] Aucello, T. (2017). p.7.
[14] *Ibid.*
[15] Calvigioni, R., & Piola, T. (2017). pp.20-21.
[16] Art. 12 of Law No. 555 of June 13th, 1912.
[17] Calvigioni, R., & Piola, T. (2017). p.15.
[18] Aucello, T. (2017). p.9.

economic, and social participation.[19] Furthermore, Article 29, which is part of Title II concerning "Relazioni etico-sociali,"[20] deals with the matter of marriage affirming the equality between the spouses.[21] Nevertheless, the Republican Constitution was not implemented on matters related to citizenship until 1983. Despite the equality determined by Articles 3 and 29 of the Constitution, no Parliamentary law had changed the rule for which the son of an Italian mother and a foreign father could not acquire Italian citizenship *jure sanguinis*.[22]

Still, some important steps before 1983 must be remembered. With the Judgment of April 9th, 1975 of the Constitutional Court, it was declared the constitutional illegitimacy of Article 10 of Law No. 555 concerning the involuntary deprivation of Italian citizenship for women, since they not have full legal capacity at that time.[23] Such provision integrated the nationality law by establishing that women were allowed to transmit the citizenship status.[24] Furthermore, an unjustified difference in treatment was also produced in the event that Italian women married a foreigner.[25] As a matter of fact, with Law No. 151 of May 19th, 1975, family law was reformed. Article 219 of Law No. 151 of 1975 allowed women the "reacquisition", which is properly defined in the jurisprudence as recognition, of citizenship.[26]

The Judgement No. 30 of January 28th, 1983 was particularly meaningful since it questioned the constitutional illegitimacy of Art. 1 (1) of the Law No. 555 of 1912.[27] The judgement determined that such article was in clear contrast with Art. 3 (1) and with Art. 29 (2) of the Constitution.[28] Furthermore, not only did the Constitutional Court declare the constitutional illegitimacy of Art. 1 for not providing that the son of an Italian mother is also a citizen by birth, but also it declared the unconstitutionality of Art. 2 (2) of the same law, as it allows the acquisition of maternal citizenship by the child only in residual hypotheses.[29] However, the Opinion No. 105 of 1983 specified that only individuals born

[19] Art. 3 of the Italian Constitution, 1948.
[20] Art. 29 of the Italian Constitution, 1948.
[21] Aucello, T. (2017). p.9.
[22] Calvigioni, R., & Piola, T. (2017). p.15.
[23] Italian Constitutional Court, Judgement No. 87, April 9th, 1975.
[24] Calvigioni, R., & Piola, T. (2017). p.15.
[25] Aucello, T. (2017). p.10.
[26] *Ibid.*
[27] Italian Constitutional Court, Judgement No. 30, January 28th, 1983.
[28] *Ibid.*
[29] Aucello, T. (2017). p.11.

of a mother citizen as of January 1st, 1948 could be considered Italian citizens.[30] That was due to the fact that the effectiveness of the Judgement could not act retroactively,[31] and hence, before the date of entry into force of the Republican Constitution, i.e. January 1st, 1948.[32] In 1983, Law No. 123 officially established that any minor child, including adoptive children, of an Italian father or mother, or born in Italy, is Italian citizen by birth, clearly admitting the possession of multiple citizenship.[33] In the event of dual citizenship, the child who was not born in Italy had to opt for a single citizenship within one year after reaching the age of majority. Such law extended citizenship to any minor at the time of its entry into force, even if they had been adopted.[34] Also, it edited the previous law that prescribed the automatic acquisition of Italian citizenship *jure matrimonii* for foreign women who had contracted marriage to an Italian citizen.[35] Therefore, from the date of entry into force the equality of foreign spouses was officially established by Italian law.

The major change occurred in 1991 with the *Circolare del Ministero dell'interno n. k.28.1*, which contained the specific indications and procedure to be followed for recognizing the uninterrupted possession of the Italian citizenship.[36] The *Circolare* was a precious and indispensable operative tool, as it identified in detail the obligations to be fulfilled and has been fully applicable even after Law No. 91 came into force.[37]

The current application on the matter of citizenship is Law No. 91 of February 5th, 1992. Such law establishes that citizenship by birth is recognized to the son of an Italian father or mother, or to individuals born in the Italian territory from both unknown or stateless parents, or to the minor who otherwise would be stateless.[38] Similarly to Art. 5 of Law No. 123 of 1983, Art. 3 expressly recognizes its retroactivity[39] for attributing the citizenship status of an adopted child, even a foreigner, of an Italian mother, in the event they are born before 1983.[40] Still, such law excludes retroactivity in Art. 20 by stating that the status of citizenship acquired prior to 1992 does not change unless expressly

[30] Opinion No. 105 of the Council of State of April 15th, 1983.
[31] Aucello, T. (2017). p.11.
[32] Calvigioni, R., & Piola, T. (2017). p.102.
[33] Law No. 123 of April 21st, 1983.
[34] Aucello, T. (2017). p.11.
[35] *Ibid.*
[36] Calvigioni, R., & Piola, T. (2017). p.16.
[37] Circolare del Ministero dell'interno n. k.28.1 of April 8th, 1991
[38] Law No. 91 of February 5th, 1992.
[39] Aucello, T. (2017). p.12.
[40] Art. 3 of Law No. 91 of February 5th, 1992.

provided.[41] Consequently, such law produced that the children of an Italian mother and a foreign father born before 1948 remain subject to Law No. 555 of 1912, despite the constitutional illegitimacy declared with Judgement No. 30 of 1983 by the Constitutional Court.[42] Furthermore, Law No. 91 of 1992 allows in any case the possession of multiple citizenship. Whereas it does not eliminate from certain guiding principles of Law No. 555, in particular from matters related to the acquisition of citizenship by filiation, the new law has introduced several rules that innovate the regulatory framework.[43] Thus, apart from the definitive recognition of equality between man and woman, Law No. 91 admits, or at least it does not prevent, the citizenship. Moreover, it attributes decisive importance to the expression of the individual's will for the purpose of acquiring or losing the status of citizenship.[44]

After 1992, some laws have changed the path and the conditions to access to citizenship by extending it to some categories of citizens, for instance, to those who had been excluded for historical reasons or due to war events.[45] [46] An example is Law No. 379 of December 14th, 2000,[47] which extends the recognition of Italian citizenship to persons born and already resident in the territories belonging to the Austro-Hungarian Empire and to their descendants.[48] Another example is Law No. 124 of March 8th, 2006[49] concerning the recognition of Italian citizenship to nationals of Istria, Fiume, and Dalmatia and to their descendants, and amending Law No. 91.[50] Such law intended to favor the preservation and regaining of Italian citizenship, thereby also responding to requests coming from the communities of nationals living in States of historical migration.[51] According to many scholars, in hindsight, this orientation has also inspired the subsequent regulatory additions that took place in 2000 and 2006.[52]

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[41] Art. 20 of Law No. 91 of February 5th, 1992.
[42] Aucello, T. (2017). p.13.
[43] Fioravanti, C. La disciplina giuridica della cittadinanza italiana: fra regime vigente e prospettive di riforma. In Zagato, L. (2011). p.42.
[44] *Ibid.*
[45] Peruffo, E., & Portinari, P. (2012). La cittadinanza italiana. Istituto giuridico e riflessioni su alcuni aspetti problematici più recenti. *Visioni Latinoamericane*, *7*. pp.162-163.
[46] Aucello, T. (2017). p.12.
[47] Law No. 379 of December 14th, 2000.
[48] Aucello, T. (2017). p.12.
[49] Law No. 124 of March 8th, 2006.
[50] Aucello, T. (2017). p.13.
[51] Fioravanti, C. La disciplina giuridica della cittadinanza italiana: fra regime vigente e prospettive di riforma. In Zagato, L. (2011). p.42.
[52] *Ibid.*

As a result, although it was issued at a historical moment of social change determined by the strong migratory flows towards Italy, the current law of 1992 does not adequately take charge of the regulation of the phenomenon. Such issue emerges in particular due to the consistent immigration to Italy of foreign citizens who had settled there and, an even more important phenomenon, of their descendants who were born in Italy or have arrived there at an early age. To those individuals the granting of Italian citizenship is still subject to the general regulation for the acquisition by the foreigner of the Italian citizenship.[53] In order to promote the integration of immigrant foreigners, there have been several proposals to amend the law aimed at amending the current law to facilitate the acquisition of Italian citizenship by the foreigners residing in the territory and integrated here, also enhancing, for the purpose of acquiring citizenship, the birth of the foreigner and his entry during the minority in the territory of the Italian Republic.[54]

Despite the efforts, the descendants of an Italian woman born before 1948 are not eligible by law for the citizenship status, with the only possibility to have it recognized by an Italian judge.[55] As a matter of fact, due to the judgments of the Constitutional Court No. 87 of 1975 and No. 30 of 1983, the right to the status of an Italian citizen have been recognized to the applicant by applying Law n. 555 of 1912.[56] Such pre-constitutional provisions have been declared unconstitutional, but the effect cannot be retroacted beyond the entry into force of the Constitution.[57] The Judgement of the Court of Cassation No. 4466 of February 25th, 2009[58] establishes the right of citizenship as a permanent status even after the entry into force of the Constitution of the illegitimate deprivation due to the unconstitutionality of this discriminatory rule.[59] Still, the request for recognition must be submitted to the Court and not to the Civil Registry Office.[60] In this sense, many specific cases lack a proper and specific regulation, and they still remain uncovered.

[53] Fioravanti, C. La disciplina giuridica della cittadinanza italiana: fra regime vigente e prospettive di riforma. In Zagato, L. (2011). p.43.
[54] *Ibid.*
[55] Calvigioni, R., & Piola, T. (2017). pp.99-101.
[56] Aucello, T. (2017). p.13.
[57] *Ibid.*
[58] The Judgment confers the Italian citizenship status to an Egyptian woman with an Italian grandmother. Due to the Law of 1912, she had lost her citizenship after marrying an Egyptian citizen. *See* Italian Court of Cassation, Judgement No. 4466, February 25th, 2009.
[59] Aucello, T. (2017). p.13.
[60] Calvigioni, R., & Piola, T. (2017). p.17.

2. The Bilateral Agreements

To the regulatory framework deriving from the Italian citizenship law in force, it is necessary to add the multilateral and bilateral conventions in force for the Italian Republic concerning citizenship. The provisions deriving from those agreements prevail over general legislation in all cases in which they must apply in relations with other States parties, as a special regime, instead of the general framework.[61] In this paragraph, firstly it will be briefly analyzed the matter of the creation of multilateral or bilateral agreements and their effectiveness. Secondly, some examples of bilateral agreements signed by Italy on the matter of citizenship will be provided, in particular regarding military service in the vent of dual citizenship. Lastly, due to the big emigration process occurred in the last century towards Latin America States, some bilateral agreements signed together with such states will be examined.

As it has been explained in the previous chapters, it is not easy to identify the existence of general international norms on the matter of citizenship. As a matter of fact, States often have, on the topic, an attitude of indifference or obstructionism. This is due to the fact that citizenship is traditionally considered within the reserved domain of States. Still, that did not prevent the formation of a number of international legal instruments. Such multilateral or bilateral agreements are very different due to the different contents being treated, and to the level of effectiveness of the agreement. Indeed, such effectiveness can depend on whether the treaty is universal, regional, or simply bilateral, or also on the success that the agreement has achieved, based on the number of ratifications of States.[62]

With regard to the Italian bilateral treaties, Italy has signed several agreements, in particular with the aim of regulating the access to military service in cases of dual citizenship. In 1929 Italy concluded the well-known bilateral agreement with the Vatican City State, the *Lateran Treaty*.[63] With such agreement, it was admitted in Article 21 that Cardinals residing in Rome outside the territory of the Vatican City, and even those of

[61] Fioravanti, C. La disciplina giuridica della cittadinanza italiana: fra regime vigente e prospettive di riforma. In Zagato, L. (2011). p.43.
[62] *See* Legalizzazione documenti. (2019). Retrieved 13 December 2019, from http://www.prefettura.it/ancona/contenuti/45047.htm
[63] ATRIO - Ministero degli Affari Esteri. (2019). Retrieved 12 December 2019, from http://itra.esteri.it/

Italian nationality, would acquire the citizenship of the Vatican City State.[64] However, the at the time Kingdom of Italy was not entirely prepared for a complete renunciation of the reserved domain on the matters of citizenship. As a matter of fact, the Italian laws, which contrasted with the provisions of the agreement, remained applicable to the Cardinals. Another example was the *Buenos Aires Agreement* of 1938 between Italy and Argentina. Such agreement provided that people born in Argentina from Italian parents who have regulated their military position in Argentina were exempt from Italian military service.[65] Similarly, the Convention between Italy and Denmark of Rome of July 15th, 1954, and Convention between Italy and Chile of Rome of June 4th, 1956, stated that an individual who possesses Italian and Danish or Chilean citizenship could perform military service only in one of the two states. Also, the *Treaty of Friendship, Commerce and Navigation* between Italy and Germany, which was signed in Rome on November 21st, 1957, established that the citizens of each State had no military obligations towards another State, nor can they be forced to join the army or any militarized formation within or outside its territory. The *Agreement of Rio de Janeiro* of 1958 between Italy and Brazil[66] and the *Rome Convention* of 1961 between Italy and the Netherlands[67] reaffirmed that in the event of a citizen who had the citizenship of the two States and had fulfilled military service in one of the two States military service in the other State was not compulsory. On the contrary, with the *Paris Convention* of 1974 between Italy and France,[68] and the *Madrid Convention* of 1974 between Italy and Spain,[69] and the *Brussels Convention* of 1980 between Italy and Belgium,[70] it was established that those holding dual citizenship must perform military service in the State where they had their habitual residence, unless they declared that they wished to do so in the other State. In a different

[64] Kingdom of Italy – Vatican City State. (1929). *Lateran Treaty*. Effective from June 7th, 1929 to June 3rd, 1985.
[65] Kingdom of Italy – Argentine Republic. (1938). *Buenos Aires Agreement*. August 8th, 1938.
[66] Italy – Brazil. (1958). *Agreement of Rio de Janeiro.* September 6th, 1958. UNTS No. 22377.
[67] Italy – Netherlands. (1961). *Rome Convention (Convenzione relativa al servizio militare in caso di doppia cittadinanza)*. January 24th, 1961. Law No. 1111 of 12.07.1962 In GU No. 202 of 11.08.1962.
[68] Italy – France. (1974). *Paris Convention (Convenzione relativa al servizio militare dei doppi cittadini).* September 10th, 1974. Law No. 401 of 05.05.1976 In GU No. 154 SO of 12.06.1976.
[69] Italy – Spain. (1974). *Madrid Convention* (Convenzione relativa al servizio militare dei doppi cittadini, con n. 4 allegati). June 10th, 1974. Law No. 168 of 12.03.1977 In GU No. 122 of 06.05.1977.
[70] Italy – Belgium. (1980). *Brussels Convention* (Convenzione relativa al servizio militare dei doppi cittadini, con protocollo e allegati). November 3rd, 1980. Law No. 560 of 10.07.1982 In GU No. 224 of 16.08.1982.

manner, the *San Marino Agreement* of 1980[71] established that those in possession of Italian and San Marino citizenship were exempted from the Italian military obligation, if they had presented the certificate of residence in the Republic of San Marino. With this agreement, therefore, unlike the others, individuals who had dual citizenship were not prevented from performing military service twice, but it simply exempted those living in San Marino.

Also, there are several specific bilateral agreements with some Latin American States. The main reason was to regulate the acquisition of Italian citizenship due to the strong emigration occurred in the last century towards those States. An example is the Agreement with Argentina of 1971,[72] which permitted to individuals who had acquired the citizenship of only one of the two States to also acquire the citizenship of the other State. They could also choose to retain the citizenship of origin, but in doing so the rights inherent in the citizenship of origin were suspended. Such agreement did not apply to the children of emigrants born in Argentina. As a matter of fact, dual citizenship was admitted without any limitation for them. Another example were the agreements signed with Bolivia in 1890[73] and with Costa Rica in 1873,[74] which established that individuals born in Bolivia or Costa Rica from Italian citizens could choose Bolivian citizenship or Costa Rica by doing a declaration.

3. The Phenomenon of Italian Migration Towards Argentina and the Analysis of the Italian Communities

The phenomenon of Italian emigration did not begin in the 19th century, but it can be traced back to more ancient times.[75] Since the Middle Age colonies of Italian merchants had been established in London, Constantinople, Seville, or Aleppo. There

[71] Italy – San Marino. (1980). *San Marino Agreement* (Accordo aggiuntivo alla convenzione di amicizia e buon vicinato del 31.03.1939 in materia di assistenza amministrativa, doppia cittadinanza e leva militare, con scambio di lettere). October 28th, 1980. Law No. 488 of 10.07.1982 In GU No. 210 of 02.08.1982.
[72] Italy – Argentina. (1971). *Buenos Aires Citizenship Agreement (Accordo di cittadinanza)*. October 29th, 1971. Law No. 282 of 18.05.1973 In GU No. 152 of 14.06.1973.
[73] Italy – Bolivia. (1890). *Agreement*, October 18th, 1890.
[74] Italy – Costa Rica. (1873). *Agreement*, May 6th, 1873.
[75] Romano, R. (1992). Il lungo cammino dell'emigrazione italiana. *Altreitalie. Rivista internazionale di studi sulle migrazioni italiane nel mondo*, 7.

were not only merchants but, later on, also artists. For instance, the construction of the Kremlin not only involved architects but also marble workers, mosaicists, and bricklayers from Italy. Both in Europe and outside Europe it was possible to find groups of Italians. In this paragraph, it will be analyzed in more details the phenomenon of Italian migration, especially towards Argentina, and the creation of the Italian communities will also be investigated. Firstly, it will be provided a more general excursus on Italian emigration and the difficulties in collecting and organizing data and statistics. Then, the phases of Italian emigration will be listed. The main focus will be the migration wave of Italians to Latin America, with an emphasis on the Argentine Republic. Hence, the journey and the creation of Italians communities will be studied in order to determine the current influences on the Argentine society.

Despite the interest that the phenomena have gained in the historiographic field, the journey of emigration still remains one of the least studied aspects of Italian historical migration.[76] The reasons can be only partially attributed to the scarce interest of the historians. Also, there is the lack of interest of the state and institutions about the life of migrants. As a matter of fact, until the early years of the 20th century, few traces of the transoceanic journey remained in the archives. Moreover, travel has assumed the character of "non-place"[77] and it makes it a difficult experience to document. During the crossings those of the emigrants were "suspended lives,"[78] since they had left their life behind and did not know how it would be in the country of destination.

There is no direct relationship between emigration and the positive or negative evolution of the various phases of the Italian economy.[79] This means that the Italian economic situation does not seem to have had an influence on migratory movements, at least until the 19th century.[80] On the contrary, it would seem that a sort of attraction aspires many Italians to new countries regardless of their economic conditions. Rather, since the mid-16th century, a sort of correlation between emigration and the bulk of religious, political, and social life had emerged.[81] For instance, the repressive process after the

[76] Molinari, A. (2017). Le traversate delle migrazioni storiche italiane tra evento e racconto. *História (São Paulo)*, 36(112). pp.1-2.
[77] *See* Augé, M. (2018). *Nonluoghi*. Milano: Elèuthera.
[78] *Ibid.*
[79] Romano, R. (1992).
[80] *Ibid.*
[81] *Ibid.*

Counter-Reformation pushed many Italians to seek refuge outside Italy to express themselves or practice their worship freely. In such cases, it could be necessary to speak of expulsion rather than emigration.

After the independence of the various American states between 1810 and 1825, Italian emigration became increasingly important.[82] On the one hand, that quantitative growth depended on the fact that the new states did not present the difficulties that the Spanish monarchy had faced with foreign immigration.[83] On the other hand, there were some political reasons: many Italian *carbonari* and patriots sought refuge in America after the failure of the revolts, riots, and revolutions of 1821, 1831, and 1840.[84] During the 19th century, the U.S.A. had become ever larger due to the annexation of the spaces of the Northern part of United States and Canada to the old Iberian America. After that, the first diaspora led to the emigration of about 10 million Italians between 1869 and 1910.[85]

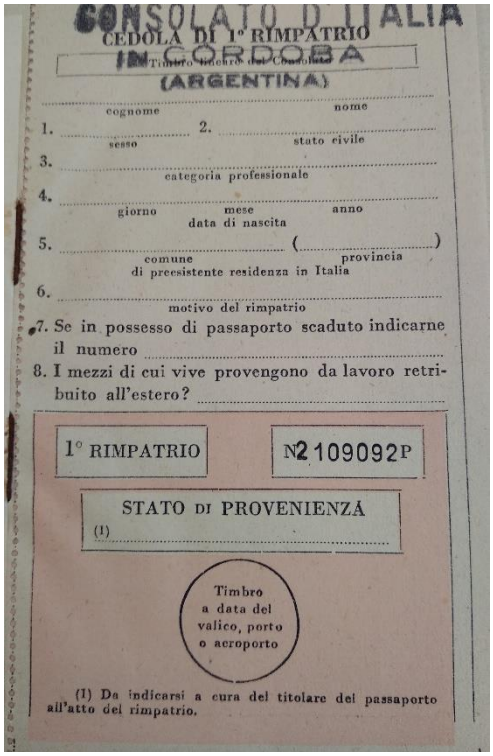
Among the Italian ports, Genoa managed the largest amount of emigration traffic for almost a century. These flows are partly attributable to the earliness with which migratory phenomena occur in the Ligurian area, although it seems very likely that emigrants from other regions also embarked in Genoa.[86] In the period between 1833 and 1850, according to the data provided by the Maritime Health Office of the port of Genoa, around 14,000 emigrants left Genoa for the Americas.[87] The preferred destination of these flows were the regions of Plata (68%), the United States (16.5%), and Brazil (8%).[88] From 1876 to 1901, 61% of Italian transoceanic emigration embarked in the port of Genoa.[89] Conversely, in the following years, the southernization of flows and the prevalence of migratory currents for the United States made the port of Naples take the lead in emigration traffic. In 1901 the port of Naples embarked a quota of emigrants that double that of the port of Genoa. However, the port of Genoa will continue to maintain a substantial share of boarding (34% from 1902 to 1924).[90] The main centers of attraction were Argentina, Uruguay, Brazil, and the United States. Only in more recent times did

[82] Romano, R. (1992).
[83] *Ibid.*
[84] *Ibid.*
[85] *Ibid.*
[86] Molinari, A. (2017).
[87] *Ibid.*
[88] *Ibid.*
[89] *Ibid.*
[90] *Ibid.*

major migration flows move towards other areas: Venezuela, Canada. Few, however, were the Italians who moved to Mexico, Peru, Ecuador, Guatemala, and Bolivia, in a very similar manner to Russians, Poles, and the citizens of the Ottoman Empire.[91]

Since 1945, the previous methods of statistical detection of Italian emigration have proved to be inadequate. In the early post-war years, the main causes were the initial lack of control of the expatriations by the Italian and foreign authorities and the insufficient financial means of the Istat.[92] The main causes were the vast proportion of illegal emigration and the insufficiency of the public security forces involved, at land and sea borders, to collect the statistical tickets from passports.[93] In 1958 Istat abolished the tickets by replacing them with some individual emigrant forms compiled by the municipal authorities of residence of the expatriates on the basis of the passports issued.[94] Nevertheless, with the establishment of the right to free movement within the European Community, such passports fell into disuse, and Istat relied on the emigrant's self-reporting of expatriation to the municipal authorities and diplomatic authorities to the abroad.[95]

[91] Romano, R. (1992).
[92] The *Istituto nazionale di statistica* (commonly known as Istat or ISTAT) is an Italian public research body that deals with general censuses of the population, services, industry, and agriculture, with sample surveys on families and general economic surveys at national level.
[93] Rinauro, S. (2010). Le statistiche ufficiali dell'emigrazione italiana tra propaganda politica e inafferrabilità dei flussi. *Quaderni storici 134, 45*(2), 393-417. p.393.
[94] *Ibid.*
[95] *Ibid.*



CONSOLATO D'ITALIA
CEDOLA DI 1° RIMPATRIO
IN CORDOBA
(ARGENTINA)

cognome nome
1. 2.
sesso stato civile
3.
categoria professionale
4.
giorno mese anno
data di nascita
5. ( )
comune provincia
di preesistente residenza in Italia
6.
motivo del rimpatrio
7. Se in possesso di passaporto scaduto indicarne il numero
8. I mezzi di cui vive provengono da lavoro retribuito all'estero?

1° RIMPATRIO N2 109092P

STATO DI PROVENIENZA
(1)

Timbro a data del valico, porto o aeroporto

(1) Da indicarsi a cura del titolare del passaporto all'atto del rimpatrio.

Figure 1: "Cedola di rimpatrio."

That change caused even greater statistical uncertainty. It was the uncertainties of detection that allowed government majorities to present unreliable or exaggerated estimates of the exodus that sparked the controversy of the oppositions, which was hostile to the migration policy of the Government.[96] Therefore, the most reliable data remain those of the general population censuses. However, since they are decennial, they capture the number of emigrants between one census and another, but they do not capture the annual flow of expatriations and repatriations.[97] Nowadays, the right to free movement of EU workers first and then the more general right to free movement with the Schengen and Maastricht treaties inducted a degree of migratory freedom for EU citizens that was unthinkable until only a few decades ago.[98] In particular, for European destinations they have compromised more than ever the already uncertain Italian emigration statistics.

In order to understand their essential characteristics, it is useful to divide the history of Italian emigration into four phases. The first phase (1876-1900) was characterized by a growing trend of migratory flows due to socio-economic and political

[96] Rinauro, S. (2010). p.393.
[97] *Ibid.* p.413.
[98] *Ibid.*

factors.[99] Socio-economic factors were a consequence of the Great Depression of 1873-1896, the consequent collapse of food prices, and the protectionist policy adopted by the government, especially in a country like Italy, in which agriculture constituted the basis of the national economy.[100] In addition, political factors depended on the adoption of a liberal migration policy, which was characterized by the lack of an organic protection legislation.[101] The Crispi legislation of 1888 recognized the freedom to emigrate, regulating only transportation and not the assistance of the emigrant after disembarkation. It is thought that each person was recognized on the ship a space of just over a cubic meter.[102] That wave of migration spread homogeneously in European countries, especially in France and Germany, and in non-European countries, especially Argentina, Brazil, and the United States.[103] However, it should be noted that in general the flows from the South were directed towards extra-European countries, whereas the flows from the North towards the European ones.[104]

The second phase (1900-1914), on the threshold of World War I, overlapped with the period of industrialization in Italy, especially in the North.[105] As a matter of fact, the industrial take-off was not able to absorb the workforce surplus expelled from the agricultural sector and rural areas, which sought work abroad. The law of 1901 provided for a *Commissariato generale per la tutela dell'emigrazione* (CGE), whose duties were related to both transportation, assistance, and protection of migrant women and children.[106] In this phase, long-term emigration of entire families was especially directed towards the United States.[107]

The third phase (1918-1939) was characterized by a strong contraction of the migration phenomenon, due to political and economic factors.[108] As for the political factors, some countries, including the United States, decided for security reasons to regulate the flow of immigration from certain countries, such as Italy. Also, fascism

[99] Falleni, E., & Guerrini, S. (2011). L' emigrazione italiana come espansione della nazione italiana. L'esempio della migrazione friulana in Argentina alla fine del XIX secolo. *Altrove - Fondazione Paolo Cresci per la storia dell'emigrazione italiana*, *5*, 17-28. p.17.
[100] *Ibid.*
[101] *Ibid.*
[102] *Ibid.*
[103] Rinauro, S. (2010). p.393.
[104] Falleni, E., & Guerrini, S. (2011). p.18.
[105] *Ibid.*
[106] *Ibid.*
[107] *Ibid.*
[108] *Ibid.*

adopted an anti-emigration policy both for prestige and for recruiting young people for military purposes. Moreover, due to the Great Depression of the 1930s, European destinations prevailed over transoceanic destinations, in particular France and Germany, after the Italian-German alliance.[109]

The fourth phase went from the Second Post-war period to the economic boom of the 1960s and it was characterized by an initial recovery of emigration, which however gradually diminished.[110] Such migratory wave mainly affected the Southern regions. Also, it had a temporary nature: the emigrant was a *Gastarbeiter*, a worker-guest, who stayed in the host country only the time necessary to carry out the tasks for which he had been recruited.[111] The phenomenon was oriented towards European countries, such as Belgium, Switzerland, France, and Germany, in which the favorable economy created new job opportunities for emigrants.

It is worth asking the reasons behind the orientation of the emigration of the 19th century. The first answer is the simplest and most obvious: the countries of the Atlantic façade of the American continent were more easily accessible.[112] The other hypothesis concerning the existence of old groups of Italian emigrants established since the beginning of the 19th century in Argentina, in the United States, and in other countries was less convincing. In order to answer this question, the starting point should be another. An emigration event is made up of two components: firstly, the expulsion force from a given country; secondly, the attraction force of another country.[113] A fragile nation can only push its inhabitants to leave. However, in order to welcome them, the receiving country should also need to get workforce. So, it was the demographic vacuum aspires to emigrants. As a matter of fact, among the four countries that have been most welcoming to Italian emigration, Argentina, Uruguay, and the United States were demographically empty.[114] Brazil was, in a way, an exception since the country was not completely empty in demographic terms.[115] Only in 1888 was slavery abolished there and the void of labor force that such institutional fact left had to be filled. Mexico, Peru, Guatemala, Ecuador,

[109] Falleni, E., & Guerrini, S. (2011). p.18.
[110] *Ibid.*
[111] *Ibid.*
[112] Romano, R. (1992).
[113] *Ibid*.
[114] *Ibid*.
[115] *Ibid*.

and Bolivia had sufficient reserves of workers and therefore did not need to import them.[116] Also, it must be added that there is no absolute demographic "void" but only in relation to which are the production needs. In the mid-19th century a whole part of America started to produce agricultural products of low unit value in relation to mass weight due to the spread of steam navigation which precipitated freight rates and allowed the transport, in fact, of goods of low unit value.[117] Such phenomenon led to the enhancement of large areas of land and consequently required increasing quantities of labor force.[118] Such considerations might apply especially to the start of the Italian migratory diaspora to the Americas. After that, another reason was certainly the reunification with relatives and friends, meaning having a first support.[119]

A relevant case is the one of Italian immigration in the Argentine Republic. Between 1876 and 1976, Argentina alone received about 11.5% of the total of the Italian diaspora (26 million).[120] Between 1880 and 1930, during the modernization process, about 70% of the population in Buenos Aires and almost 50% in the major provinces was foreign.[121] Still, between 1871 and 1930, the Italians came to represent on average 43.6% of the immigrant population.[122] After examining Argentine censuses in historical series from the first survey in 1869 until 2001, it can be stated that the Italian presence rate on the total foreign population has always remained on considerable percentages.

Conventionally, it is possible to identify two main waves. On the one hand, the first between 1870 and 1915 was interrupted with the outbreak of the Great War. It essentially affected Northern Italy. On the other hand, the second wave occurred immediately after the Second World War and until the end of the 1960s, and it concerned mainly the central and the Southern regions.[123] During the first wave of migration, the regions most affected at a quantitative level were those of the North, in particular Veneto (13% with about 2 million expatriates), Piedmont (11% with about 1 million and half),

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[116] Romano, R. (1992).
[117] *Ibid.*
[118] *Ibid.*
[119] *Ibid.*
[120] Osservatorio sulla formazione e sul lavoro degli italiani all'estero. (2008). Gli italiani in Argentina. Retrieved 4 March 2019, from http://www.esteri.it/mae/doc_osservatorio/rapporto_italiani_argentina_logo.pdf
[121] *Ibid.*
[122] *Ibid.*
[123] Daccò, D. M. (2016). L'emigrazione italiana in Argentina (Parte I). *Conf. Cephalal, 26*(2), 43-56. p.47.

and Friuli (10%, 84,073 units).[124] Among the Southern regions, the greatest human contribution was instead that provided by Campania (same percentage of Lombardy, 10.5%, just over half a million).[125]

The second wave of Italian emigration abroad presents peculiarly distinct characters. On the one hand, the main feature was quantitative since it was much smaller than the first wave, which could be represented a real exodus. On the other hand, there was a decreasing trend, also due to a greater preference for expatriation towards European destinations.[126] As a matter of fact, transoceanic migration flows went from 43.4% in the five years of the immediate post-war period (1946-1951) to 39.8% in the 1950s, and then dropped again to 19.6% in the early 1960s.

Starting from the end of the 20th century, due to the political, economic, and social changes, there has been a turnaround for which often Argentines have migrated in Europe in search of better working conditions.[127] Just as Argentina had been for Italians, the preferred destination of this new flow is almost always Italy. The main reasons are the desire to rediscover their origins and the possession by many of the Italian passport or a dual citizenship, both Argentine and Italian, reconfirming the intimate bond that unites the two countries.[128]

According to the famous phrase by the Argentine writer Jorge Luis Borges, "[los argentinos] descendemos de los barcos," meaning the Argentines descend from the ships, where the verb "descender" presents the polysemic meaning of "to descend from" and "to disembark."[129] The Italian sense of belonging remains very strong not only among the few direct descendants, but also among their sons, who had inherited traditions from their ancestors. Unlike other Latin American areas, the Argentine previous indigenous substrate, similarly to the Uruguayan one, is particularly weak.[130] As a matter of fact, there are few monumental remains of their history, or literature that recalls its existence, or significant traces of influence in today's culture. This is also reflected in the physical appearance of the Argentine population, which is characterized largely by Caucasian

[124] Daccò, D. M. (2016). p.48.
[125] *Ibid*.
[126] *Ibid.*
[127] *Ibid.*
[128] *Ibid.*
[129] Argentine writer Jorge Luis Borges Quotation In Daccò, D. M. (2016). p.48.
[130] Daccò, D. M. (2016). p.46.

somatic traits. The indigenous population of Argentina was eliminated due to the total extermination gradually implemented by European colonizers. One of the definitive and bloodiest events is represented by the conquest of the desert, *la conquista del desierto*, conducted by General Julio Argentino Roca,[131] whose image appears on the 100 pesos banknote, the highest in circulation.

3.1. The Journey of Migrants and the Creation of Italian Communities

The procedure for expatriation included the request and subsequent granting of a passport. From the beginning of the 20th century, in order for an Italian emigrant to obtain a passport, it was necessary to request it from the mayor of the municipality of residence who, in turn, turned it to the Ministry of Foreign Affairs with a declaration of no impediment to expatriation.[132] On the passport of a family man, his wife and children and also the cohabiting relatives could be registered.[133] For those enrolled in military service, the authorization from the military authorities was also needed. A concession fee was paid, but people who went abroad for work were exempted.

According to common methods and a route that coincide exactly with what narrated in *Sull'oceano*,[134] the journey lasted on average a month. Leaving Genoa after 3 or 4 days of sailing, the ship crossed the Strait of Gibraltar and entered the Atlantic. After about another 6 or 7 days, it passed through San Vicente, the island of Cape Verde, so that the fuel was refueled.[135] The first stop was in Uruguay at the port of Montevideo, where a part of the passengers disembarked.[136] The next day, after 8 hours of navigation that took place at night, other passengers arrived in Buenos Aires.[137] Over the years, navigation times shortened considerably, and during the 1920s the fastest ships could

[131] General Julio Argentino Roca was the president of the Argentine Republic from October 12th, 1880 to October 12th, 1886 and from October 12th, 1898 to October 12th, 1904. Today he is still remembered as one of the fathers of the country.
[132] *See* Blog » Fondazione Paolo Cresci. (2019). Retrieved 10 August 2019, from http://www.museoemigrazioneitaliana.org/news
[133] *Ibid*.
[134] *Sull'oceano* is a novel written by Edmondo De Amicis, which tells the writer's journey from the port of Genoa to the port of Buenos Aires and which represents a fundamental historical testimony on the Italian immigration at the end of the 19th century. *See* De Amicis, E. (2009). *Sull'oceano* (2nd ed.). Milano: Garzanti.
[135] Daccò, D. M. (2016). p.54.
[136] *Ibid*.
[137] *Ibid*.

complete the route in two weeks.[138] As a matter of fact, in 1937 a ticket from Genoa to Buenos Aires listed those stops: Naples, Las Palmas de Gran Canaria, Rio de Janeiro, Santos, and Montevideo.[139]

Figure 2: Third-class ticket Genoa-Buenos Aires.

Once arrived in Buenos Aires, before disembarking migrants had to receive the clearance from the local authorities.[140] Therefore, a medical commission went on the ships in order to examine the health conditions of the passengers and the crew. Also, an administrative commission was in charge of checking the documents of immigrants, pinning their details on the lists of the *Registro General de los Inmigrantes*, handwritten lists, often disordered and full of errors, such as the incorrect transcription of names and

[138] Daccò, D. M. (2016). p.54.
[139] Figure 2 shows a ticket found in a passport during the reorganization of the archives at the Consulate General of Italy in Córdoba, Argentina.
[140] Daccò, D. M. (2016). p.54.

last names.[141] Newly arrived immigrants were recorded in the appropriate registers and, starting from 1883, they were given a number that at the end of the year gave the final number of immigrants who entered the country. Subsequently, a more modern and faster registration model was adopted.[142] The lists of the *Registro General de los Inmigrantes* cover 98% of the entry movement from 1882 to 1887 (375,352 names out of 384,017 immigrants).[143] Passengers had to mark personal data, such as name, surname, nationality, gender, year of birth, travel class, marital status, occupation, religion, and educational level (ability to read and write). According to Argentine sources, in that period, 70.4% of overseas immigrants were Italians. The first registered immigrant was Battista Trovasci,[144] a 49-year-old farmer and celibate, who arrived on January 2nd, 1882 with the *Correbo III* steamboat with the Italian flag and coming from Genoa with 12 emigrants.[145] From 1888 onwards the lists were no longer transcribed in such registers. The migrants were listed in the *Lista de inmigrantes: entrada de ultramar*, a form approved by the Argentine government, directly on board.[146] The Commissioner on board had to specify data related to the ship, such as name, model, serial number, and name of the captain, and had to write a final report on the condition of the ship and on the progress of the voyage, including its duration and information on births, deaths, or the presence of irregular passengers.[147]

When migrants arrived in Argentina, those who had no contacts, relatives, or friends were given all the necessary logistical assistance.[148] In addition, the decision to leave was often made at the call of relatives or friends from abroad and also found comfort in the guides for emigrants,[149] which were very often produced by the countries that wanted to attract labor from Europe. They showed images of boundless lands with exuberant vegetation and clean houses, which were exhibited with ruthlessness by travel

[141] Daccò, D. M. (2016). p.54.
[142] *Ibid*.
[143] *Ibid*.
[144] *See* CEMLA - Centro de Estudios Migratorios Latinoamericanos. (2019). Retrieved 3 September 2019, from https://cemla.com/
[145] *See* Favero, L. (1992). Le liste di sbarco degli immigrati in Argentina. Altreitalie. Rivista internazionale di studi sulle migrazioni italiane nel mondo, 7.
[146] Daccò, D. M. (2016). p.54.
[147] *See* Glazier, I. A., & Kleiner, R. (1992). Analisi comparata degli emigranti dall'Europa meridionale e orientale attraverso le liste passeggeri delle navi statunitensi. *Altreitalie. Rivista internazionale di studi sulle migrazioni italiane nel mondo, 7*.
[148] Daccò, D. M. (2016). p.54.
[149] *See* De Zettiry, A., & Armus, D. (1983). *Manual del emigrante italiano*. Buenos Aires: Centro Editor de América Latina.

agencies and shipping company agents as migratory lever to convince the hesitant ones to leave.[150]

Some passengers moved to other cities with the full cost of the trip being paid. For the majority of the immigrants, who wanted to stay in Buenos Aires, the first and almost obligatory stop was the stay at the *Hotel de Inmigrantes*, a huge structure not far from the port designed to host the migrant population, whose current building was completed in 1911, and it was clearly visible from the sea.[151] Each guest was given a number with which he could freely exit and enter the structure, but at night the doors were closed and those who had not returned would have had to sleep outside. During lunch and dinner time, recreational films were shown related to the history of the country, the customs and habits of the inhabitants, the local laws and regulations to be respected.[152] The classic menu included meat dishes, a food that represented a real luxury for immigrants coming from Italy. Therefore, the *Hotel de Inmigrantes* had a clear image and propaganda intent as a demonstration of the country's power.[153] It continued to function until the 1970s until the end of the migration phenomenon, and it was declared a *Monumento Histórico Nacional* in 1995. Today, the building is a *Museo Nacional de la Inmigración* dedicated to the history of the structure and the great human epic of European immigration to Argentina.

3.2. The Phenomenon of Italian Associationism in Argentina

The creation of the first Italian associations in Argentina precedes the establishment of the Kingdom of Italy. Two examples were the *Società di Beneficenza*, created in 1853, and the *Unione e Benevolenza*, created in 1858.[154] At the beginning, the Genoese and Ligurians constituted the prevailing group. The inhabitants of some neighborhood in Buenos Aires were called throughout the city *Xeneizes*, meaning Genoese in dialect.[155] Today this name is still used to indicate the *barra brava*, which is

[150] Daccò, D. M. (2016). p.54.
[151] *Ibid*.
[152] *Ibid*.
[153] *Ibid*.
[154] Bernasconi, A. (2018). Las asociaciones italianas en Argentina entre pasado y presente. *AdVersus*, *XV*(34), 40-55. p.41.
[155] *Ibid*.

the violent part of supporters, of Boca Juniors, one of the most famous football teams in the world.[156] Although the presence of associations has characterized the presence of the Italian communities in the countries where they emigrated, there were no mutual associations in other countries, comparable to Argentina in number of partners or in share capital.[157]

In 1853, under the presidency of Nicolás Avellaneda, the body of *Los bomberos voluntarios de la Boca* ("the voluntary firefighters of La Boca") was established.[158] It was a point of reference for the whole neighborhood, and it still continues to be vital. Several religious commemoration parties are still held at its headquarters, such as the Bonfire of San Giovanni and the *Festa della Madonna of the Guardia di Genova*.[159]

That did not constitute the only experience of associationism in the barrio of La Boca. The first of these social structures was, on February 1st, 1885, the *Asociacion Ligure de Socorros Mutuos*. Starting from 1942, it was established by a governmental ordinance that all civil associations must have Spanish names.[160] The function of the association was to protect elementary rights and to provide logistical assistance to the Ligurians and their descendants born in Buenos Aires. Still, the main purpose of the company was to provide medical assistance to the population, due to the tragic shortage of health facilities because of epidemics and high morbidity rates. For that reason, the pharmacy was the most visited place of the association, while the doctors and health staff who provided free assistance at the center were often those who also worked at the Italian Hospital founded in 1853.[161]

In 2003, the Consulate General of Italy in Buenos Aires published a survey of the associations, partial and limited to its geographical jurisdiction (Buenos Aires, Morón, and Lomas de Zamora).[162] Still, it was interesting for its purpose of updating, since it included photographs of the headquarters. Thirty societies had been founded before the First World War and are still active (although they have limited activity).[163] These former mutual aid societies have contributed with their archives to preserve the historical

[156] Bernasconi, A. (2018). p.41.
[157] *Ibid*.
[158] *Ibid*.
[159] Daccò, D. M. (2016). p.55.
[160] *Ibid*.
[161] *Ibid*.
[162] Bernasconi, A. (2018). p.41.
[163] *Ibid*.

memory not only of Italian immigration, but of the whole of Argentine society, and have guarded a rich heritage.[164] The serious risk that exists today is that, with their decay or extinction, the archives will be lost or destroyed. Also, another risk is that the buildings will deteriorate due to lack of funds for their maintenance, be altered in their architecture to obtain additional income or, in extremis, that associations must completely detach themselves from them.[165] Apart from the already mentioned *Unione e Benevolenza* of 1858, another great historical association of the Italians in Buenos Aires was the *Nazionale Italiana* of 1861.[166] The oldest association that is still active today is the one founded in 1871 in San Martín, a town in Gran Buenos Aires, called *Società di Mutuo Soccorso Fratellanza Operaia Italiana*.[167]

Another important cultural influence was due to the formation of real mixed language, the Spanish-Italian. The *cocoliche* that emerged (and which left traces) in the Rio de la Plata between the late 19th and early of the 20th century is still famous.[168] It was a mixture of Italian and Spanish whose name perhaps derives from this *Cocolicchio*, an actor who mixed Italian and Spanish words in order to cause the audience's hilarity.[169] It is true that such Italianisms have remained more massive in some countries. The Italianisms played their part in what has been called the "linguistic *resaca*"[170] from the great immigration wave. The more popular layer of immigrants' speeches was mixed with *lunfardo* and even with *cocoliche*.[171] Little remains "pure" in its state and everything changes. The *tallarines a la boloñesa* from a restaurant in Buenos Aires are excellent as *tagliatelle,* but the *boloñesa* sauce has no longer anything *bolognese*.[172] Still, such features indicate the strength and depth of the influence of Italian emigration.

[164] Bernasconi, A. (2018). p.51.
[165] *Ibid*.
[166] *Ibid.*
[167] *Ibid*.
[168] Romano, R. (1992).
[169] *Ibid*.
[170] *Ibid*.
[171] *Ibid*.
[172] *Ibid*.

4. The Request for Recognition of Permanent Residents Abroad and the Implication of Acquiring the Italian Citizenship

The migratory wave occurred at the end of the Second World War, mainly to South America, and Australia, caused problems of return immigration and of citizenship in a very broad sense.[173] That has particularly concerned the Italian population in Argentina. However, it affects many other Latin American emigrants. On the one hand, the population seek to receive the Italian national social security in the country of residence, which is in this case Argentina.[174] On the other, Italian descendants want to gain or re-obtain Italian political citizenship, primarily with the aim of returning to Italy to build a career. In this paragraph, the procedure for requesting the Italian citizenship jure sanguinis will be analyzed, along with the documents needed and the law applied to Argentine apostille. Then, the Argentinian issues within Italian consulates will be examined. For this reason, the phenomenon of citizenship journeys will be introduced. Finally, the implications of holding an Italian citizenship will be investigated.

As it has already been stated, the general rule for the attribution of the Italian citizenship is the *jus sanguinis*, whereas the use of the *jus soli* is limited only to residual cases. Hence, the recognition *jure sanguinis* concerns the recognition of permanent residents abroad. Such recognition of the Italian citizenship can be requested from the registry office by those who are registered in the registry of residents of the municipality. The required documents of the ascendant born in Italy are: the birth certificate, extract or full copy or original certificate containing the indications of paternity and maternity, and the marriage certificate.[175] In Argentina the certificate of the *Camara Nacional Electoral*, a certificate attesting if (and when) the Italian progenitor bought the argentine citizenship, is also needed. It is necessary for such certificate to contain all the names both in Italian and Spanish (e.g. Giovani Battista vs. Juan Bautista) and all the changes that the name or surname has undergone over time, deducible from the civil status documents (e.g. Callegari vs. Calegari; Eristo vs. Evaristo).[176] If the certificate proves positive, it must

[173] Pugliese, E. Italy and the Problems of Citizenship. In Cesarani, D., & Fulbrook, M. (1996). *Citizenship, Nationality, and Migration in Europe*. London: Routledge. pp.110-111.
[174] *Ibid.*
[175] Consolato Generale - Cordoba. (2019). Retrieved 9 February 2019, from https://conscordoba.esteri.it/consolato_cordoba/it/
[176] *Ibid.*

show the date of the oath of allegiance or at least the date of the granting of the citizenship card. In the absence of the aforementioned data it will be essential to acquire the judgment proving the naturalization, without which, on the indication of the Ministry of the Interior, it will not be possible to proceed with the process of recognition of citizenship. Such judgments are often kept at local state entities, such as *Archivo General de Tribunales* at the *Palacio de Tribunales* in Buenos Aires; the *Archivo del Ejercito Argentino* in Buenos Aires; the *Archivo del Estado Mayor Argentino* in Buenos Aires.[177]

The certificate must be provided with apostille. With the *Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents*, also known as the *Apostille Convention*,[178] the modalities by which all other signatory states may approve a certificate published in one of the signatory countries for legal purposes are defined. Such certifications, which comply with the terms of the Convention, are called apostille. It is a legal certification that is equivalent to a domestic law notarization, which usually combines the certificate with a local notarization. In the event the Convention involves two State parties, an apostille can confirm the authenticity of a text by the country of origin and then by the country of receipt.[179] This process eliminates the need for double certification.

In the case of Argentinian relations with Italy, birth or marriage certificates are exempt from apostille for the Italy-Argentina Agreement of December 1987, which is applicable from July 1990. Also, the criminal record certificate can be issued by diplomatic or consular representations in Italy, directly in Italian (*Circolare del Ministero dell'interno n. K.4.3* of December 29th, 2004), but it must be legalized by the *Prefettura*.[180] This means that civil status documents are exempt from legalization on condition that they are dated and also equipped the signature and, if necessary, the stamp of the Authority of the other Party that issued them.[181] Still, documents that have not been sent officially via the Italian consular or diplomatic authority but produced by the interested party (without legalization or apostille) are subject to authenticity checks.

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[177] Consolato Generale - Cordoba. (2019).
[178] Hague Conference on Private International Law. (1961). *Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents*. October 5th, 1961.
[179] *Ibid*.
[180] Italy – Argentina. (1987). Accordo tra la Repubblica italiana e la Repubblica argentina sullo scambio degli atti dello stato civile e l'esenzione dalla legalizzazione per taluni documenti. December 9th, 1987. Law No. 533 of 22.11.1988 In GU No. 292 of 14.12.1988.
[181] *Ibid*.

However, due to the great number of Italian descendants in Argentina, Argentinian consulates have been saturated with requests to be processed. For instance, at the Consulate General of Italy in Córdoba,[182] turns that were assigned in the year 2016 have started to be processed from October 15th, 2019 to June 1st, 2020. Nevertheless, this does not mean necessarily that all the citizenship requests for recognition will be completed before by that time. Apart from the great wave of emigration occurred in the past century, another cause was logistical. As a matter of fact, before 2017 turns were assigned to the whole family, which sometimes included up to twenty requests in the same file, causing an underestimation of the timing and hence the system saturation.[183]

For this reason, some associations were specifically created with the aim of helping Argentine people to start the request for recognition in Italy.[184] Indeed, submitting such request to an Italian municipality would reduce the waiting list and, hence, the time for completing the process. Indeed, generally, newborn having born and residing in Italy from Italian parents are recognized the Italian citizenship at birth and, more importantly, before reaching the majority.[185] This means that the citizenship is automatically attributed at the Registry Office by a formal declaration made by one or both parents. In this case, which is more common within the Italian territory, the long process of recognition is avoided.[186]

On the contrary, 48 months (4 years) is the time that a foreign citizen must wait to obtain citizenship abroad after applying regularly.[187] To that time, it must be added the time necessary for obtaining a turn to submit the request.[188] It is necessary to highlight that there is an illegal market of turns massively purchased by agency or individuals, which makes turns unavailable on the official website. For those who are processing dual citizenship in Italy, if the process is extended for more than three months, this permit accredits to stay legally while waiting for the recognition of nationality. Such permit is

[182] Consolato Generale - Cordoba. (2019). Retrieved 9 February 2019, from https://conscordoba.esteri.it/consolato_cordoba/it/
[183] *Ibid*.
[184] Riconosci la tua cittadinanza italiana per discendenza in Italia – Argentina per il Mondo. (2019). Retrieved 10 December 2019, from http://www.argentinaperilmondo.org/cittadinanza-italiana/
[185] *Ibid*.
[186] *Ibid*.
[187] *Ibid*.
[188] IlMessaggero.it. (2019). Quei turisti della cittadinanza che vengono dal Sud America. Retrieved 14 February 2019, from: https://www.ilmessaggero.it/blog/corri_italia_corri/turisti_cittadinanza_ius_sanguinis_sudamerica-2542763.html

called *permesso di soggiorno per riacquisto cittadinanza italiana*, which was established by Law No. 92/91e Art. 11 DPR 394/99, and subsequent amendments.[189]

In Argentina, the devaluation of January 2002 significantly increased the economic recession and the unemployment rates, generating a traumatic political and social situation.[190] This goes far beyond the simple increase in the unemployment index and the fall in purchasing power. Also, the loss of confidence in political institutions questioned the possibility of medium-term recovery of Argentina.[191] Individuals in Argentina started to consider the idea of moving abroad in order to seek better working conditions. Those who were ready to obtain Italian citizenship belonged to a middle class.[192] Still, they were inserted in a process of gradual impoverishment due to situations of underemployment or unemployment. One of the opportunities for Italians descendants in Argentina to enter Europe easily with facilitated bureaucratic procedures was having their Italian citizenship recognized.

A useful instrument for highlight the differences between the Italian and the Argentine citizenship is Kälin and Kochenov's Quality of Nationality Index (QNI), which is an index that ranks the objective value of nationalities as legal. The index measure goes beyond the number of visas accessible by holding a certain passport. On the contrary, the QNI tries to demonstrate that some nationalities afford a better legal status than others for holders.[193] Concerning the different ranking of the Italian and the Argentine citizenship, there are two elements that are lacking to the Argentine score, namely the weight of settlement freedom and the diversity of settlement freedom. As a matter of fact, the variety of the places one can live in or visit due to the held nationality profoundly affects the quality of life.

[189] Riconosci la tua cittadinanza italiana per discendenza in Italia – Argentina per il Mondo. (2019).
[190] Bramuglia, G., & Santillo, M. (2002). Un ritorno rinviato: discendenti di italiani in Argentina cercano la via del ritorno in Europa. *Altreitalie. Rivista internazionale di studi sulle migrazioni italiane nel mondo*, 24. pp.1-2.
[191] *Ibid.*
[192] Riconosci la tua cittadinanza italiana per discendenza in Italia – Argentina per il Mondo. (2019). Retrieved 10 December 2019, from http://www.argentinaperilmondo.org/cittadinanza-italiana/
[193] Quality of Nationality Index. (2020). Retrieved 8 January 2020, from https://www.nationalityindex.com/

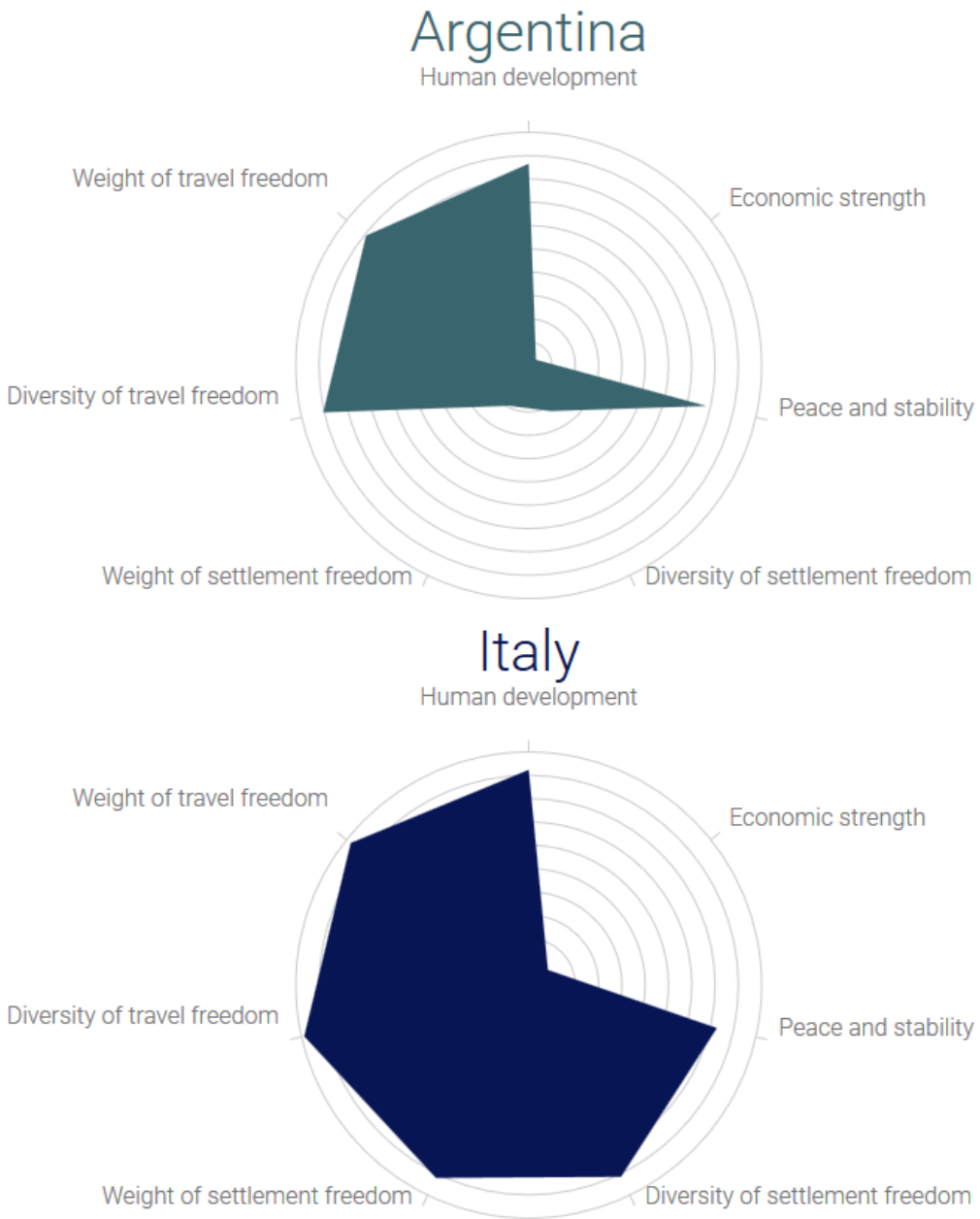

Table 1: Quality of Nationality Index Comparison Between Argentina and Italy.[194]

Apart from cultural reasons, an even more unique meaning attributed to Italian citizenship is the obtaining of an Italian passport. Holding an Italian citizenship means holding the European citizenship, which has already been mentioned as a derivative citizenship attributed within the European Union framework. Along with the European citizenship it comes the right to have free access to any country in Europe. Such right

[194] Quality of Nationality Index. (2020). Retrieved 8 January 2020, from https://www.nationalityindex.com/

involves the main freedoms in the EU, established by the TFEU in Art. 21 (the freedom to move and reside) and in Art. 45 (the freedom of movement to work).[195] Also, Italian citizenship means obtaining a valid passport to enter European countries or any other country in the world. As a matter of fact, the Italian passport has been confirmed in 2020 at the top of the Henley Passport Index, the index that measures which are the most powerful passports based on the number of countries in which holders can enter without the need for special visas.[196] Italy has gained the fourth position together with Finland.

Having Italian citizenship has an intrinsic value, it is a capital and a goal for the social subjects who want to choose their future and that of their children. Those people are faced with a political and social framework perceived as marginalizing and oppressive, which generates feelings of powerlessness. Instead, Argentine impoverished ex-immigrants return to Europe, in particular to Italy, but also to Spain, in which they can offer their language skills as Spanish proficient speakers, as well as professionally qualified young Argentines who are looking elsewhere for the prospects that Argentina is no longer able to offer.[197]

Unlike other countries, Italy does not adopt any corrective measures to avoid the unlimited transmission of citizenship rights over time, even when it is reasonable to presume an interruption of the socio-cultural link between descendants of emigrants and country of origin. Such cases are treated differently in other countries. For instance, Portugal nationality law did not recognize citizenship *jure sanguinis* to persons born abroad from non-Portuguese parents.[198] Such individuals can only request Portuguese citizenship via naturalization. A draft law was discussed to extend the recognition *jure sanguinis* to those who had at least one ascendant in the second degree of the direct line holding Portuguese citizenship.[199] However, such amendment has not been approved to enter into law. A more restrictive procedure is applied to granting Italian citizenship by marriage. Since December 4th, 2018, Art. 9.1 has been introduced to the Law No. 91 of February 5th, 1992. This amendment provides, as a condition for the recognition of

[195] European Union. (2012). *Treaty on the Functioning of the European Union*. Official Journal C 326, 26/10/2012, P. 0001 – 0390.
[196] Henley Passport Index 2008 to 2020. (2020). Retrieved 12 January 2020, from https://www.henleypassportindex.com/global-ranking
[197] Bramuglia, G., & Santillo, M. (2002). p.14.
[198] *Ibid*.
[199] *Ibid*

citizenship by marriage, the possession of a certified knowledge of the Italian language at level B1 of the Common Framework of reference for knowledge of languages. The rediscovery of Italian roots for many foreign citizens, such as Argentines or Brazilians, often conceals an intention of access to the European labor market. In several cases, the freedoms of movement and work within the European Union are exploited above all to access the states of the Iberian Peninsula, with which South American citizens share linguistic and cultural affinities.

CHAPTER IV

The Normative Gaps Within the Citizenship Framework

1. The Concept of Citizenship and the Issue of State Sovereignty

The notion of citizenship cannot overlook the fundamental notion on which international politics is based, i.e. the notion of State sovereignty. Considering citizenship or nationality depends on the context of the use of such terms. However, more importantly, it is necessary to define in which ways the doctrine of State sovereignty in its classic form can affect the framing of nationality legislation.[1] In this paragraph, it will be analyzed the current definition of State sovereignty, with a mention of the Westphalian system. Then, the concept of Westfailure will be introduced along with the notion of post-Westphalian alternatives. Therefore, the connection with citizenship will be made in connection with the concept of nation State and regionalism.

There is a general consensus that the world politics is experiencing fundamental systemic changes that threaten the concept of state sovereignty. The notion of State sovereignty has often been debated. Still, State sovereignty continues to remain the starting point despite of the presence of challenging alternatives to current political practices. It is believed that the use of the term sovereignty must apply to power or authority and thus implies a state characteristic.[2] In general the term sovereignty characterizes both powers and privileges of States deriving from customary law. A basic principle on which the independence of States is based is the equality among States articulated by the principle of *par in parem non habet imperium*.[3]

The debate on sovereignty raises doubts about whether it is still possible to speak about the existence of sovereign States. On the contrary, it has been openly proposed to move to "a new stage in international relations beyond Westphalia."[4] However, so far

[1] Donner, R. (1994). p.16.
[2] Ní Mhurchú, A. Citizenship Beyond State Sovereignty. In Isin, E. F., & Nyers, P. (2014). pp.119-120.
[3] Crawford, J. (2012). p.448.
[4] Croxton, D. (1999). The Peace of Westphalia of 1648 and the Origins of Sovereignty. *The International History Review*, *21*(3), 569-591. p.569.

sovereignty has been central to our interpretation of the State system and it is also the fundamental principle on which the UN Charter is based.[5]

Article 1 of the *Montevideo Convention on Rights and Duties of States* establishes that "the State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states."[6] For this reason, while raising the question of establishing general principles of law on nationality matters, States' action relating to transnational issue on the topic pose fundamental questions about State sovereignty and State equality, but also about the nature of the state itself.[7]

When dealing with state sovereignty, reference is generally made to Westphalian sovereignty. Such principle of international law affirms that each State has exclusive sovereignty over its territory, laying the foundations of the modern international system. In the United Nations Charter, Article 2(7) affirms that "nothing […] shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter."[8] Thus, every State has an equal right to sovereignty. Such concept is usually traced back to the *Peace of Westphalia* of 1648, a treaty with which the Thirty Years' War was ended. The so-called Westphalian system is currently facing some challenges after reaching its peak in the 19th and 20th centuries. According to American professor emeritus of international law Richard Falk, "Westphalia" is a term that has acquired multiple meanings, being used simultaneously "to identify an event, an idea, a process, and a normative score sheet."[9]

Hence, the foundation of the Westphalian sovereignty system was not a multilateral treaty. On the contrary, there were two bilateral treaties, signed at Osnabrück and Münster between France and Sweden. Such bilateral treaties confirmed an interstate system that already existed. However, the peace of Westphalia did not recognize the equality of the signatories States although sovereignty itself usually implies equality

[5] Croxton, D. (1999). p.569.
[6] Seventh International Conference of American States. (1933). *Montevideo Convention on the Rights and Duties of States*, League of Nations Treaty Series No. 3802.
[7] Boll, A. M. (2007). p.14.
[8] United Nations. (1945). *Charter of the United Nations*. Article 2(7).
[9] Falk, R. (2002). Revisiting Westphalia, Discovering Post-Westphalia. *The Journal Of Ethics*, *6*(4), 311-352. p.312.

between States.[10] The main aim was to protect their own sovereignty. Nevertheless, neither State involved in negotiations at Westphalia aimed to create an international system of independent states.[11] Such community of sovereign States, to which legal writers usually refer to as Westphalian system, was the one adopted up to 1914, and embodied the basic principle of the balance of power. The intention to strain the development of international law occurred by equating States with subjects.[12]

For this reason, when mentioning sovereignty acquired by a State, it must be mentioned the difference existing between internal and external sovereignty. The former does not depend on the recognition by other States, meaning that new States' sovereignty does not require any confirmation of recognition by other States. On the contrary, the external sovereignty States is the one required by other States in order to enter into the international society.[13] Firstly, every State has full legislative power within its own jurisdiction and, secondly, only States are subject to international law.[14] Under public international law, which is to be considered as the law applicable in the relations between sovereign States, it is important to stress the right of each sovereign State to equality at international conferences and before international courts.[15] In international law, the dynamics of state sovereignty can be expressed by their equality. The basic principles on which the sovereignty and equality of States are based are: an exclusive jurisdiction over a territory and a permanent population; a duty of non-intervention in other States' jurisdiction; and the respect of obligations of customary law or from treaties.[16] From this framework, States are the only one that can confer citizenship and decide any defensive action.[17]

The British international relations scholar Susan Strange speaks of the Westphalian system as a "Westfailure" system, a portmanteau of the terms West and failure. Such system has been defined as a failure from the globalist, humanitarian, and political economy point of view. As a matter of fact, States have been conceded a major

[10] Croxton, D. (1999). p.582.
[11] *Ibid*. p.589.
[12] Donner, R. (1994). p.8.
[13] Hegel, G. (1991). *Elements*, 366–67. In Crawford, J. (2007). *The Creation of States in International Law* (2nd ed.). Oxford: Oxford University Press. pp.8-9.
[14] Donner, R. (1994). p.16.
[15] *Ibid*. p.9.
[16] Crawford, J. (2012). pp.447-448.
[17] *Ibid.*

political authority, but the objection is made to the monopoly that States have for the "legitimate use of violence within their respective territorial borders."[18] Whereas States must endeavor the external sovereignty in order to interact within the international community, such approval is not requested for exercising State power within its territorial jurisdiction, which depends on the internal sovereignty. The Westphalian system is said to rest on "mutual restraint" and non-intervention. Also, Strange affirms that scholars engaged in international studies should consider the ways in which such failed system can be improved. Thus, when referring of a failure, the idea is not that the system is collapsing, but that it no longer satisfies the long-term conditions of sustainability.[19]

The proposal is the one of a new multilateralism, anticipated by Cox, that could also escape and resist such state-centrism deriving from the Westphalian understanding of conventional international relations.[20] The phenomenon of globalization and the research on the topic has to study not only economic behaviors but also behaviors of political authority. International politics and political economy must be analyzed both at the sub-state and at the state level. Hence, the Westphalian system must not be defended but improved, and its analysis extended.[21]

The Westphalian system, as the normative score sheet, applies to the strengths and weaknesses of such a sovereignty-based system determined by historical circumstances, which has protected authoritarian states from revealing economically disadvantaged states to any intervention. Each dimension is important to be underlined, but their fundamental connection to the contemporary interface and correlation between Westphalia and post-Westphalia does not rely on such a systematic exploration.[22] The notion of citizenship cannot be disregarded by interrogating the notion of State sovereignty. In the contemporary globalized world, the increasingly complex phenomenon of citizenship still continues to be defined by dichotomies, e.g. between an inside and an outside, identity and difference, inclusion and exclusion, past and present.[23] Such oppositions enhance a confined geographical hierarchical understanding of political membership. The need for cohesion within clearly defined borders, such as color,

[18] Strange, S. (1999). The Westfailure System. *Review of International Studies*, *25*(3), 345-354. p.345.
[19] *Ibid*. p.346.
[20] Cox, R. (1992). Multilateralism and World Order. *Review of International Studies*, *18*(2), 161-180.
[21] Strange, S. (1999). p.354.
[22] Falk, R. (2002). p.312.
[23] Ní Mhurchú, A. Citizenship Beyond State Sovereignty. In Isin, E. F., & Nyers, P. (2014). pp.120-121.

ethnicity, religion, class, nationality, the local, or the global, enhances such distinctions and reinforce the existence of a movement from being the outsider to becoming a citizen.[24]

Juridically, the Westphalian framework was organized through the organization of basic principles of international law as States' equality, sovereign immunity, and the policy of non-intervention, as well as within the most important international bodies. Fully sovereign States are the one in charge of providing the credentials for full membership and involvement. Nevertheless, since the existence of global diplomacy has complicated the contemporary reality, States push towards regional representation, particularly for countries of the European Union.[25] The UN Charter also deals with questions of "domestic authority," in accordance to the Westphalian framework, which can also be interpreted as appreciation of the UN's limited capabilities within an international integrated society.[26] In the event that such limits are not respected, as was arguably the case in the 1990s with regard to humanitarian diplomacy, the UN activities generate criticism.[27]

For this reason, the current trend in world order transformation constitutes a shift from the Westphalian system to a post-Westphalian system. The transformation regards the Westphalian system based on anarchical territorial sovereignty to a post-Westphalian order characterized by the establishment of internationalized authorities.[28] Therefore, the Westphalian framework still contains a dualism concerning the equality of States under international law and the hierarchy of States in the international relations practice. The common perspective of these two concepts relates to their emphasis on power either as the States' territorial sovereignty or strategic control of State affairs by hegemonic processes.[29]

Therefore, a crucial aspect of the Westphalian system is the relation between State and nation, and hence nationality. Whereas in the 18th century militant nationalism consolidated State power, it also enhanced the opposition between inside and outside, as

[24] Ní Mhurchú, A. Citizenship Beyond State Sovereignty. In Isin, E. F., & Nyers, P. (2014). pp.120-121.
[25] Falk, R. (2002). p.314.
[26] *Ibid.*
[27] *Ibid.*
[28] Kreuder-Sonnen, C., & Zangl, B. (2014). Which Post-Westphalia? International Organizations Between Constitutionalism and Authoritarianism. *European Journal of International Relations*, *21*(3), 1-27. p.2.
[29] Falk, R. (2002). p.316.

well as between the citizen and alien. So, the nation State required a kind of loyalty partly represented by the attribution of a nationality, which was conferred independently by the existence of an ethnic link. Nevertheless, such nationalism has been thought to have weakened bonds between citizens and outsiders. Still, not only was it necessary to build political communities, but also to eliminate many discrimination patterns based on racial and ethnic identity within territorial boundaries.[30] In the early 21st century, the failure of the existing nation-states, which were hosting micro-nationalisms within their boundaries, led to the questionability of the system and to the identification of a modern system of states that could tend toward the nullification of the obsolete Westphalian world order.[31] Therefore, after colonialism and the Cold War ended, the right of self-determination within a Westphalian world favored both ethnic diversity and religious pluralism.

Being the Westphalian order a system of nation States within an international anarchical community,[32] it has been the product of the history of the last couple of hundred years. The crisis of this order implies indirectly a crisis for the nation State. And hence, also the notion of citizenship is being undermined as directly deriving from the concept of nation State. After centuries of well-defined national boundaries, citizenship is currently facing a phase of more porous and less important boarders. Thus, it is required an updated framework of more inclusionary forms of citizenship beyond nation States, but it will not be operative until nation States retain their "monopoly over territorial sovereignty."[33]

For these reasons, it is useful to mention the European citizenship, which has been established within a framework of "pooled" or "combined" sovereignty. The EU outcome in Europe is still an ongoing process. Nevertheless, European regionalism is perceived as a success, so there is a possibility of replicating such form of regionalism, which would require from States the capacity to engage cooperatively, based on a minimum degree of mutual respect and on balanced benefits and burdens.[34] Similar regionalist attempts would

[30] Falk, R. (2002). p.320.
[31] *Ibid*.
[32] Hettne, B. (2000). The Fate of Citizenship in Post-Westphalia. *Citizenship Studies, 4*(1), 35-46. pp.35-36.
[33] *Ibid*.
[34] Falk, R. (2002). p.348.

move beyond Westphalian systems. The European Union is currently the best arena within practicing a "post-Westphalian enhancement of world order."[35]

It is often presumed that it would be sufficient to shift the focus from the national to the global or to the local. However, despite moving to subnational and supranational community, the core of the idea of nation continues to be a territorialized entity with calculable boundaries to divide the inside from the outside.[36] Nevertheless, a positive change is ongoing. For instance, the role of well-established transnational NGOs has been helpful, in particular with respect to human rights and environment. Currently, the Westphalian system of regulatory authority is insufficient, and it will be even more so in the future. Still, Westphalia remains formidably resistant to adjustments, blocking any innovations.[37] A new post-Westphalia could become a reality in the event that regionalism and globalism could provide political communities with their security and identity.[38]

2. The Compatibility Between Citizenship and Human Rights

So far, the focus has been mainly put on citizenship as a matter of international law. By referring to international law, primarily, it has been necessary to highlight the international rights and duties of sovereign and independent States.[39] Nevertheless, a big step in international law was represented by the creation of the *Universal Declaration of Human Rights* in 1948. That was one of the most advances relating to the development of individuals' rights and obligations. In this paragraph, a brief background of international human rights law will be provided with the aim of connecting human rights to nationality. Since nationality is generally being considered as *domaine réservé*, which is in contrast with the definition of human rights, different interpretations on the issue will be provided. Furthermore, international and regional instruments concerning nationality as human right will be analyzed in more details. Lastly, the issue of the

[35] Falk, R. (2002). p.349.
[36] Ní Mhurchú, A. Citizenship Beyond State Sovereignty. In Isin, E. F., & Nyers, P. (2014). p.121.
[37] Falk, R. (2002). p.350.
[38] *Ibid*. p.352.
[39] Dixon, M. (2013). p.354.

arbitrary deprivation of nationality will be resumed by making a specific reference to the statelessness issue in the light of a human rights approach.

Only rather recently, international human rights law has converted into a major branch of international law. The majority of normative instruments and institutions regarding the protection of human rights have emerged after World War II. The development of human rights law has affected in many ways the matter of nationality to be dealt within international law. As a matter of fact, according to Ruth Donner, the human rights instruments that have been drafted after World War II had circumvented the different nationalities of individuals being applicable to individuals from all States parties.[40] International law was interested by a shift from being applicable only to rights and duties of States to be directly applicable to individuals.[41] As a matter of fact, individuals started to be considered as ultimate recipients of international rights and duties starting from the *Four-Power Agreement* of August 6th, 1945 that set up the International Military Tribunal from crimes against international laws. Such crimes were not committed by States but men. Since men could be punished for crimes for which they are responsible, they should also receive rights in international law.[42]

Since then, human rights instruments have been reinforced by other global and regional treaties. However, the majority of human rights instruments derives from *Universal Declaration of Human Rights* and they also include reference to that treaty. It was adopted unanimously by the United Nations General Assembly on December 10th, 1948.[43] Throughout the world, individuals have access to a form of international protection in the event that domestic governing bodies fail to comply with the applicable international agreements and commit violations of international obligations. The exclusive and dominant legal doctrine is no longer public international law concerning interstate relations. Also, human rights law has emerged with the intention of guaranteeing periods of stability, still without altering the pre-existent theory of sovereignty and domestic jurisdiction.[44]

[40] Donner, R. (1994). p.183.
[41] Judge Jessup's Quotation In Donner, R. (1994). p.183.
[42] Donner, R. (1994). p.183.
[43] United Nations General Assembly. (1948). *Universal Declaration of Human Rights*, Resolution 217 A.
[44] Shelton, D. (2015). *The Oxford Handbook of International Human Rights Law*. Oxford: Oxford University Press. pp.1-2.

Nevertheless, such equilibrium was disrupted after the Second World War with the emergence of new doctrines and governing institutions, which have considerably changed the international legal system.[45] Before then, the dominant theory was that jurisdiction remained an exclusive matter of domestic concern.[46] Still, human rights started to become an international concern. Often, the term "human rights" has been referred to as a Western concept. Though, the majority of the basic values defined as human rights are common to other civilizations and cultures, e.g. justice or the dignity of every human being. They have originated from important historic texts, such as the Code of Hammurabi, the Persian Charter of Cyrus, the Hungarian Golden Bull, and the Magna Carta.[47] Still, in 18th century human rights declarations were integrated in the constitutions of France and the United States. Nevertheless, the progress made in protecting human rights before the end of the Second World War is dwarfed by the boom of human rights tools and jurisprudence that has taken place since the establishment of the United Nations in 1945. The progress made in human rights protection prior to the end of the Second World War, however, was overcome by the increasing number of human rights instruments occurred after the establishment of the United Nations in 1945 and the adoption of the Universal Declaration of Human Rights in 1948.

It can be affirmed that the term "human rights" can be compared to the term "general principles", a more familiar, but elusive, concept. In Article 38 Par. 1(c) of the Statute of the International Court of Justice reference is made to "the general principles of law recognized by civilized nations"[48] as one of the four applicable sources of international law. Since the adoption of the UDHR in 1948, human rights standards have been improved, so that States have started to insert such provisions in their domestic constitutions. Currently, human rights standards are present in most constitutional documents and such provisions remain in force today.[49]

[45] Shelton, D. (2015).
[46] *Ibid.*
[47] O'Boyle, M., & Lafferty, M. General Principles and Constitutions as Sources of Human Rights Law. In Shelton, D. (2015). pp.194-195.
[48] United Nations. (1945). *Statute of the International Court of Justice*.
[49] O'Boyle, M., & Lafferty, M. General Principles and Constitutions as Sources of Human Rights Law. In Shelton, D. (2015). p.197.

Citizenship, or more specifically within the international law framework, the right to nationality has been interpreted as a human right.[50] However, the main difficulty consists in the fact that nationality matters has generally been regarded as matters of exclusive domestic jurisdiction of the States. Since human rights have been removed from matters of domestic jurisdiction, the right to nationality is still not seen as a human right. As a matter of fact, nationality is still conceived as a matter that is strictly considered as part of a *domaine réservé*. That is also confirmed by the fact the international regulations on the matter are more vague than domestic regulations, a clear manifestation that reflects the interests of the States.[51] According to judge at the International Court of Justice Hersch Lauterpacht, nationality cannot be considered a natural or inalienable right since it is strictly connected to the manner in which sovereign States consider the relationship between individuals and international law.[52]

The right to nationality can be distinguished into two different interpretations. On the one hand, the right to nationality can be seen as the right to one nationality, which implies the prohibition of multiple nationality. On the other hand, the right to nationality corresponds to the right of holding any nationalities, which means that holding multiple nationalities is allowed.

The right to a nationality originated during the 16th century during a lecture held by Francisco de Vitoria, one of the founders of the philosophical thought of the School of Salamanca and one of the main contributors of international law. During that time, he affirmed that individuals could not be excluded from citizenship. However, despite such intervention, the proper formula of "right to nationality" appeared only in the mid-20th century. It was firstly mentioned by the *American Declaration on the Rights and Duties of Man*, a non-binding regional instrument. Such document was drafted and negotiated in Bogotá in 1948 together with the *Charter of the Organization of American States* and anticipated the UDHR. Article XIX establishes that: "every person has the right to the

[50] Ganczer, M. The Right to a Nationality as a Human Right? In Szabo, M., Lancos, P., Varga, R., & Molnar, T. (2015). *Hungarian Yearbook of International Law and European Law 2014*. The Hague: Eleven International Publishing. p.15.
[51] *Ibid.*
[52] Lauterpacht, H. (1968). *International Law and Human Rights*. London: Archon Books. p.347. In Ganczer, M. The Right to a Nationality as a Human Right? In Szabo, M., Lancos, P., Varga, R., & Molnar, T. (2015).

nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him."[53]

Nevertheless, it was only with the binding document of the UDHR adopted in December 1948 that the right to nationality has become a binding customary international law.[54] Still, the UDHR was largely influenced by the previous *American Declaration on the Rights and Duties of Man*. Nonetheless, the reference to the right to nationality, along with statelessness and the right to change nationality, had already appeared in the 1947 draft. Such proposals were presented by the Chilean government, which present the proposal of the Inter-American Juridical Committee. A similar proposal was presented by the French jurist René Cassin by the UN members, but the proposal concerning the elimination of statelessness was not endorsed by the rest of the Committee.[55]

The arbitrary deprivation of nationality was introduced in 1948 supported by India and the United Kingdom. The amendment proposed concerned the provision established by Article 15 ("everyone has the right to a nationality"[56]) which was integrated by the provision "no one shall be arbitrarily deprived of his nationality,"[57] also supported by the Vice-Chair of the Commission on Human Rights Peng-Chun Chang and the Chairperson of the Commission on Human Rights Eleanor Roosevelt. Also, the representative of Uruguay Roberto Fontaina suggested to insert the right to change of nationality similarly to the American Declaration. For those reasons, the final version of the Article states: "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."[58]

Subsequently to the adoption of the *Universal Declaration of Human Rights* in 1948, a series of treaties have been passed concerning the matter of granting human rights, such as the 1978 *American Convention of Human Rights*, the 1981 *African Charter of Human and Peoples' Rights* (ACHPR), and the 2004 *Arab Charter on Human Rights* (ArCHR). For instance, Article 20 of the ACHR contains provisions that are very similar

[53] Ninth International Conference of American States. (1948). *American Declaration of the Rights and Duties of Man*. Article XIX.
[54] Ganczer, M. The Right to a Nationality as a Human Right? In Szabo, M., Lancos, P., Varga, R., & Molnar, T. (2015). p.16.
[55] *Ibid*. p.17.
[56] United Nations General Assembly. (1948). *Universal Declaration of Human Rights*, Resolution 217 A. Article 15.
[57] *Ibid.*
[58] *Ibid.*

to Article 15 of the UDHR. Along with the right to nationality, Article 20 of the ACHR states that "every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality"[59] and that "no one shall be arbitrarily deprived of his nationality or of the right to change it."[60] Nevertheless, Section 2 of the same article provides, in case of statelessness at birth due to conflict of laws, "the adoption of jus soli to ensure that those individuals acquire a nationality." In this sense, Article 20 of the ADHR is more advanced by providing a provision for the prevention of statelessness at birth. Also, regarding nationality, the Inter-American Commission on Human Rights, established by Article 33 of the ACHR, stated: "it is generally considered that since nationality of origin is an inherent attribute of man, his natural right, and is not a gift or favor bestowed through the generosity or benevolence of the State, the State may neither impose it on anyone by force, nor withdraw it as punishment or reprisal."[61]

However, the aim of those documents was mainly giving social rights the status of human rights. For this reason, the notion of nationality as human right since social rights has been extended to every individual without distinction of race, color, sex, language, opinion, or origin.[62] As a matter of fact, the ACHPR does not contain explicit provisions on nationality.[63] Such exclusions does not imply that nationality matters has excluded from being regulated in the African region. On the contrary, nationality matters have been largely discussed, resulting in the adoption of *Resolution 234 on the Right to a Nationality* in 2013 by the African Commission on Human and People's Rights. For this reason, Member States have been acknowledged to be active since they "recognize, guarantee and facilitate the right to nationality of every person on the continent and to ensure that no one is exposed to statelessness."[64] Furthermore, the ACRWC has tried to manage the issue of statelessness of minors by inserting a provision concerning the rights of children to a nationality.

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[59] Organization of American States. (1969). *American Convention on Human Rights, "Pact of San Jose", Costa Rica*.
[60] *Ibid.*
[61] Inter-American Commission for Human Rights. (1977). *Third Report on the Situation of Human Rights in Chile*, OEA/Ser.L/V/II.40, doc. 10. Paragraph 10.
[62] Annoni, A. Nationality and Social Rights. In Annoni, A., & Forlati, S. (2013). pp.135-137.
[63] The ACHPR is also known as *Banjul Charter* and it was adopted in 1981 by the African Union.
[64] African Commission on Human and Peoples' Rights. (2013). *Resolution on the Right to Nationality*, April 23rd, 2013. Preamble.

The *Arab Charter on Human Rights* was adopted by the Council of the League of Arab States only in 2004, since the first draft of 1994 was not ratified by any State. The Convention does not explicitly mention the right to nationality. Still, Article 24 establishes that "no citizen shall be arbitrarily deprived of his original nationality, nor shall his right to acquire another nationality be denied with-out a legally valid reason."[65]

On the contrary, the Council of Europe approved in 1997 the already mentioned *European Convention on Nationality* without explicitly inserting the right to nationality into the pool of human rights established with the ECHR.[66] The Council of Europe has been active on the nationality matters since the 1963 *Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality*.[67] In Article 4, some fundamental principles have been established along with the right to a nationality. In a manner that is similar to the other regional treaties, the Convention establishes that statelessness shall be avoided, the arbitrary deprivation of nationality, and deals with any change in nationality due to marriage or the dissolution of marriage.[68] The 1997 Convention has had a considerable role in the consolidation in a single text of the rights and obligations related to nationality matters, which had emerged as a natural consequence of the development of both international and national law.[69]

As explained in the previous paragraph, one of the main issues to be overcome was linked to the Westphalian state system, since State sovereignty challenges the idea of establishing norms that aim to be universal. The implementation of such kind of rights cold be difficult if the necessary incentives lack, due to the fact that any declaration is effective if it can shape the behavior of actors without acting against history and human civilization.[70] Still, it is a document for which it is necessary to provide institutional mechanisms to ensure implementation and compliance of such normative documents.

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[65] Council of the League of Arab States. (2004). *Arab Charter on Human Rights*.
[66] Council of Europe. (1952). Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 005.
[67] Council of Europe. (1963). Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, ETS No. 043.
[68] Council of Europe. (1997). *European Convention on Nationality*, ETS No. 166.
[69] De Groot, G. R. (2000). The European Convention on Nationality: A Step Towards a Ius Commune in the Field of Nationality Law. *Maastricht Journal of European and Comparative Law*, *7*(2), 117–157. p.117.
[70] Özler, Ş. (2018). The Universal Declaration of Human Rights at Seventy: Progress and Challenges - Ethics & International Affairs. Retrieved 15 January 2020, from https://www.ethicsandinternationalaffairs.org/2018/udhr-at-seventy-progress-and-challenges/

Such power of States can be examined connected to the human right to nationality, in particular relating to the issue of deprivation of nationality. States' decision on nationality matters do not affect only internal order, but they also have consequences at the international level.[71] The deprivation of nationality can be seen by States as a form of penal sanction, which can be applied to those citizens as a consequence of crimes committed against public security. The aim is to prevent dangerous citizens from criminal actions. Commonly, deprivation applies to naturalized citizens or citizens with a foreign background, which could be seen as a discriminatory act. Despite the nature of nationality as domestic matter and expression of State sovereignty, States that are also members of international instruments concerning nationality are bound by *jus cogens* norms. Such norms are applicable due to the existence of any multilateral or bilateral agreement that States have ratified. Consequently, Sates sovereignty on nationality matters is largely influenced by the limits and accomplishment deriving from the regulation of nationality issues at supranational levels.[72]

The right to nationality implies the existence of an effective system of implementation of international human rights law and any other norm that constrain State sovereignty over nationality matters.[73] Also, it is necessary an effort by State parties and non-State actors to acknowledge States of their responsibilities towards their citizens. However, current normative gaps concerning nationality exist. As a matter of fact, stronger legal instruments are necessary, in particular to refrain from arbitrarily deprivation of citizenship with the aim of avoiding statelessness as agreed in international instruments at international level.[74] A more effective framework must be created to improve the inclusion of the universal right to nationality as part of the fundamental human rights, since current human rights norm are a strong start but still vague on nationality matters.[75]

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[71] Mantu, S. (2018). 'Terrorist' Citizens and the Human Right to Nationality. *Journal of Contemporary European Studies*, *26*(1), 28-41. p.29.
[72] *Ibid*. p.28.
[73] Adjami, M., & Harrington, J. (2008). The Scope and Content of Article 15 of the Universal Declaration of Human Rights. *Refugee Survey Quarterly*, *27*(3), 93-109. p.109.
[74] *See* McDougal, M., Lasswell, H., & Chen, L. (1974). Nationality and Human Rights: The Protection of the Individual in External Arenas. *The Yale Law Journal*, *83*(5), 900.
[75] *Ibid*.

3. The Challenges of Globalization and the Notion of Denationalized Citizenship

One of the most influencing processes that has been occurring over the past century is globalization. From an economic and technological process, it has evolved into a social cultural process and it has reconstituted social and political life. In particular, the notion of citizenship has been largely affected by such phenomenon. New important questions concerning globalization and its effects on citizenship and political communities have arisen. It is necessary to investigate whether the concept of the Westphalian system of sovereign states is still applicable, or whether the notion of citizenship itself is in danger.[76] In this paragraph, the process of globalization will be analyzed by comparing its evolution with the evolution of the notion of nationality. Also, the developing of the political theory of nativism will be presented along with its set of problems. Lastly, the existence of new denationalized forms of citizenship will be introduced.

Between 1980 and 1988, the Western world has started facing the consequences of the ongoing process of the globalization, which is also considered to represent a shift of paradigm connected to end of the Cold War. After the end of the Cold War era, the current State system has been put into question, and the end of Westphalian system has been desired for an eventual replacement by a post-sovereign order.[77] The Treaty of Westphalia, which shaped a system based on nation-state and their sovereignty and territoriality was then challenged by a post-national and postmodern world order. Still, globalization is also considered as a contradictory phenomenon, in which neoliberalism and fragmentation, global peace and religious fundamentalisms, and prosperity and inequality coexist.[78] During the 1980s, people were willing to be recognized as citizens holding both dignity and responsibility and being recognized both rights and duties. Also, in 1989 an exponential growth depicted the global reconstruction of economic, political and cultural relationships.[79] A central feature of this was the idea that people live within

[76] Pfister, T. (2005). Citizenship and Globalization. *Ethnopolitics*, *4*(1), 105-113. p.105.
[77] Ivic, S. (2018). Globalization and Postnational Model of Citizenship. *Glocalism: Journal of Culture, Politics and Innovation*, *1*. p.2.
[78] *Ibid*.
[79] Urry, J. (1999). Globalization and Citizenship. *Journal of World-Systems Research*, *5*(2), 310-324. p.311.

a global village and any fight for citizenship were immediately brought independently from wherever they were.[80]

Such process of ending of the State was not assumed as a single linear one. On the contrary, many ongoing processes occurred at the same time, i.e. "the emergence of a global economy; revolutionary changes in communications technology; the formation of regional economies and markets; the development of supranational institutions and legal norms; a growing significance of human rights and democracy; and, finally, the emergence of a global commitment to a common set of values."[81] Among those, three features are strictly linked with citizenship. The first is the questionability of the autonomy of nation-State, since such economic processes transcend borders. The second is the possible dissolution of autonomous national cultures.[82] Although the idea of a homogenous nation can be considered as a theoretical myth, the construction of a national identity is still considered to pass through a process of homogenization as the core of patriotism and nationalism. Such process is also followed by the spreading of global values together with the re-ethnization on sub-national level. Thirdly, the last feature is the rapid growth of human fluxes caused by large-scale migrations beyond borders, which includes migrant workers, specialists, and refugees. The difference with past migrations consists in the quantities and the frequency. In this sense, the fear is the impossibility of an assimilation of the human fluxes within the domestic population. Such fear depends on cultural reasons, since migrants come from areas that are often geographically and culturally far. All those aspects question the old notion of citizenship and request a rethinking of a new framework.[83]

Accordingly, nowadays, the national political orders witnessed a resurgence of populism and xenophobia. These new or old tendencies are mainly promoted by parties and movements that are usually categorized as conservatism and far right factions. These new tendencies started to be analyzed by several scholars who developed the notion of nativism.[84] Started from the end of the World War II, our contemporary society experimented a huge social development. However, it could be misleading to not

[80] Urry, J. (1999). p.311.
[81] Pfister, T. (2005). p.106.
[82] *Ibid*.
[83] *Ibid*. p.107.
[84] Guia, A. (2016). The Concept of Nativism and Anti-Immigrant Sentiments in Europe. *EUI Working Paper*. MWP 2016/20. p.1.

recognize that these extreme and radical right movements got a widespread and growing appeal by traditional constituencies. Aiming at understanding this change of direction, several scholars started to develop the nativism theory.

Nativism allows professionals to comprehend the reasons why xenophobic ideas spread within the most developed Western societies. In other words, nativism aims at providing a full understanding of the "us/them" dichotomy emerging within frameworks of cultural diversity and immigration.[85] What is important to underline is that nativism conceptualizes these new tendencies as not as exclusive features of rights movements. The spread of the dichotomy of us/them has not been caused by the success of several rights' political parties at the national elections but by the mere influence of the new cleavage between natives and non-natives. In short, the native part of the society overestimates its values diminishing the immigrant cultures as fundamental threat to the perfect native customs, traditions, and ways of life.[86]

Intuitively possible is the link for which nationality remains in a difficult association with globalization. Citizenship stems from the nature of culture, which is rooted in a geographically defined nation State recognized by other nations, with borders and rules enforced by coercion, in some cases. On the other side, globalization is a phenomenon with financial, socio-cultural, and political dimensions and it relates along those dimensions to integration and interconnection across national boundaries.[87] Due to the fact that goods, commodities, ideas, and people have always traveled around the world, today's comparisons to globalization point to a shift in the scale of such a trend. It is a trend of greater interconnectivity, which has increased the movements of products, resources, people, and ideas through both conventional and modern networks. In this sense, such increase has complicated also the relationship between citizens and nation state.[88]

Not only can globalization impact on citizenship due to the fact that the movement of people across national boundaries questions national identity and participation, and the privileges that this membership acquires. Also, this is due to the existence of transnational and multinational organizations that occur in tandem with the nation state and make the

[85] Guia, A. (2016). p.1.
[86] *Ibid.*
[87] Gans, J. (2005). Citizenship in the Context of Globalization. *Immigration Policy Working Paper.* Udall Center for Studies in Public Policy, The University of Arizona. p.1.
[88] *Ibid.*

rights and privileges that accrue to citizenship both complex and ambiguous.[89] In this sense, it is necessary to outline that the development of international law concerning nationality has evolved to a more flexible form from a rigid status.[90] Such change was a response to the change of the international political economy structure. Therefore, nationality law has evolved and developed consequentially within an evolving framework, which is currently far from the one strictly based on nation States. For instance, it is noticeable that the old principle of multiple nationality is no longer applicable, as it has been investigated in the previous paragraphs.

Nationality is strictly connected to the centrality of States within international law framework. In the event the importance of States decreases, the same will happen to the importance of nationality.[91] According to the law scholar Linda Bosniak, the current debate in political theory is whether citizenship can exist beyond the boundaries of national States. [92] Since a nation-center conception of citizenship is inadequate to describe the current reality, it has become common to debate around the denationalization of citizenship, according to which new forms of nationality beyond nation States are starting to replace the old framework. Such alternatives are generally called global citizenship, transnational citizenship, post-national citizenship, etc. and will be analyzed in the conclusive paragraph.[93]

While international law is gradually becoming more flexible dealing with nationality issues, a more progressive citizenship project has started to be developed. The aim is to provide more appropriate outcomes to the disputes arisen between States on nationality matters, leading to more certainty in the resolution of such cases. Such understanding moves the focus from an international approach based on sovereignty to an approach based on the granting of individual rights.[94]

Globalization's social consequences could possibly lead to a political commitment to stop or reverse the globalization process with the aim of maintaining any degree of

[89] Gans, J. (2005). p.1.
[90] Rubenstein, K., & Adler, D. (2000). International Citizenship: The Future of Nationality in a Globalised World. *Indiana Journal of Global Legal Studies*, *17*(2), 519-548. p.533.
[91] *Ibid*.
[92] Bosniak, L. (2000). Citizenship Denationalized (The State of Citizenship Symposium). *Indiana Journal of Global Legal Studies, 7*(2), 447-509. p.449.
[93] *Ibid*.
[94] Rubenstein, K., & Adler, D. (2000). p.547.

territorial control and cultural diversity.[95] The new regional institutions could be one way of achieving such a move towards deglobalization. The two globalization and regionalization mechanisms are embodied within the same larger global systemic transformation process. The outcome of this process cannot be extrapolated quickly or accurately foreseen. However, it rather reflects the strength of the social forces that are active in both systems.[96] Both have a profound impact on the security of the Westphalian state system. Hence, they both lead to instability and, probably, to a future world order, ideally a form of regional multilateralism.[97]

4. The Contemporary Direction of Citizenship

During the last decade of the 20th century, the transnational trends and the participation in the global economic system incentivized the control over the powers of national governments. Supranational bodies, such as the EU, have been the consequence of such internationalization. Still, on the one hand they tend to undermine the deeply rooted notion of national sovereignty, whereas on the other hand they challenge the tradition idea of national identity.[98] Also, the spreading of right-wing movements aiming to strengthen national identities and make them more cohesive have revitalized national pride. Consequently, such rhetoric can achieve the opposite of the decline of nations. Concurrently, similarly to the so-called "German question"' seemed to have been fixed by integration, and Germans, freshly unified in a nation state, declared their lifelong commitment to Western values, the conflicts on South-eastern Europe fringes mirrored the Balkan crises that started in the 20th century.[99] In this conclusive paragraph, the notion of nationality as means of mobility will be connected the topic of globalization introduced in the previous paragraph. For this reason, it will be necessary to mention the phenomenon of the selling of passports and golden visas, with the aim of connecting to transnational

[95] Hettne, B. (2000). p.42.
[96] *Ibid.*
[97] *Ibid.*
[98] Cesarani, D., & Fulbrook, M. (1996). *Citizenship, Nationality, and Migration in Europe*. London: Routledge. pp.209-210.
[99] *Ibid.*

business flows. In the end of the paragraph, both the *jus sanguinis* and *jus soli* frameworks reveal to be inadequate to depict the current world affected by the phenomena of mobility and internationalization.

From a global perspective it has been argued that nationality has become mainly a means for mobility. Since globalization has been thought to undermine national citizenship as a link between individuals and States, the acquisition of passports has been thought to be merely a symptom of an inevitable commodification of citizenship.[100] The most striking case was that of Malta. In 2013, the Individual Investor Program (IIP) was introduced on the Mediterranean island, which allows individuals to actually obtain the citizenship of the country for just over a million euros.[101] A similar program has been set up on the other Mediterranean island, Cyprus, where those who invest two million euros in property, a company, or government bonds can obtain their national passports. The 2013 law did not even require knowledge of the language and residence until 2016, but only to visit the European part of the island at least once every seven years.[102] For years, Europe had kept out of this market. The "selling" of the citizenship and "golden visas" was a prerogative of Caribbean States, like Antigua and Barbuda, Saint Kitts and Nevis, and Dominica.[103]

Mobility privileges connected to the holding of passports are the primary value of citizenship. The high price that the Maltese Parliament imposes on Maltese passports is the representation of the functional value of EU free movement privileges for the global elites linked to EU citizenship. The transfer of citizenship is pointed out to be less coercive and more open than other methods to obtain citizenship. Still, it has been argued that granting the ultra-rich privileged exposure to "global mobility corridors"[104] could raise concerns of fairness and justice. As an alternative to the "selling" of the citizenship for monetary reasons, nationality could be assigned by States to those individuals who

[100] Bauböck, R. Summary: Global, European and National Questions About the Price of Citizenship. In Bauböck, R. (2018). *Debating Transformations of National Citizenship*. Cham: Springer Open. p.3.
[101] Europa.today.it. (2019). Cittadinanza vendesi, così alcuni Stati Ue fanno cassa dando il proprio passaporto a ricchi stranieri. Retrieved 14 February 2019, from: https://europa.today.it/attualita/cittadinanza-vendesi-stati-ue-passaporto.html
[102] *Ibid*.
[103] Scarcella, R. (2019). In Europa la fabbrica della cittadinanza: così funziona il business dei passaporti comprati. LaStampa.it. Retrieved 14 February 2019, from: https://www.lastampa.it/2016/08/21/italia/in-europa-la-fabbrica-della-cittadinanza-cos-funziona-il-business-dei-passaporti-comprati-e0dWQ28J4sGXYEcJ0jWLOI/pagina.html
[104] Bauböck, R. Summary: Global, European and National Questions About the Price of Citizenship. In Bauböck, R. (2018). p.3.

are endangered by persecution or who struggle for democratic values as a means of protection or exit.[105]

Transferring the citizenship status from parents to children is a common contemporary custom that provides many realistic and standard advantages. Depending on the citizenship of parents, it is relatively easy to transfer legal status to children, especially in a context of high mobility, in which the relations between people and their birthplace are assuming less relevance.[106] It may also be desirable to grant citizenship status to children of citizens as a way of avoiding statelessness, recognizing special family ties, and fostering political ties between children and their parents' political communities. Nonetheless, a series of complications counterbalance these apparent advantages of *jus sanguinis* citizenship. As a matter of fact, historically, citizenship *jure sanguinis* is based on traditions and concepts focused on ethno-nationalist membership theories. Also, it is insufficient because coping with contemporary issues, such as developments in assisted reproductive technology and variations of family traditional patterns and norms, is becoming constantly inadequate.[107]

Primarily, introducing unconditional *jus sanguinis* in the countries interested by a long history of emigration ensures that emigrants will automatically pass citizenship to their descendants, even if in some cases their ties with the political community are very weak. Across Europe more than twenty countries apply these regulations. It is possible to consider non-nationalist arguments to justify the citizenship of emigrants. Still, such bond significantly weakens as extended to successive generations of non-residents. Furthermore, in some cases countries rely on the concept of descent to grant or return citizenship to certain categories of individuals. In this manner, people can restore their citizenship status being descendants from ancestors who were citizens or residents in a territory that once belonged to a predecessor state with different boundaries, such as in Latvia or Romania.[108] Nevertheless, while maintaining *jus sanguinis*, an ethnonationalist disposition may be overcome if this principle is supplemented by *jus soli* and residential naturalization. Even in the absence of the additional inclusionary effects of *jus soli*, this latter has created an ethnically highly diverse citizenship in continental European

[105] Bauböck, R. Summary: Global, European and National Questions About the Price of Citizenship. In Bauböck, R. (2018). p.3.
[106] Dumbrava, C. Bloodlines and Belonging: Time to Abandon Ius Sanguinis? In Bauböck, R. (2018). p.73.
[107] *Ibid*.
[108] *Ibid*.

immigration countries.[109] The reason for this ethnically inclusive effect of *jus sanguinis* is that, if first-generation immigrants can obtain citizenship, *jus soli* and *jus sanguinis* will make little difference. As a matter of fact, immigrant children can acquire citizenship under either rule.[110] Consequently, *jus soli* and *jus sanguinis* cannot be considered as alternative outlines. On the contrary, they can be mixed in order to neutralize the consequences that strengthen their nationalist capacity for ethnic exclusion and territorial expansion.[111]

For this reason, *jus soli* per se has exclusionary implications for migrants. In most American states, the generation of migrants who entered the country as minor is unable to gain citizenship until age of majority, although the consequences are in some cases mitigated by normative measures, such as the already mentioned Obama's Dream Act. Such individuals acquire the citizenship by naturalization, but they do not become nationals. They remain excluded from many public offices, such as the U.S. Presidency, and may be deprived of their citizenship status, while nationality can often never be lost. In some Latin American States, such as Uruguay, a definition of naturalization does not exist for those who were not born in the country. As it has been explained in the first chapter, researches of citizenship have described the distinction between the notions of citizenship and nationality, terms that carries little semantic differences. Still, in the legal tradition, many countries make substantial distinctions between citizens and nationals. Such differentiation depends on the manner of acquisition of citizenship, if it has been acquired at birth or later.[112] This is what generally occurs in Latin America and the Caribbean countries. Similar exclusionary effects deriving from *jus soli* apply to individuals who have been born abroad from nationals. Children often do not gain citizenship if their parents do not enroll them in time, generally before a majority age.[113] Nonetheless, children are reliant on the migration decisions of their parents in any situation. This explains the reason why they also have a right to share the citizenship of their parents. Otherwise, they would fear being stuck in their country of birth or being

[109] Bauböck, R. Ius Filiationis: A Defence of Citizenship by Descent. In Bauböck, R. (2018). p.84.
[110] *Ibid*.
[111] *Ibid*.
[112] Pedroza, L., & Palop-García, P. (2017). The Grey Area Between Nationality and Citizenship: An Analysis of External Citizenship Policies in Latin America and the Caribbean. *Citizenship Studies*, *21*(5), 587-605.
[113] Bauböck, R. Ius Filiationis: A Defence of Citizenship by Descent. In Bauböck, R. (2018). p.85.

regarded as immigrants in the country of nationality of their parents. Instead, it could be necessary the creation of a basic legal childhood status that confers fundamental rights independently of the parental citizenship or migration status.[114] This is similar to what is aimed by 1989 *Convention on the Rights of the Child*, which is one of the documents on human rights most widely signed and ratified.[115]

In a system with border restrictions in which citizenship is the only firm promise of a country's right of entry, some scholars promote a different kind of citizenship, which could, therefore, be given provisionally in order to limit the expansion of hereditary privilege in this area.[116] Also, it has been affirmed convincingly that *jus sanguinis* is not necessarily ethnically exclusive. In fact, it does not have to be considered in terms of pure genetic or biological descent. Thus, it should be addressed the existing *jus sanguinis* inadequacies does not consider all the biological parenting issues raised by the latest reproductive technologies. An example is the case of Samuel Ghilain.[117] In the event in which *jus sanguinis* can be separated from the rigid hereditary definition, the cases of biological descent no longer give a warrant for unlimited propagation through successive generations.[118]

From the conventional viewpoint, the more common definitions of political community and nationality need to overcome or conquer the peculiarity of State sovereignty as the foundation of politics. Such emphasis on opposing or transcending State sovereignty is usually associated with concepts of cosmopolitan or transnational citizenship portrayed as more egalitarian and democratic forms of political belonging.[119] Alternatives to the more classic notion of citizenship have been presented by scholars. For instance, an idea of post-national citizenship could be focused on fundamental privileges and identity obligations, rather than rights and duties based solely on nation State particularities.[120]

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[114] Bauböck, R. Ius Filiationis: A Defence of Citizenship by Descent. In Bauböck, R. (2018). p.87.
[115] United Nations General Assembly. (1989). *Convention on the Rights of the Child*.
[116] Honohan, I. Limiting the Transmission of Family Advantage: Ius Sanguinis with an Expiration Date. In Bauböck, R. (2018). p.131.
[117] Dumbrava, C. Bloodlines and Belonging: Time to Abandon Ius Sanguinis? In Bauböck, R. (2018). p.73.
[118] Honohan, I. Limiting the Transmission of Family Advantage: Ius Sanguinis with an Expiration Date. In Bauböck, R. (2018). p.131.
[119] Ní Mhurchú, A. Citizenship Beyond State Sovereignty. In Isin, E. F., & Nyers, P. (2014). p.120.
[120] *Ibid*.

Consequently, due to globalization it seems that national citizenship is regressing in favor of a more universal membership model based on an increasingly de-territorialized notion of the universal rights of the individual.[121] This post-national citizenship is specifically related to the interconnection and global interdependence, gradually shared memberships in various types of citizenship, and the proliferation of universal human rights principles and definitions formalized by international law, such as the UN, the Council of Europe, or the EHRC. Still, an inconsistency between common, standardized, and internationally established freedoms and territorially determined social identities is likely to exist. This can be defined as a post-modern citizenship.[122] NGOs and international organizations have also arisen as being more influential in some ways than nation States. Generally, the composite nature of many communities in a post-colonial period is said to result in a disjunctive, disputed and contradictory citizenship.[123] This increase in post-national citizenship, and more internationally expanded conceptions of human rights, derives from the development of new mechanisms and institutions that extend across and inside different societies. In the contemporary world, accordingly, a wide variety of citizenships emerge. Some examples include cultural citizenship, which involves all social groups without any ethnic, gender, sexual, or age discrimination to culturally participate within their society. Another example is the ecological citizenship connected to the rights and responsibilities of any inhabitant of the Earth. As a matter of fact, the ecological rights of citizens have been affirmed by many American States and by the South African Constitution. Similarly, the cosmopolitan citizenship is "concerned with how people may develop an orientation to other citizens, societies and cultures across the globe."[124] Also, the consumer citizenship is connected to the rights of those individuals that are provided with goods, services and information. Moreover, the mobility citizenship that is concerned with the rights and responsibilities of individuals moving from one nation to another has been cited.[125]

Nonetheless, in many respects the globalization of danger demonstrates the artificiality of Marshall's differentiations between civil, political, and social rights, and how contemporary society entails overlapping encounters that merge the different

[121] Urry, J. (1999). p.314.
[122] *Ibid*.
[123] *Ibid*.
[124] *Ibid*.
[125] *Ibid*.

dimensions of Marshall's citizenship. For instance, as for the already mentioned ecological citizenship, different approaches have been promoted by different global environmental movements. The first approach aims to increase inclusion and challenges the notion that only human beings should be citizens and should hold rights, which is one of the main claims of the animal rights movement.[126] Also, another approach focuses on the responsibility human beings hold in respect to nature, expressing the concerns of green parties and environmental movements, for which citizenship cannot mean holding responsibility only for society but also for nature.[127]

Currently, the participation in political communities conveys different set of rights and duties. For this reason, citizenship has become multilayered. As a matter of fact, in some cases national and supranational citizenship intersect, e.g. as it happens with the European Union citizenship or, similarly, with the African Union passport.[128] Also, no longer is citizenship limited to the territorial boundary. On the contrary, a digital citizenship has been spreading, as it has been demonstrated by the Estonian digital residency program, e-Estonia.[129] Such digital-based "society" grant e-residency in Estonia, which means accessing digital governmental services, such as establishing a business in Estonia or having a digital ID. In such specific case, e-residents are not eligible for territorial residency unless they hold also regular visa requirements. In July 2017, Estonia had more e-residents than newborns and the country plans to reach 10 million e-residents by 2025, making its virtual population nearly ten times larger than its territorial population (1.3 million in 2017).[130]

Also, as for global citizenship within the current political economy framework, the figure of a global citizen engaged in transnational affairs is widespread. The sensation of being global might be felt in the sense of losing the cultural specificity deriving from the exclusive attachment with a specific place or community. In such context, the setting for a European integration has been placed and it is a condition for being successful in the world economy.[131] Due to the disappearance of barriers to leisure or business travel,

[126] Van Steenbergen, B. Towards a Global Ecological Citizen. In Van Steenbergen, B. (1994). pp.143-144.
[127] *Ibid*.
[128] Orgad, L. Cloud Communities: The Dawn of Global Citizenship? In Bauböck, R. (2018). p.258.
[129] e-Estonia — We have built a digital society and we can show you how. (2020). Retrieved 27 January 2020, from https://e-estonia.com/
[130] Orgad, L. Cloud Communities: The Dawn of Global Citizenship? In Bauböck, R. (2018). p.258.
[131] Falk, R. The Making of Global Citizenship. In Van Steenbergen, B. (1994). *The Condition of Citizenship*. London: Sage. p.134.

the access to a new variety of sources of information, multi-media products, new risks to health, or environmental risk have reconfigured contemporary citizenship beyond nation States.[132]

The new political consciousness rising from regional integration produces a significant innovation in the notion of citizenship since the creation of the modern State in the 17th century. For instance, the European integration depict an emerging political community distant from the Westphalian system of territorial sovereignty, acting as mediator between States and the global political order.[133] Global citizenship means a revolutionary confidence in the human capacity to go beyond practical horizons, but it is also grounded in the deeply rational conviction that what is actually deemed reasonable is not sustainable. The inclusive pillars of the welcoming notion of universal citizenship provide some security against any dependence on another totalizing ideology deriving from the West, but this may not be enough. Such a reconstruction of the understanding of global citizenship is highly skeptical of the transnational business world view, which seems to increasingly reject the particularity of the classic notion of citizenship and yet never acquires a sense of the global and social obligation.[134]

[132] Urry, J. (1999). p.314.
[133] Falk, R. The Making of Global Citizenship. In Van Steenbergen, B. (1994). pp.136-137.
[134] *Ibid*. p.140.

CONCLUSIONS

Citizenship studies have emerged as a field of social sciences in the 1990s. Yet, it was only during the 2000s that academics and scholars started to consider the new dimension of citizenship also at a transnational and global level, thanks to the spreading of the phenomena of globalization and post-modernization. However, what affects the right to citizenship do not interest exclusively academic research but population firsthand. Migratory or diasporic events, environmental sustainability, or minorities' recognition are all phenomena that can be interpreted in the light of citizenship rights and obligations. The purpose of this thesis tries to go further the mere national conceptualization of citizenship law. In other words, it takes the analysis of citizenship to an international law point of view.

Despite the evident transboundary dimension of citizenship, its research is still at an early stage. As a matter of fact, more specific legal instruments are necessary. Therefore, the main focus of the present thesis has been the study of citizenship and its inadequate regulation from an international law point of view. Starting from an analysis of the evolution of the notion, this dissertation has explored the normative gaps of international law within the citizenship framework. By exploring the complex issue of citizenship, this thesis has investigated the added value of international instruments. In other words, it has tried to demonstrate that the fulfillment of this gap via international law application could be more effective.

Before presenting the achievements of this research, due to methodological reasons, it is necessary to clarify that, although the terms "nationality" and "citizenship" have been interchanged as synonymous throughout the thesis, conceptually and linguistically there is a consistent difference between the two terms, both in social sciences and in the legal terminology. From the legal point of view, with the term "nationality" reference must be made to the citizenship status in public international law instead of the national aspect. Nationality is a political and legal term used denoting membership of a State and must be distinguished from its historical and biological connotation related to a generic membership of a nation.

The analysis of the global historiography of citizenship has been necessary to determine whether it is possible to find a univocal definition suitable for describing the contemporary reality. Citizenship still represents a controversial issue of the current affairs. Both normative and empirical theories have been useful to investigate which rights and duties should be included in the definition of citizenship and how the social, economic, and political processes are influenced by the notion. The current normative debate between promoting active and participatory citizenship and promoting a passive notion of citizenship, in which there is no obligation to participate in public life, continues. Nonetheless, analyzing both the positions, it resulted that a balance is necessary to be found between the attribution of rights and obligations to the individual. The idea that rights should be balanced by obligations is largely a result of trusting the civil society, the network of families, and unofficial organizations. Since criticisms have interested both the communitarian and the liberal discourse on citizenship, it has been explained that future citizens were not fully aware of their rights. Likewise, the idea of active citizenship and participatory citizenship has raised the question of how this participation should be made possible, since many individuals are excluded from such opportunities, e.g. second-class citizens.

For this reason, the research of a contemporary univocal definition of the notion of citizenship is still on-going. In the light of the lack of a univocal universal definition, it is understandable the reason for which the modes of attribution of citizenship are not homogenous worldwide. States have adopted the two main principles of *jus soli* and *jus sanguinis* based on their historical heritage. Nevertheless, with the exception of the rule of statelessness necessarily regulated by the *jus soli*, the two concepts cannot be considered as mutually exclusive. Indeed, most States apply a mixture of both.

From the legal point of view, with the aim of examining the cross-border dimensions of the notion, it has been necessary to enlarge the application field from national to international. In this sense, the already mentioned normative approach has allowed the circumscription of the wider notion of citizenship to the set of normative frameworks. Within the international legal framework, the aim of this final dissertation has been demonstrating that nationality is not a matter to be confined to the reserved domain or the realm of State relations. Concerning the recognition of nationality by other States, any change in domestic nationality law is necessarily to be conducted in a spirit

of fair cooperation. In this sense, the international community has to provide a coherent set of binding international norms concerning the regulation of the attribution and withdrawal of nationality.

Currently, the international community has entered the field of global migration law, pressuring the Nottebohm system and incentivizing a change. The main issues to be faced have been the multiple citizenship and the deprivation of citizenship. The issue of multiple citizenship has been useful to analyze the proper definition of nationality in the international legal instruments. As for the cases of deprivation of citizenship, this thesis has demonstrated that statelessness continues to be an anomaly that leaves individuals into a legal limbo. Efforts should still be made by States not to denationalize their citizens depriving them of their link with the State. By doing so, States are only placing the burden on other States.

Not being extraneous to the non-discrimination rule, provisions of nationality legislation could be discriminatory by preventing persons from acquiring the status or denying human rights to non-nationals. For this reason, States cannot limit the rights of a restricted category of individuals and cannot avoid the application of fundamental human rights already determined by other treaties. In this sense, this final thesis has highlighted the insufficiency and inadequacy of more specific international legal instruments for the regulation of citizenship on many aspects.

With the aim of highlighting the set of problems that currently exists, the process of recognition *jure sanguinis* of Italian descendants in the Argentine Republic has been investigated as a case study. Due to the historical social change determined by the strong migratory flows towards Italy, it has been proven that the current Law of 1992 does not adequately take charge of the regulation of the phenomenon. Several proposals have been aimed at amending the current law to facilitate the acquisition of Italian citizenship by the foreigners residing in the territory and integrated in Italy. Though, despite the existence of several specific bilateral agreements with some Latin American States, e.g. the Agreement with Argentina of 1971, many aspects still remain unresolved. For instance, the discriminatory recognition of the citizenship status for descendants of Italian women who had married a foreign citizen before 1948 and had lost their Italian citizenship due to marriage is not immediate but requires the intervention of the jurisprudence.

The problems deriving from return immigration and of citizenship in a very broad sense have particularly concerned the Italian population in Argentina, in which Italian descendants want to gain or re-obtain Italian political citizenship, primarily with the purpose of returning to Italy to build a career. Such phenomenon often conceals an intention of access to the European labor market in order to get access to the freedoms of movement and work within the European Union. In many cases, Italian descendants aim to reach the states of the Iberian Peninsula, with which South American citizens share linguistic and cultural affinities, for working reasons. A possible solution could be the improvement of the bureaucracy of the naturalization process and the restriction of the criteria of *jus sanguinis* citizenship, as it has been done for Italian citizenship via marriage, which responds to a more restrictive procedure after 2018 amendment introducing the language requirement. Similarly to what happens in Portugal, which reminds those individuals to the process of naturalization, it is reasonable to presume an interruption of the socio-cultural link between descendants of emigrants and country of origin after a determined degree of Italian descent.

Here lies the question concerning the relationship between citizenship and State sovereignty. Citizenship cannot prescind the idea of State sovereignty, especially in the contemporary globalized world, in which citizenship still continues to be defined by dichotomies, e.g. between inclusion and exclusion. In the current world order, it has been proven that a general transformation from the Westphalian system to a post-Westphalian order characterized by the establishment of internationalized authorities has been more effective. However, little has such transformation interested the field of nationality law. On the contrary, in this field, the dualism between the equality of States under international law and the hierarchy of States in the international relations practice, typical of the Westphalian regime, still exists. Due to the crisis of this order, also the notion of citizenship is being undermined. Thus, an updated framework of more inclusionary forms of citizenship beyond nation States is required.

Though, a positive change is ongoing, for instance, thanks to the role of well-established transnational NGOs. In this sense, the improvement of international human rights instruments has been partially reinforcing the right to nationality. However, the main difficulty consists in the fact that human rights have been removed from matters of domestic jurisdiction, whereas the right to nationality is still seen as part of a *domaine*

réservé, and not as a human right. The theory has been confirmed by the vagueness of the international regulations on the matter and by the fact that nationality is said impossible to be considered a natural or inalienable right. Subsequently, *jus soli* and *jus sanguinis* cannot be considered as alternative outlines, but they can be mixed in order to neutralize the consequences that strengthen the nationalist capacity for ethnic exclusion and territorial expansion.

In this sense, it has been possible to illustrate the existence of a more progressive citizenship project, which has started to be developed in order to settle any dispute arisen between States on nationality matters, leading to more certainty in the resolution of such cases. Such understanding moves the focus from an international approach based on sovereignty to an approach based on the granting of individual rights. The aim of maintaining any degree of territorial control and cultural diversity can be reached by establishing new regional institutions. For this purpose, regional citizenship cannot exhaust the notion of supranational, and global citizenship is still too broad to be strictly adhesive. However, both globalization and regionalization mechanisms have demonstrated to have had a profound impact on the security of the Westphalian State system. This is the reason for which reference has been made to the European citizenship, established within a framework of "pooled" or "combined" sovereignty.

Despite there is no shortage of attention to the issue of citizenship, there is still the need to work on the effectiveness of the international legal instruments and on the creation of new provisions to fill the institutional gap. To conclude, this thesis aims at shedding light on the transboundary implications of citizenship. As a matter of fact, it is no longer possible to frame it exclusively as a matter of a *domaine réservé*. Establishing a link between citizenship and international law represents a thematic challenge for citizenship studies and law itself. On the basis of the Westphalian system, territorial sovereignty required the element of population. For this reason, for a long time citizenship has been limited to be a matter of domestic jurisdiction. However, the contemporary phenomena of globalization and migrations have had great impact on the concept. The request for a post-Westphalian system of sovereignty has affected the international community by creating a new concept of pooled or combined sovereignty. In this sense, citizenship has been put under pressure and changing from an exclusive matter of domestic law to a matter carrying transboundary implications. Both international public law and private law

have been necessary to explain some realities, e.g. the right to diplomatic protection, cases of multiple citizenship, and statelessness. In this context, the request for more specific international legal instruments seems justified, since the current legislation only offers non-specific treaties on the topic.

Even though this final thesis has tried to provide an analysis of the matter, there is still the need for further research. Certainly, the international jurisprudence on nationality can increase, and hence, fill the gaps on the matters that still remains unregulated. Likewise, stronger legal instruments are necessary, in particular to refrain from arbitrarily deprivation of citizenship and to avoid statelessness as agreed in international instruments. Also, a more effective framework should be created to improve the inclusion of the universal right to nationality as part of the fundamental human rights, since current human rights norm are a strong start but still vague on nationality matters.

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LIST OF ACRONYMS

ACHPR	African Charter of Human and Peoples' Rights
ACHR	American Convention of Human Rights
ArCHR	Arab Charter on Human Rights
ASEAN	Association of Southeast Asian Nations
CARICORM	Caribbean Community
CDCJ	European Committee on Legal Co-operation
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEMLA	Centro de Estudios Migratorios Latinoamericanos
CoE	Council of Europe
CRPM	Comisión de Representantes Permanentes del Mercosur
DACA	Deferred Action for Childhood Arrivals
DREAM	Development, Relief, and Education for Alien Minors Act
EC	European Community
ECHR	European Convention of Human Rights
ECJ	European Court of Justice
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
EEC	European Economic Community
EU	European Union
GCC	Cooperation Council for the Arab States of the Gulf
IACHR	Inter-American Court of Human Rights
IACommHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILC	International Law Commission

MERCOSUR	Common Market of the South
MFN	Most-Favored Nation
NAFTA	North American Free Trade Agreement
PCIJ	Permanent Court of International Justice
PICE	Argentina-Brazil Integration and Economics Cooperation Program
QNI	Quality of Nationality Index
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees
WTO	World Trade Organization