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Citizenship Beyond Borders: A Comparative Study of France, Italy, and Spain in the Regulation of Non-Resident Nationals

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1.
Introduction

1.1 Citizenship Studies: A Growing Field

Over the past thirty years, there has been a renewed general interest in the topic of citizenship.[1] While debates about citizenship and membership to a political community date back centuries,[2] the systematic academic study of the topic is much more recent. In fact, the disciplinary field of *citizenship studies* emerged in the mid-20th century, with early scholars[3] focusing on situations of 'deficient legal entitlements'[4] affecting specific categories of the population (e.g. women, whose situation amounted to that of second-class citizens, since they did not enjoy the same array of rights as their male counterparts)[5], without directly questioning the criteria for inclusion in the political community.

The contemporary configuration of citizenship studies differs significantly from this original form: indeed, it has evolved into a multidisciplinary field.[6] Citizenship – understood as a status of equal membership within a bounded polity[7] associated with a bundle of rights and duties, as well as

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[1] L Bosniak 'Citizenship' in M Tushnet and P Cane (eds), *The Oxford Handbook of Legal Studies* (OUP 2005) 183.
[2] In its seminal work *The Idea of Citizenship since Classical Times* (State University of New York Press 1995), J. G. A. Pocock references Aristotle's *Politics* and Gaius the Jurist's *Institutes*, as well as more recent philosophers such as Jean-Jacques Rousseau.
[3] Among the foremost exponents there is the sociologist Thomas H. Marshall, whose work on citizenship as an evolving set of rights (*Citizenship and Social Class*, 1950) has been a cornerstone for subsequent studies.
[4] E Codini *La cittadinanza. Uno studio sulla disciplina italiana nel contesto dell'immigrazione* (G Giappichelli Editore 2022) xiv.
[5] T Bottomore 'Citizenship and Social Class, Forty Years On' in TH Marshall and T Bottomore *Citizenship and Social Class* (Pluto Press 1987) 68.
[6] A Shachar 'Citizenship' in M Rosenfeld and A Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012) 1002.
[7] R Bauböck and V Guiraudon, 'Introduction: realignments of citizenship: reassessing rights in the age of plural membership and multi-level governance' (2009) 13 (5) Citizenship Studies 439.

collective national identity[8] – is, in fact, studied not only by legal scholars but also by political philosophers, social theorists, and sociologists.

This is hardly surprising in a complex context such as today's globalized world, where the traditional conception of citizenship is challenged. The crisis of citizenship stems from the fact that this concept was designed to operate within "closed" national societies, and therefore inherently linked to the nation-state (i.e. a community of people bound to a territorial legal order). Indeed, if territorial borders are stable and populations largely sedentary, the enjoyment of rights, political participation, and the formation of personal identity are confined within the boundaries of a State, resulting in the overlap of territorial and personal jurisdictions. In this sense, the traditional idea of citizenship relied on exclusive membership and enjoyment of rights in one state alone. Instead, nowadays citizenship must contend with transnational phenomena, such as migration, and multilevel citizenship combining sub-state with supranational modes of membership (i.e. European Union citizenship).[9] (See Chapter 2 Paragraph 5).

Believing that the foundational premises of citizenship were eroding, some scholars went so far as to deem it an institution in decline. Their argument was twofold. First, citizenship was denationalizing. The proliferation of dual citizenship, for example, significantly departed from the original idea of univocal membership to a country. The possibility of continuing to participate in a state's political life regardless of an individual's residence (that is, even if it is outside that state) further exacerbated such disconnect. Also, the 'vertically integrated nested constellations of citizenship'[10] deriving from the European Union (EU) supranational citizenship and the devolution processes occurring in several of its Member States did not correspond to the original paradigm. Secondly, the consolidation of international human rights protection, codified through regional and international treaties, undermined the interpretation of citizenship as the necessary condition for exercising individual rights.[11] Indeed, citizenship itself came to be recognized as a right.[12] This reflected the idea that rights should not be granted on the basis of citizenship, hence according to the State's discretion, but rather on the basis of being a human being.[13]

This view was challenged by a dissenting group of scholars,[14] who argued that citizenship is a robust concept that will not disappear as long as the world remains organized according to the

[8] S Kalm, 'Diaspora Strategies as Technologies of Citizenship' (2013) 27(3) Global Society 379, 380.
[9] Bauböck and Guiraudon (n 7).
[10] Ibid 444.
[11] M Dicosola, *Il diritto alla cittadinanza: problemi e prospettive* (Maggioli 2022) 25.
[12] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 15.
[13] S Staiano 'Migrazioni e paradigmi della cittadinanza: alcune questioni di metodo' (2008) 21/2008 Federalismi.it
[14] See R Brubaker, *Citizenship and nationhood in France and Germany* (Harvard University Press 1998) 124; Staiano (n 13) 2; K Rubenstein and Lenagh-Maguire N, 'Citizenship and the boundaries of the constitution', in T Ginsburg and R Dixon (eds), *Comparative Constitutional Law* (Edward Elgar: Cheltenham 2011) 143; J Shaw, 'Citizenship and Constitutional Law: An Introduction' in J Shaw (ed), *Introduction to Citizenship and Constitutional Law* (Edward Elgar 2017) 21/2017 Edinburgh School of Law Research Paper 8; K Henrard, 'The shifting parameters of nationality' (2018)

Westphalian system. In this sense, the decline of citizenship remains difficult to sustain due to the functions such status still performs in the current context of constitutional states – including especially the identification of political communities and the ability to exercise political rights.[15]

Indeed, citizenship has not declined, rather it came back 'with a vengeance'.[16] In many countries, nationality came center stage in political debates, specifically concerning the regulation of those allowed to enter the country and who among long-term residents could be included in the political community via naturalization.[17]

Instead, the academic debate has developed along two main lines of research: normative and empirical.[18]

The former is largely predominated by sociological approaches; it addresses questions concerning who should be a citizen, and the substance of the rights entailed by this status.[19] These scholars try to develop so-called *postnational* or *postmodern*[20] concepts of citizenship – that is a reconceptualization of citizenship sensitive to current global dynamics. Notably, Reiner Bauböck developed the idea of stakeholder citizenship. According to this theory, 'individuals have a claim to membership in a self-governing political community whose autonomy and well-being depend on the collective self-government and flourishing of a particular polity'.[21] However, this strand of literature presents a key limitation, namely the lack of participation of legal scholars in the innovation of a legal concept such as citizenship, thus weakening legal categories.[22]

Empirical theories, instead, are predominantly a political science and immigration scholars' domain and they address queries such as why states regulate citizenship in a certain way and why individual migrants decide for or against pursuing citizenship in their residence country.[23] The most significant achievement of this multidisciplinary scholarship is the development of a taxonomy of citizenship regimes. Specifically, they mapped out a spectrum of inclusiveness underlying citizenship

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65(3) Netherlands International Law Review 269, 275; J Shaw, *The People in Question* (Bristol University Press 2020) 3; Dicosola (n 11) 25.

[15] Dicosola (n 11).

[16] C Dauvergne, 'Citizenship with a Vengeance' (2007) 8(2) Theoretical Inquiries in Law 489.

[17] Shachar (n 6) 1013.

[18] For a comprehensive account on the current state of the art of citizenship studies see MP Vink, R Bauböck and J Shaw 'A short history of comparative research on citizenship' in O Vonk and others (eds) *Grootboek: Opstellen aangeboden aan Prof.mr. Gerard-René de Groot ter gelegenheid van zijn afscheid als hoogleraar rechtsvergelijking en international privaatrecht aan de Universiteit Maastricht* (Wolters Kluwer 2016); MP Vink, 'Comparing Citizenship Regimes' in A Shachar and others (eds) *The Oxford Handbook of Citizenship* (OUP 2017); J Džankić and MP Vink 'Citizenship & Migration' in P Scholten (ed) *Introduction to Migration Studies* (IMISCOE Research Series 2022) 357.

[19] Džankić and Vink (n 18) 361.

[20] K Barry, 'Home and Away: The Construction of Citizenship in an Emigration Context' (2006) 81 NYU Law Review 11, 58.

[21] R Bauböck 'Political Membership and Democratic Boundaries' in A Shachar and others (eds) *The Oxford Handbook of Citizenship* (OUP 2017) 64.

[22] Staiano (n 13).

[23] Džankić and Vink (n 18) 362-363.

policies. This measure is captured by indices such as the Migrant Integration Policy Index (MIPEX)[24], which relies on indicators including the number of years of residence required for naturalization, and dual citizenship acceptance.[25]

Conversely, in the context of citizenship studies, law is primarily engaged within the framework of international law,[26] reflecting the relevance of citizenship as formal affiliation to a State in the resolution of inter-state legal questions involving individuals[27] (e.g. diplomatic protection[28]). Generally, this internationalist perspective develops along two main strands of scholarship examining the ways in which international and supranational legal orders constrain State authority over citizenship. On the one hand, legal literature on citizenship concerns the intersections of domestic nationality laws with human rights law,[29] specifically the ways in which the latter body of norms impacts states' autonomy in a domain traditionally ascribed to national sovereignty.[30] On the other hand, scholars address the doctrinal issues raised by EU citizenship,[31] which defies the classical conception of citizenship by creating a notion of citizenship 'exclusively about rights with no complementary duties whatsoever, decoupled from even the thinnest of identities'.[32] Thus, the task of identifying patterns and trends across citizenship laws does not appear to be a popular issue from the legal standpoint, or more specifically within public law or comparative public law. Rather, such endeavor was undertaken by the aforementioned new wave of multidisciplinary comparative citizenship studies.[33]

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[24] B Yavçan and M Gorgerino, *MIPEX 2025 – A Roadmap for Inclusive Policy in the EU* (Migration Policy Group 2025); G Solano and T Huddleston, *Migrant Integration Policy Index 2020* (Migration Policy Group 2020).
The *Migrant Integration Policy Index* (MIPEX) is an internationally recognized comparative tool assessing policies for migrants' integration in 56 countries since 2007. It is developed by the European NGO Migrant Policy Group, in collaboration with a network of respected national partners, and is funded by the European Union and the Center for Global Development. The Index measures migrants' opportunities to participate in society across 8 policy areas: labor market mobility, family reunification, education, political participation, permanent residence, access to nationality, anti-discrimination, and health. Countries' policies are scored on 0-100 scale against the highest equality standards drawn from EU Directives and UN Conventions (a complete list is available on the MIPEX website). MIPEX has become the most widely cited index on integration and citizenship policies (over 8,000 references on Google Scholar): it is used in international organizations' reports (e.g. the UN Global Compact for Migration) and it informs policy debates within governments and parliaments (including recent discussions in Switzerland concerning racist discrimination, in Finland relating on new citizenship integration requirement, and in Portugal for policy assessment).

[25] Džankić and Vink (n 18) 362-363.

[26] Such approach can be found in: R Sloane, 'Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality' (2009) 50 Harvard International Law Journal 1; A Annoni and S Forlati (eds) *The Changing Role of Nationality in International Law* (Routledge 2013); A Edwards and L van Waas *Nationality and Statelessness under International Law* (Cambridge University Press 2014).

[27] E Fripp *Nationality and Statelessness in the International Law of Refugee Status* (Hart Publishing 2016).

[28] See for example E Denza, 'Nationality and Diplomatic Protection' (2018) 65 Netherlands International Law Review 463.

[29] See for example: D Owen, 'On the right to have nationality rights: Statelessness, citizenship and human rights' (2018) 65 Netherlands International Law Review 299.

[30] J Shaw, *The People in Question* (Bristol University Press 2020) 11.

[31] See D Kochenov *EU Citizenship and Federalism: The Role of Rights* (Cambridge University Press 2017); N Nic Shuibhne *EU Citizenship Law* (Oxford European Union Law Library 2023).

[32] C Joppke, 'The instrumental turn of citizenship' (2019) 45(6) Journal of Ethnic and Migration Studies 858, 870.

[33] See e.g. R Bauböck *Transnational Citizenship: Membership and Rights in International Migration* (Edward Elgar 1994); I Bloemraad *Becoming a Citizen: Incorporating Immigrants and Refugees in the United States and Canada*

Over the past decade, these scholars[34] have revolutionized their field. Most notably, they have recognized that a country's nationality law does not merely regulate the inclusion of immigrants, but it serves a wider range of purposes. In fact, most literature on citizenship focused (and still does!) on the modes through which immigrants can acquire the nationality of their country of residence. However, focusing only on access to citizenship for immigrants leads to a static and incomplete perspective on how states regulate citizenship status. Notably, all traditional typologies of citizenship regimes did not consider loss of citizenship: the provisions regulating voluntary renunciation and involuntary withdrawal of citizenship play a crucial role in shaping the extraterritorial inclusiveness of citizenship in both sending states and kin states with co-ethnic minorities abroad.[35] In fact, emigration is the flip side of immigration. Hence, the citizenship discourse 'will remain incomplete until it analyzes emigrant citizenship as a tool of nation-building and identity construction in emigration states'.[36] For this reason, when examining citizenship regimes, scholars need also to evaluate the provisions that enable emigrants to retain their citizenship after naturalizing abroad, as well as the provisions related to the automatic transmission of citizenship to second and later generations living out of the country.[37] When discussing migration, it is generally overlooked that immigrants are also emigrants. This might be due to the fact that emigrants (specifically the first generation) represent 'legal anomalies',[38] since they traded full membership in the political community of a country to live in a liminal state of non-belonging in their host country.

It is against this backdrop that Anglo-Saxon literature on citizenship introduced the concept of *external citizenship* at the beginning of the 21st century.[39]

External citizenship is the condition in which individuals who are temporarily or permanently residing outside the territory of a state maintain formal membership in that polity, through citizenship status, and continue to hold the political and social entitlements associated with such membership status. It includes both the legal dimension of citizenship exerted from abroad – namely, the

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(Berkeley University of California Press 2006); MM Howard *The Politics of Citizenship in Europe* (Cambridge University Press 2009); MP Vink and GR de Groot, 'Citizenship Attribution across Western Europe: International Framework and Domestic Trends' (2013) 36(5) Journal of Ethnic and Migration Studies 713.

[34] For example: GR de Groot and MP Vink, 'Loss of Citizenship: Trends and Regulations in Europe' (EUDO Citizenship 2010); R Bauböck and M Helbling (eds), 'Which Indicators Are Most Useful for Comparing Citizenship?' (EUDO Citizenship Working Paper 2011); R Bauböck, MP Vink and I Honohan, 'How Citizenship Laws Differ: A Global Comparison' (2018) 9 Delmi Policy Brief; GR de Groot and O Vonk, 'Acquisition of Nationality by Birth on a Particular Territory or Establishment of Parentage: Global Trends Regarding *Ius Sanguinis* and *Ius Soli*' (2018) 65 Netherlands International Law Review 319; I Honohan and N Rougier, 'Global Birthright Citizenship Laws: How Inclusive?' (2018) 65 Netherlands International Law Review 337; J Džankić *The Global Market for Investor Citizenship* (Palgrave Macmillan 2019).

[35] MP Vink and R Bauböck, 'Citizenship configurations: Analysing the multiple purposes of citizenship regimes in Europe' (2013) 11 Comparative European Politics 621, 623-625.

[36] Barry (n 20) 19.

[37] Vink and Bauböck (n 35) 628.

[38] Barry (n 20) 18.

[39] I Ciornei, 'Emigración, ciudadanía externa y ciudadanía europea. Retos conceptuales y prácticos.' (2012) 188(755) Arbor Ciencia 543, 554.

acquisition of citizenship without having residence in the country, and the rights of consular protection and to return to that State – and its relational dimension of maintaining social and cultural ties with the national community despite living abroad.[40]

Such phenomenon has become prominent mostly because of the increasing acceptance of double citizenship. In fact, while a century ago the preamble of the 1930 Hague Convention read that 'it is in the general interest of the international community to secure that all its members should recognize that every person should have a nationality and should have *one* nationality',[41] currently half of the world's states accept that their nationals retain multiple citizenships.[42] At the beginning of the new millennium, Kim Barry argued that this trend was growing[43] and, indeed, her prediction has largely become true. The recognition of dual nationality as a legitimate legal status has been accompanied by a steady increase in the number of countries allowing non-resident citizens to vote from abroad. In the EU, specifically, all Member States have adopted provisions enabling non-residents to cast votes from abroad in national elections. However, this does not necessarily mean that such frameworks have been enacted: namely, Cyprus has not effectively implemented external voting.[44] The reasons why countries grant this kind of citizenship, which assume diverse configurations across states, are numerous. Among these, the most frequently referenced are restitution of citizenship to people who were unjustly deprived of the status (also sometimes called *citizenship as reparations*);[45] and democratic continuity, which is grounded in the belief that an intergenerational community linked by a shared sense of belonging creates a stable membership system that is more able to self-govern. Finally, a nationalist perspective argues that special bonds of ethnicity and culture should be perpetuated to protect co-ethnics living abroad.[46]

However, external citizenship has received increasing scholarly attention primarily due to the distortions it generates. Specifically, the fact that particularly expansive citizenship acquisition regimes are frequently associated with stricter naturalization criteria for immigrants. In this regard, the debate focuses on the normative challenges posed by external citizenship: if citizenship is meant

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[40] This definition was developed based on the following works: Barry (n 20) 26; R Bauböck, 'The rights and duties of external citizenship' (2009) 13(5) Citizenship Studies 475, 477-478; C Dumbrava, 'External citizenship in EU countries' (2014) 37(13) Ethnic and Racial Studies 2340; Joppke (n 32) 867.

[41] League of Nations Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930) 179 LNTS 89 Preamble. Emphasis added.

[42] MP Vink and others 'The Global State of Citizenship 2025 – Gender equality, migrant inclusion, and security of status' (Global Citizenship Observatory 2025) 23. Most notably, among the first countries loosening restrictions on dual nationality there were: the United Kingdom (1948), France (1973), Canada (1976), the United States of America (1990), and Mexico (1998).

[43] Barry (n 20) 59.

[44] Dumbrava (n 40) 2350.

[45] D Owen and R Bauböck, 'Citizenship as reparations: should the victims of historical injustice be offered membership?' (2025) Global Citizenship Observatory.

[46] Dumbrava (n 40) 2351-2356.

to represent a special tie between an individual and a state,[47] to what extent can this link be considered genuine if (part of) non-resident citizens have never lived within the territory of the polity to which they belong?

Indeed, some authors argue that such expansive regimes (e.g. Italy and most Eastern European countries), which do not stipulate generational limits or residence requirements for transmission of citizenship abroad, are more vulnerable to the instrumental use of citizenship. That is, people in fragile states[48] of the world acquiring citizenship of wealthier countries as an insurance policy against things going wrong in their country of residence.[49] This is the case of Latin Americans with Italian ancestors, who seek to get their Italian citizenship as a precautionary contingency option to be able to easily migrate to North America or to the European Union in the event of a new economic collapse in their birth countries.[50] These overseas claims to Italian citizenship have reached substantial numbers in recent years (in 2024 alone, approximately 30,000 Argentinians and 20,000 Brazilians were granted Italian citizenship) with projections suggesting that between 60 and 80 million foreign nationals may be eligible to acquire Italian citizenship through recognition by descent,[51] thereby prompting the Italian government to amend the nationality law in order to alleviate the pressure on administrative and judicial systems, as well as to limit the commodification of Italian passports.[52] (See Chapter 4 Paragraph 3.2)

However, external citizenship is not inherently good or bad, rather it is just one of the ways in which nationality takes form.[53] In fact, external citizenship provisions, as well as citizenship laws in general, provide deeper insights into how nations construct the notion of People, namely who qualifies as a member of the national community.

1.2 Methodology and Case Studies Selection Rationale

As the analysis above suggests, this dissertation is situated within a body of literature that predominantly engages with the concept of external citizenship from a normative rather than descriptive perspective, the latter being understood as the systematic examination of existing legal

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[47] *Nottebohm Case* (Liechtenstein v Guatemala) (Second Phase) [1955] ICJ Rep 4 23.
[48] There is general consensus on the notion of state fragility presented by the OECD Development Assistance Committee in 2007, according to which: 'States are fragile when state structures lack political will and/or capacity to provide the basic functions needed for poverty reduction, development and to safeguard the security and human rights of their populations'.
[49] Joppke (n 32) 860.
[50] G Tintori, 'The Transnational Political Practices of 'Latin American Italians'' (2011) 49(3) International Migration 168, 173-174.
[51] Ministero degli Affari Esteri de della Cooperazione Internazionale, 'Il Consiglio dei Ministri approva modifiche alla legge sulla cittadinanza "ius sanguinis"' (2025).
[52] Ibid.
[53] A Gatti 'Forme e contenuti delle nuove cittadinanza: una prospettiva di diritto comparato' in A Di Stasi, MC Baruffi and L Panella (eds) *Cittadinanza europea e cittadinanza nazionale* (Editoriale Scientifica 2023) 99, 100.

frameworks and state practices without evaluating their legitimacy or moral justification. Relatedly, the limited empirical scholarship adopts an explanatory focus, examining the motivations that underpin this form of citizenship. Finally, it is important to highlight that comparative public law literature has only recently approached this phenomenon,[54] while earlier legal research primarily examined citizenship for non-residents through single-country case studies.[55]

Furthermore, the countries usually taken into consideration are States of recent or ongoing emigration, hence from the Global South,[56] and most case studies consider Latin American countries and their diaspora in the United States.[57] Conversely, ancestral citizenship in Europe has been relatively understudied. The body of work focuses on Central and Eastern Europe, where co-ethnic provisions have been used to exclude Russian-speaking minorities and are now a common tool to contain Russia's foreign policy objectives in post-Soviet space.[58] (Notably, the duty and right of protecting its ethnic minorities abroad was used as a pretext by Russia to wage war in Ukraine).[59] Similarly to Russia, also other countries employ external citizenship as a strategic tool, albeit not to such an extreme extent but still causing suspicion by the host state of the minority. Namely, Hungary and Slovakia have been involved in a conflict over Hungarian nationals living in the Slovak territory: to prevent the acquisition of Magyar external citizenship, Slovakia outlawed dual citizenship.[60]

Thus, this dissertation aims to investigate the phenomenon of external citizenship from the perspective of Western countries, specifically Western European states. It offers a complementary perspective to existing research with a focus on immigration in these same countries. In the context of such states, comparative public law is generally employed in its articulation of 'betterment through analysis',[61] that is to compare national legal systems during reform processes to identify more effective constitutional mechanisms by either emulating or diverging from other countries. However, even if immigration is understandably at the center of the citizenship debate in these countries, such studies reduce citizenship to an immigration-related concept grounded in the integration of aliens in the national community.

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[54] See: C Finotelli and MC La Barbera, 'When the exception becomes the rule: Spanish citizenship regime' (2013) 10(2) Migration Letters 245; E Iannario, 'Dual citizenship among diaspora communities. Social ties or economic and political resources?' (2024) 3 McGill GLSA Research Series: Law & Prejudice 94; R Schweitzer, 'Ancestral Citizenship as Restitution, Or Selective Immigration Policy?' (2025) CITREST.

[55] See Barry (n 20).

[56] Here, *Global South* is understood as a macro-category indicating countries predominantly located in Africa, Asia and Latin America. It is used as a shorthand to refer to countries historically positioned in subordinate political, economic, and epistemic relations within the global system, rather than as a purely geographical designation. For a more detailed account on the use of this term see T Berger, 'The 'Global South' as a relational category – global hierarchies in the production of law and legal pluralism' (2021) 42(9) Third World Quarterly 2001.

[57] See Barry (n 20) and L Pedroza and P Palop-García 'The gray area between nationality and citizenship: An analysis of external citizenship policies in Latin America and the Caribbean' (2017) 21(5) Citizenship Studies 587.

[58] Džankić and Vink (n 18) 368.

[59] Iannario (n 54) 111.

[60] Dumbrava (n 40) 2355.

[61] R Hirschl, 'The Question of Case Selection in Comparative Constitutional Law' (2005) 53 Am J Comp L 125, 127.

The choice to compare France, Italy and Spain does not stem from their geographical proximity, nor from the intrinsic relevance of each country considered in isolation. Rather, it is grounded in the analytical insights they provide together into how different states regulate the status of non-resident nationals and what these approaches reveal about each country's understanding of who belongs to the national community.

First, this selection addresses a central methodological challenge in comparative law: introspective bias,[62] which can lead to conceptual oversimplification. This risk arises when scholars lack enough familiarity with the social, historical and legal contexts of the legal systems under study, resulting in the unconscious application of elements and structures of their own legal system onto foreign doctrines. To minimize this methodological vulnerability and avoid conceptual stretching, non-Westen countries were not considered for comparison alongside European countries for this study. In fact, citizenship is an inherently Western concept which developed during the French Revolution and was spread worldwide due to colonization.[63] Such characterization understands citizenship as a legal status endowing individuals with rights, among which the right of abode. (See Chapter 2 Paragraph 4). This right, also known as the right to enter (or return to) one's state, is particularly relevant for the notion of external citizenship employed in this dissertation, which stresses the distinction between legal membership and territorial residence. Therefore, legal systems that do not share this foundational premises risk being only formally comparable while considerably differing in substantive terms. The Chinese legal conception of citizenship, for example, significantly diverges from the Western understanding of the concept. Chinese citizenship is tightly linked to the household registration system – *hukou* (户口) – which links citizenship 'to a localized set of status and rights'.[64] Since in authoritarian China political rights are seldomly exercised, *hukou* is fundamentally representative of residence. Consequently, such conception of citizenship substantially constraints the freedom of residence of Chinese nationals by tying their legal status and socioeconomic rights to their locality of registration. Upon emigration, Chinese emigrants are obligated to renounce their local household registration in the mainland, making them ineligible for fundamental rights (e.g. public education and healthcare, but also financial transactions and obtaining a driver's license). To redeem such entitlements, *hukou* must be restored. However, this is not a simple bureaucratic procedure, rather it entails the fulfillment of significant selective requirements: only financially well-off and

[62] G Samuel *An Introduction to Comparative Law Theory and Method* (Hart Publishing 2014) 107.
[63] Shachar (n 6) 1009.
[64] JM Liu 'The return of Chinese emigrants: legal barriers and local practices' in HØ Haugen and B Wang *Handbook on Migration to China* (Edward Elgar Publishing 2025) 88.

properly documented migrants are allowed to return.[65] Thus, the Chinese definition of nationality does not include the application of the central right of external citizenship, i.e. the right of return.

Within this delimited conceptual framework, the selection of France, Italy, and Spain allows for the analysis to be conducted in a relatively homogeneous legal environment, consequently reducing the impact of broader structural differences. In fact, all three countries are EU Member States. This is significant, since membership in the supranational organization, together with the development of European citizenship, generally reinforces the trends shared across the citizenship laws of European states.[66] Arguing that international legal standards influence regional convergence trends, Gerard-René de Groot characterized these trends as 'European nationality law'.[67] Concerning non-resident citizens regulation regimes, Costica Dumbrava identified as a general trend the recognition of dual nationality and the expansion of external voting rights.[68]

Despite these overall trends, national legislations governing external citizenship remain diverse, reflecting different underlying national identity rationales. Against a diverse landscape, the shared status of EU members provides a sufficiently integrated space to ensure the effective deployment of a most-similar case design.[69] In fact, France, Italy and Spain present matching characteristics that allow to isolate the state's conception of national identity as an explanatory variable of the differences of citizenship regimes. Furthermore, such research design is the most suited for the diachronic methodology adopted in this study.[70] A historical approach is common in the field of citizenship studies; indeed, several scholars root their work in historical institutionalism. According to this approach, institutions are path-dependent in nature: this logic applies also to citizenship, since the concept is closely related to the political development of states and to political self-determination.[71] Most notably, this approach was used by Rogers Brubaker, who compared the development of citizenship regimes in France and Germany linking them to different conceptions of nationhood: one based on institutional and political unity, the other grounded on shared culture.[72]

As suggested by recent scholarship, the number of countries chosen for comparison are three rather than two in order to avoid the amplification of divergences in legal systems.[73] In fact, if the selection were to be limited to France and Italy, this dissertation would have likely reproduced (from an external citizenship standpoint) the discussion and results already highlighted by Brubaker: France would have continued to represent the civic conception of nationhood, while Italy would have

[65] Ibid 87-89.
[66] R Bauböck (n 40) 477.
[67] Shaw (n 30) 17.
[68] Dumbrava (n 40) 2355.
[69] See Hirschl (n 61) 133-139 for a detailed description of the most-similar case methodology.
[70] Ibid 137.
[71] Džankić and Vink (n 18) 363.
[72] Brubaker (n 14).
[73] M Siems *Comparative Law* (Cambridge University Press 2022) 17.

substituted Germany as an example of ethnic national identity. Moreover, the differences between the two regimes could have been largely attributed to Italy's history of emigration and France's postcolonial immigration. In this context, Spain plays a crucial role as a control variable: while it has experienced substantial emigration, it was also one of the world's main colonial powers.

As such, the selected countries represent three prototypes[74] of external citizenship regimes that can be found in Europe. The ends of the spectrum are Italy and France, while Spain stands as a midpoint. In fact, Italy represents a traditional *familistic co-ethnic* model rooted in *ius sanguinis*, which did not conceive generational limits for descendants of Italians until the March 2025 reform. Specifically, the former external citizenship regime enabled all descendants of Italians – that emigrated after the 1861 unification and never renounced their citizenship – to be recognized as Italian citizens even without setting foot in the country. On the other hand, France is an example of a *civic-oriented* citizenship regime. This is coherent to its status as an immigration country: diaspora policies emphasize the maintenance of ties through registration abroad and the toleration of dual nationality. Yet, in practice, citizenship for non-resident nationals is generally recognized only for the next generation, with reacquisition requiring ordinary naturalization in cases of extended absence. Finally, Spain embodies a *historical* model shaped by colonial ties and emigration, that aims to maintain links with Ibero-American communities and pursue reparations for certain groups, such as Sephardi Jews and International Brigades combatants.[75]

The dissertation is organized in three chapters. First, Chapter 2 reconstructs the institution of citizenship, aiming to provide a comprehensive – yet necessarily limited – overview of its various understandings. In line with public law scholarship, this chapter will also examine citizenship's defining features as legal status and the bundle of rights attached to it. Then, two key challenges to the concept of citizenship will be addressed: multiple nationality and EU citizenship. The discussion will proceed with an historically informed comparative analysis of the evolution of citizenship regimes in France, Italy, and Spain (Chapter 3). Finally, before drawing the study's conclusions, the fourth chapter will focus on the laws and provisions regulating citizenship for non-resident nationals of these three countries.

[74] For an account on prototypical case study design: Hirschl (n 66) 142-144.

[75] Specific provisions for Sephardi Jews are contained in Articles 22 and 23 of the Spanish Civil, as well as in the *Ley 12/2015 de 24 de junio 2015 en materia de concesión de la nacionalidad española a los sefardíes originarios de España*. Instead, volunteers of the International Brigades are the subject of the *Real Decreto 39/1996 de 19 de enero 1996 sobre concesión de la nacionalidad española a los combatientes de las Brigadas Internacionales en la guerra civil española*.

2.
The Concept of Citizenship:
Evolution, Legal Foundations, and Contemporary Legal Challenges

2.1 Defining Citizenship

As previously illustrated, the field of citizenship studies has been drawing the attention of scholars from different disciplinary backgrounds. This diversity might originate from the lack of a univocal interpretation of citizenship. In fact, scholarship consistently emphasizes that citizenship is a *polysemous*[1] concept 'which is often disputed'[2] and 'which develops in different ways depending on the domain in which it is employed'.[3] Consequently, from an academic standpoint this noun generates a heterogeneous conceptual landscape: one can discern legal, political, sociological, and other understandings of citizenship. Despite the conceptual plurality, the minimum common definition all commentators develop their arguments from is that citizenship entails some form of membership in a political community.[4] What varies is the dimension of membership that scholars underscore – whether it is conceived as a legal bond endowing individuals with rights, as political participation or as a set of socially embedded identities.

From a legal perspective, citizenship is a formal status conferred by a State that codifies the relationship between an individual and that state (or other territorial polity, as will be presented in

[1] Such definition is used by several scholars, among which: E Grosso, 'Il ruolo del confine nelle trasformazioni della nozione giuridica di cittadinanza' (2020) 10 teoria Politica 207, 210; M Dicosola, *Il diritto alla cittadinanza: problemi e prospettive* (Maggioli 2022) 13.
See also: L Bosniak 'Citizenship' in M Tushnet and P Cane (eds), *The Oxford Handbook of Legal Studies* (OUP 2005); K Barry, 'Home and Away: The Construction of Citizenship in an Emigration Context' (2006) 81 NYU Law Review 11; A Shachar 'Citizenship' in M Rosenfeld and A Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012); AC Diener 'Re-Scaling the Geography of Citizenship' in A Shachar and others (eds) *The Oxford Handbook of Citizenship* (OUP 2017).
[2] R Brubaker, *Citizenship and nationhood in France and Germany* (Harvard University Press 1998) ix.
[3] Dicosola (n 1) 13.
[4] Bosniak (n 1) 185; Shachar (n 1) 1003.

Chapter 2.5). It endows the individual with full membership of the political community, along with the bundle of specific rights and duties that it entails,[5] among which political engagement has a preeminent position. Citizenship is tailored after the necessities of a given political system and it changes in accordance with these necessities.[6] Hence, it is governed by domestic law, specifically through constitutional provisions, statutory rules, and administrative regulations defining criteria for attribution and loss of citizenship, as well as the rights and duties attached to it.[7]

This standard *vertical* understanding of citizenship, according to which citizens are subject to the State's authority, is deeply rooted in the Westphalian order, meaning the system of statehood that was codified in international agreements starting from the Peace of Westphalia in 1648. Such order relies on the idea that each State possesses absolute territorial sovereignty, thus enjoying the right to govern that territory free from other states' interference, and that states are regarded as equals and the only legitimate actors in international affairs.[8] Moreover, according to the 1933 Montevideo Convention on the Rights and Duties of States, countries – to be deemed as such – require not only a defined territory, i.e. geographical boundaries to separate territorial jurisdictions[9], but also a government and the capacity to enter relations with other states, as well as a permanent population. Therefore, citizenship responds to two imperatives: guaranteeing that the State can constitute and perpetually reconstitute itself,[10] and differentiating who belongs to the political community from those who do not, thus creating the dichotomy between citizens and aliens.[11] In achieving this goal of social closure, the state identifies the People – i.e. the collective body that grounds a polity's legitimacy, identity, and authority.

The idea of People is crucial in citizenship law, as it shapes how membership is constructed and justified within a constitutional order. Similarly to citizenship, traditionally, the notion of People is multifaceted[12]. For the rationale of this dissertation, its most relevant aspects are the sovereign, political, and national dimensions. First and foremost, in any given democratic constitutional order the People is the final source of political authority and the holder of constituent power.[13] Such conception is predominantly idealistic, as it presents itself during historical moments (usually

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[5] GLOBALCIT, *Glossary on Citizenship and Electoral Rights* (Global Citizenship Observatory 2020).
[6] J Shaw, *The People in Question* (Bristol University Press 2020) 12.
[7] O Dörr, 'Nationality', *Max Planck Encyclopedias of International Law* (2019) ch B para 4.
[8] Diener (n 1) 44.
[9] R Bauböck 'Political Membership and Democratic Boundaries' in A Shachar and others (eds) *The Oxford Handbook of Citizenship* (OUP 2017) 60.
[10] Brubaker (n 2) xi.
[11] S Staiano 'Migrazioni e paradigmi della cittadinanza: alcune questioni di metodo' (2008) 21/2008 Federalismi.it.
[12] Shaw (n 6) 27.
[13] This can be found, for example, in Article 1 of the Italian Constitution '*La sovranità appartiene al popolo, che la esercita nelle forme e nei limiti della Costituzione*' or in Paragraph 1 of Article 3 of the French Constitution '*La souveraineté nationale appartient au peuple qui l'exerce par ses représentants et par la voie du référendum*'.

revolutions) when a reshaping of the constitutional order occurs.[14] Otherwise, sovereignty is normally exercised via a representative government. Thus, the term *People* denotes the electorate, namely all individuals who are entitled to partake in political decision-making within the constitutional framework. This understanding is legally constructed and it changes according to the evolution of the understanding of democratic inclusion; indeed, throughout history membership has been restricted on a variety of grounds, such as property, gender, and race. Finally, the People is articulated as a nation – understood as a community united by its shared history, culture, and language regardless of geographical boundaries,[15] 'something more cohesive than a mere aggregate of persons who happen legally to belong to the state'.[16]

This exclusionary understanding of citizenship, which underscores its binary quality of distinguishing insiders from outsiders, describes the relationship between political institutions (i.e. the State) and those whom they govern (i.e. the political community). However, this vertical relationship is complemented by a *horizontal* conception that emphasizes the individual's participation in such community and the horizontal relations between its members. The increasing understanding of citizenship as a lived and relational practice, rather than merely a formal legal status, is said to account for sociology's growing encroachment upon an academic debate traditionally belonging to the legal domain.[17]

Nevertheless, both vertical and horizontal dimensions have coexisted in the public law conception of citizenship throughout history, with the shifting emphasis among them shaping the ways in which political membership and rights were conceived. Thus, to fully understand the foundation of contemporary citizenship and the assumptions grounding current citizenship regimes, it is necessary to examine how these conceptions have evolved over time.

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[14] The identification of the People as the ultimate bearer of constituent power has been theorized in different ways across modern constitutional thought. In revolutionary contexts, the idea of constituent power emerges to articulate the principle of popular power. In 1789, Sieyès famously developed the notion of *pouvoir constituant* to attribute the popular power to the people, who acted as a unitary political actor, while at the same time confining it to exceptional founding moments when the relationship between the people and the political authority is renegotiated – thereby distinguishing constitutional founding from ordinary democratic participation. See L Rubinelli *Constituent Power – A History* (Cambridge University Press 2020); M Loughlin, 'Constituent Power' in R Bellamy and J King (eds) *The Cambridge Handbook of Constitutional Theory* (Cambridge University Press 2025). A similar logic underpins the American *Madisonian* model of democracy, in which popular sovereignty is affirmed in principle but on a day-to-day basis it is exercised indirectly through constitutional mechanisms designed to fragment and restrain power. This configuration was preferred to the direct exercise of popular power to prevent its abuse, especially by majorities. See RA Dahl *A Preface to Democratic Theory* (The University of Chicago Press 2006). By contrast, other accounts radicalize the revolutionary dimension of constituent power, suggesting that it is not exhausted in a single founding act, but it represents an enduring capacity of the people to constitute itself as a political subject through collective mobilization. See A Kalyvas, 'Constituent Power: Andreas Kalyvas' (Political Concepts 2013). More recent works question the fact that constituent power indeed represents popular power. In fact, the constituent acts are usually carried out by representatives or elites acting in the name of the people, thus rendering the notion of constituent power mainly symbolic. See D Duke, 'Can the people exercise constituent power?' (2023) 21(3) International Journal of Constitutional Law 798.

[15] L Pegoraro and A Rinella *Sistemi costituzionali comparati* (G. Giappichelli Editore 2017) 382-383.

[16] Brubaker (n 2) 21.

[17] Staiano (n 11).

2.2 From the Polis to the Nation-State: an Overview

The concept of citizenship is believed to be born in classical times, that is in the context of the ancient civilizations of the Mediterranean, specifically Athens in the fifth and fourth centuries BC and Rome between the third century BC and the first century AD.[18] This genealogy was formulated by Professor J. G. A. Pocock, who counter-posed the different conceptions of citizenship that these societies developed.

The ideas of citizenship implemented by Athenians and Romans represent, respectively, the two dimensions of horizontal and vertical relations that still ground our understanding of citizenship.[19] Specifically, in Athens, the Aristotelian conception of citizenship associated membership in the political community with active participation in the community political life, i.e. the collective self-governance that characterized Greek *poleis*.[20] In this context, citizenship was highly exclusive both externally, vis-à-vis other city-states, and internally, since it was considered a privilege and was possessed only by virtuous individuals on the basis of their qualities and social position.[21] Similarly, the Roman understanding of citizenship was originally conceived as privileged participation in the *civitas*: Roman citizens were a limited number of individuals by virtue of an array of socio-economic rights and duties.[22] However, this notion of citizenship changed in 212 AD, when the *Constitutio Antoniniana* extended full citizenship to all free men living in the Empire. The purpose of the edict was to leverage citizenship to legally integrate the diverse populations that composed the Empire at the time. Consequently, the Roman conception of citizenship lost its active participatory meaning, focusing instead on its vertical understanding as an abstract and formal status determining formal (passive) membership in an organized political community.[23] The legacy left by the Roman legalist notion of citizenship is the interpretation of citizenship as rights, i.e. the idea that the defining characteristic of social membership is the enjoyment of rights under law. Thus, citizenship inherently entails holding certain rights and, consequently, those who possess these rights are generally regarded as citizens.[24]

In the Middle Ages, the concept of citizenship as such largely disappeared, giving way to the notion of subject. Feudalism was grounded in reciprocal relationships of perpetual allegiance and protection between the monarch, or feudal lord, and the subject.[25] This conception of membership

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[18] E Acosta-Pumarejo 'Citizenship and nationality: a saga of a historical connection and the dialectic of inclusion/exclusion' (2023) 13(2) Tribuna Juridica 283.
[19] Dicosola (n 1).
[20] Bosniak (n 1) 186.
[21] Acosta-Pumarejo (n 18) 287-289.
[22] Ibid.
[23] Ibid; Dicosola (n 1) 15.
[24] Bosniak (n 1) 185.
[25] Dicosola (n 1) 15.

was merely passive: subjection enabled the individual to gain social and economic benefits, which were granted on the basis of inhabiting a certain territory and being subject to a certain jurisdiction. For this reason, nationality at birth was attributed following the principle of *ius soli*.[26]

Not even during the Renaissance, with the newfound interest in the classics, was the *original* strong conception of participatory citizenship restored. This period witnessed the emergence of the nation-state, consisting in the rejection of the atomization of power during medieval times and the consequent centralization in the hands of the absolute monarch. Nonetheless, citizenship was still characterized by subjection – namely, the legal bond between the individual and a certain power of sovereignty (i.e. the nation-state). In a context where monarchs sought to secure sovereignty over a determined territory, the institution of citizenship as a general membership status had a specific political function: creating the subjective foundation of the nation-state. To guarantee internal cohesion, it was vital to unify the population that previously pledged its allegiance to several lords. Consequently, citizenship was a top-down political and territorial construct created by monarchs to create a common culture or criteria to assimilate the population.[27]

However, such assimilation did not achieve the intended result. The centralization of political power was soon challenged by demands of greater popular representation. Notably, this was exemplified by the French Revolution and the belief that sovereignty lies with the people and their consent to be governed. The Revolution posited that the state should serve the nation – that is, the citizens conceived as a group of people with a shared cultural identity – rather than the opposite.[28] In this sense, the 1789 upheaval can be deemed as a nationalist revolution. Firstly, it created the idea of a '*nation une et indivisible*' composed of legally equal individuals standing in a direct relationship with the state, hence eliminating all internal corporate divisions.[29] Secondly, it was a steppingstone in the development of nationalism, since it advanced the idea that the political boundaries of the state must overlap with the cultural-linguistic borders of the nation, intensifying antagonisms between nations[30].

The French Revolution was not only the context where the idea of the nation-state took form, but also – and most notably – when modern national citizenship was invented.[31] Intellectual figures such as Rousseau were central in reviving the active participatory element of citizenship: while maintaining the idea of the citizen as a subject of sovereign power, individuals were also called upon to participate in such sovereign authority. Thus, citizens were recognized as bearers of rights,

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[26] Acosta-Pumarejo (n 18) 292.
[27] Ibid 292-294.
[28] Diener (n 1) 45.
[29] Brubaker (n 2) 43.
[30] Ibid; Diener (n 1) 45.
[31] Brubaker (n 2) 35.

specifically political rights, that allowed them to participate in a political order designed to protect individuals.[32]

Overall, the legacy of the 1789 Revolution was profound and multifaceted. It included the formal delimitation of the citizenry, the establishment of civil equality and its derivative rights and obligations, and the institutionalization of political rights. Furthermore, in articulating the doctrine of national sovereignty and of the link between citizenship and nationhood, it developed the legal and ideological distinction between citizens and foreigners.[33] In fact, the inherent characteristic of a nation-state is that it is "the state of a nation", meaning that those who do not belong to the homogeneous and bounded sovereign nation are excluded and treated differently by the institutions, by virtue of being foreigners.[34] The dichotomy citizen-alien, which is a defining characteristic of citizenship today, served the purpose to delimit externally who belonged to the nation-state. From an internal perspective, the revolutionary citizenship created homogeneity in the state by erasing the legal distinctions within the nation, i.e. the corporations, and substituting the *Ancien Régime* organization with civil equality.[35] The abolition of such diversifications provided fertile ground for de-linking citizenship from the land: the principle of *ius sanguinis* (that is, the transfer of political membership to one's progeny at birth) was affirmed thanks to the idea that citizens were now linked to each other by being members of the same national and political community.[36]

However, during the time and through codification the notion of citizenship strayed from its revolutionary understanding: while the original emphasis was on the individuality of the subject, the 19th century conception underscored 'a perfect integration between individual, People, nation, and State'.[37] Within this framework, the individual's fulfillment is realized only as a member of the nation-state, which determines the citizen's personal identity by recognizing rights and duties. Thus, citizenship, having lost its participatory meaning, was understood primarily as membership to the nation-state. This led to the conflation of citizenship with nationality.[38]

2.2.1 Citizenship and Nationality

Before delving into the specifics of the legal features of citizenship, there is the need to address the meaning, intersections, and usage of the terms *citizenship* and *nationality*.

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[32] Dicosola (n 1) 17.
[33] Brubaker (n 2) 35.
[34] Ibid 46.
[35] Ibid 48.
[36] Shachar (n 1) 1009.
[37] Dicosola (n 1) 18.
[38] Ibid 19.

The vast literature[39] on the relationship between these two concepts generally associates nationality with the vertical (or weak) meaning of citizenship, i.e. membership to a nation-state attributed at birth.[40] Conversely, citizenship is linked to the horizontal (or strong) understanding of citizenship as participation and as civic purpose – specifically, the full range of rights, duties and commonalities protected under a national constitution.[41] From this point of view, nationality is a required status to hold the quality of citizenship, that is, the possibility to actively participate in the political life of one's country.[42] Accordingly, the two terms are not used as synonyms in those instances where citizenship refers to the legal rights and duties of individuals attached to nationality by domestic law.[43] This is the case of France and of the United Kingdom, where *citoyenneté* and *citizenship* have a distinct participatory connotation, while *nationalité* and *nationality* identify the membership relation between an individual and the State.[44] In some national laws, the latter refers specifically to political rights that can be exercised only after the age of majority and on the national territory,[45] e.g. Spain and most Latin-American countries.[46]

Typically, the two terms are uncontroversially[47] used as synonyms in the legal doctrine,[48] as evidenced in the 1997 European Convention of Nationality, where nationality indicates 'the legal bond between a person and a State'.[49] For this reason, in this dissertation the two nouns will be used interchangeably unless otherwise specified.

Customarily, nationality is the preferred noun in the context of international law to indicate the international relations between countries and the relation of states to other countries' nationals.[50]

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[39] See D Heater *A brief history of citizenship* (NYT Press 2004); K Rubenstein, 'Globalisation and Citizenship and Nationality' (2004) The University of Melbourne Faculty of Law Legal Studies Research Paper No 69; B Aláez Corral, 'Nationality and citizenship: A historical-functional approach' (2005) 6 Historia Constitucional; N Piattoeva, 'Citizenship and Nationality' in *The Wiley Blackwell Encyclopedia of Race, Ethnicity, and Nationalism* (Wiley Online Library 2016); R Walters, 'The nation state, national identity and citizenship' in R Walters *National identity and social cohesion in a time of geopolitical and economic tension: Australia-Europea Union-Slovenia* (Springer 2020).

[40] Staiano (n 11) 13-14; Acosta-Pumarejo (n 18) 289. Such distinction has roots in Roman law, where citizenship evolved from the active political and socio-economic participation of a small number of privileged Roman citizens (citizenship as participation) to the formal belonging under Roman authority (citizenship as membership). This conception was later adopted by contemporary scholars such as T.H. Marshall.

[41] J Shaw 'Citizenship and Constitutional Law: An Introduction' in J Shaw (ed), *Introduction to Citizenship and Constitutional Law* (Edward Elgar 2017) 21/2017 Edinburgh School of Law Research Paper.

[42] *Constitution du 31 septembre 1791* art 2.

[43] GLOBALCIT (n 5).

[44] Brubaker (n 2) 50; Shaw (n 6) 21.

[45] GLOBALCIT (n 5).

[46] L Pedroza and P Palop-García 'The gray area between nationality and citizenship: An analysis of external citizenship policies in Latin America and the Caribbean' (2017) 21(5) Citizenship Studies 587.

[47] Shaw (n 41) 4.

[48] Shaw (n 6) 19.

[49] European Convention on Nationality CETS Treaty Series No 166 (1997) art 2a.

[50] GLOBALCIT (n 5).

This does not hold true when considering plurinational or multinational states (e.g. Bolivia[51] and Canada[52]), where the term is used to designate the different people constituting the country.[53]

Especially outside of the legal field, the concept of nationality is frequently linked to 'ideas of the nation, of ethnicity and of common cultural affinities via language, territory and history'.[54] For example, in Italy, *nazionalità* refers only to the common ethnic background of the population and it cannot be found among the entries of Italian law dictionaries, while *cittadinanza* is understood as a legal concept encompassing both membership and participation.[55] A peculiar case is Germany, where one can discern three different concepts: formal state-membership (*Staatsangehörigkeit*), participatory citizenship (*Staatsbürgerschaft*), and ethnocultural nation-membership (*Nationalität* or *Volkszugehörigkeit*).[56]

The complex relationship between the notions of citizenship and nationality stems from the French Revolution, the Enlightenment, and different nation-building processes. As previously illustrated, during the *Ancien Régime* the population of newborn nation-states was unified through a top-down process, with nationality being the term used to identify the legal bond of subjection to the monarch. French revolutionaries decided to abandon this term and adopt, instead, the expression *citizen* to indicate all individuals bearing civil and political rights. Consequently, even though the idea of passive and active citizenship gained traction, only the term citizenship was used in constitutional texts in France. Only over time were the two concepts progressively linked to the labels of nationality and citizenship, as illustrated at the beginning of the paragraph.[57]

The differentiation between the two notions produced by the liberal revolution in France did not correspond to that created during the unification of Germany in the 19th century. The process of centralizing power in several German states under the aegis of the Kingdom of Prussia that started during the 18th century culminated in the creation of a national state, the second German *Reich*, in

[51] *Constitución Política del Estado Plurinacional de Bolivia* art 3.
[52] Shaw (n 6) 21.
[53] The notion of multinational federalism has been developed to account for federal states composed not merely of territorially differentiated units, but of multiple constituent peoples or nations whose collective identities predate or coexist with the state framework. Specifically, in Canadian constitutional scholarship, Canada is theorized as a polity in which several political communities (Québécois and Indigenous people) constitute distinct *demoi* whose claims cannot be reduced to individual rights or regional interests alone. Therefore, multinational federalism explicitly disconnects nation from state, rejecting the assumption that citizenship and nationality must coincide with a single homogeneous people, and instead reconceptualizes citizenship as layered, combining shared state-wide membership with recognition of differentiated forms of nationhood and self-rule. See AG Gagnon *The Case for Multinational Federalism* (Routledge 2010); AG Gagnon, 'Multinational federalism: Challenges, shortcomings and promises' (2021) 31(1) Regional & Federal Studies 99; F Mathieu and D Guénette, 'Empowering minorities' societal culture within multinational federations' in N Steytler, B Arora and R Saxena *The Value of Comparative Federalism* (Routledge 2021); M Sahadžić and P Popelier, 'Constitutional Asymmetry Through an Empirical Lens: A Federal Device for Diverse Systems' in F Mathieu, D Guénette and AG Gagnon (eds) *Comparative Federalism A Pluralist Exploration* (Springer Nature 2024).
[54] Shaw (n 41) 4.
[55] P Carnevale, 'Sulla distinzione tra nazionalità e cittadinanza' (Accademia della Crusca 2022).
[56] Brubaker (n 2) 50.
[57] Acosta-Pumarejo (n 18) 294-295.

1871. Although formally framed as a federal bond between the German princes, the new *Reich* effectively unified the diverse States,[58] giving rise to a unitary legal system through the gradual centralization of political power driven by Prussian military victories under the leadership of Chancellor Otto von Bismarck and Prussian King Wilhelm I.[59] Crucially, the legislator consolidated this institutional unification among the population through the idea of a pre-existing ethnic concept of nation. As can be inferred, the German idea of nation is quite distinct from the French Enlightened conception of exercise of popular consent.[60] In fact, it is rooted in the historical-cultural concept of *Volkstum*[61] developed in the social and political thought of Romanticism, which identified the common objective ethnic characteristics of the population as the precondition to establish a politically unified state.[62] Consequently, in German legal text it was preferred to use the noun nationality, which underscores the ethnic component of state membership.[63]

These different paths to create the French and German nation-state, which can summarize the trajectory of most European states,[64] not only influenced the conceptions of the terms citizenship and nationality but also impacted the *idioms of nationhood*[65] that still shape the way citizenship is attributed in different countries. In fact, national identity can be constructed around the concept of *ethos* – according to which the nation is founded on a shared ancestral culture – and the notion of *demos* – where the nation is formed on the basis of a social contract, with membership open to those who actively choose to belong, regardless of the traditional cultures of the different constituent communities. While these two ideas are not mutually exclusive, generally one prevails on the other when conceiving citizenship regimes.[66]

In his seminal work *Citizenship and Nationhood in France and Germany*[67], Rogers Brubaker identifies the two ends of the spectrum of nationhood tradition and policies of citizenship attribution. On one end, France identifies institutional and territorial political unity, rather than shared culture as the basis of its nationhood. Consequently, its citizenship regime was deemed *civic*, or *universalist*, and depended on the confidence of the assimilatory abilities of major institutions. By contrast, in Germany the national feeling developed before the nation-state; as a result, its national idea was not

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[58] The German Empire founded in 1871 consisted of twenty-six *Bundesglieder*: four kingdoms (Prussia, Bavaria, Saxony, and Württemberg), six grand duchies, five duchies, seven principalities, three free Hanseatic cities (Bremen, Hamburg, and Lübeck), and the imperial territory of Alsace-Lorraine.
[59] Acosta-Pumarejo (n 18) 294-295.
[60] Dicosola (n 1) 21-22.
[61] Translation: national character.
[62] Brubaker (n 1) 1; C Gans 'Citizenship and Nationhood' in A Shachar and others (eds) *The Oxford Handbook of Citizenship* (OUP 2017) 116; Dicosola (n 1) 22.
[63] Brubaker (n 1) 1; Dicosola (n 1) 22.
[64] Gans (n 62) 126.
[65] Brubaker uses this notion to identify the ways of thinking and talking about nationhood.
[66] A Gatti 'Forme e contenuti delle nuove cittadinanza: una prospettiva di diritto comparato' in A Di Stasi, MC Baruffi and L Panella (eds) *Cittadinanza europea e cittadinanza nazionale* (Editoriale Scientifica 2023) 99, 101.
[67] Brubaker (n 2).

political at its origin, and it reflected an un-Enlightened[68] idea of citizenship emphasizing ethnic, linguistic, and cultural belonging, thus creating a so-called *ethnic* conception of nationhood.

In practice, these different understandings of nation are included among the principles that shape countries' preferred criteria of citizenship attribution[69] – namely, *ius sanguinis* and *ius soli*, which are used in Germany and France respectively.

2.3 Citizenship *qua* Status: Models of Citizenship Attribution (and Loss)

As discussed above, first and foremost citizenship is understood as the attribution of a status: citizenship – hence, in practice, citizenship laws – is the means through which countries draw the social boundary of their community. In fact, the People is one of the indispensable qualifications a state must possess to be considered as such in the international realm.[70] In this sense, citizenship can be considered a 'filing mechanism'[71] that determines the state to which a person belongs[72]: 'in a world divided among exhaustive and mutually exclusive jurisdictions of sovereign states, it is axiomatic that every person ought to have a citizenship, that everyone ought to belong to one state or another'.[73]

Starting from the overall aim of allocating individuals to countries, citizenship laws serve five purposes.[74] First of all, intergenerational continuity: citizenship is 'the institution through which every state constitutes and perpetually reconstitutes itself',[75] which explains why nationality is predominantly attributed at birth. Secondly, countries might seek to ensure territorial inclusion by aligning citizenry with the population residing within their borders. The third purpose is singularity, namely the creation of an exclusive legal bond between the individual and the state, which inherently prevents people from holding multiple nationalities. Fourth, citizenship is used to secure membership for an individual or a group that are perceived to have special ties to the polity because of personal history, colonial past, or cultural markers associated with ethnic belonging. Finally, citizenship regimes are increasingly shaped by the ideal of genuine link. This last principle was first articulated by the International Court of Justice in the 1955 *Nottebohm* judgement.[76] While this criterion is predominantly used in private international law to solve family or property conflicts for dual

[68] Gans (n 62) 116.
[69] Gatti (n 66) 102.
[70] Convention on Rights and Duties of States (Montevideo Convention) (adopted 26 December 1933, entered into force 26 December 1934) OAS Treaty Series No 37 art 1.
[71] Brubaker (n 2) 31.
[72] MP Vink and GR De Groot, 'Birthright Citizenship: Trends and Regulations in Europe' (EUDO Citizenship Observatory 2010) 3.
[73] Brubaker (n 2) 31.
[74] MP Vink and R Bauböck, 'Citizenship configurations: Analysing the multiple purposes of citizenship regimes in Europe' (2013) 11 Comparative European Politics 621.
[75] Brubaker (n 2) xi.
[76] *Nottebohm Case* (*Liechtenstein v Guatemala*) (Second Phase) [1955] ICJ Rep 4.

nationals, it has also been embraced by countries to avoid over-inclusion. Consequently, citizenship can be lost in cases where individuals are not connected to a state in such a way that their individual interests can be linked to those of the country.[77]

To achieve these objectives, the citizenship law of a state provides rules determining the conditions according to which citizenship can be attributed or lost.[78] Such criteria are not politically neutral, rather they reflect specific conceptions of the nation, which in turn shape the functions that citizenship is intended to fulfill within the broader context of political, social and demographic transformations affecting political communities.[79]

For this reason, citizenship laws are an exclusive prerogative of sovereign states, meaning that they are fully regulated by the domestic law of states.[80] However, countries' freedom to regulate their own nationality is restricted by practical and legal constraints stemming from the intersection of nationality law with human rights law. Chief among these is the right to a nationality and the right not to be arbitrarily deprived of his (sic) nationality enshrined in Article 15 of the 1948 Universal Declaration of Human Rights, which is intended to prevent harm caused by statelessness together with other instruments (namely the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness).[81] Provisions relating to nationality can be found in several universal treaties for the protection of human rights, which extend to nationality the prohibition of discrimination on the ground of race[82], sex[83], and disability.[84]

As can be inferred from the information discussed so far, citizenship is not acquired because of individual volition, choice, and consent;[85] rather nationality is a non-voluntary legal status. This is because the primary criterion to attribute citizenship is birth: 97% of the world population[86] acquire their nationality this way. The reason behind this is functional stability: states require a stable way to identify all individuals who are to be protected and subject to taxation. Furthermore, democracy can function properly only if governments can rely on a clear and stable political community in order to solve collective problems and to be held accountable[87].

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[77] Vink and Bauböck (n 74) 626-632.
[78] Vink and De Groot (n 72) 3.
[79] Dicosola (n 1) 100.
[80] Dörr (n 7) ch B para 4.
[81] Shaw (n 41) 6.
[82] UNGA Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965) 660 UNTS (CERD) art 5 (d) (iii).
[83] UNGA International Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979) 1249 UNTS (CEDAW) art 9 (1).
[84] UNGA Convention on the Rights of Persons with Disabilities (adopted 24 January 2007) A/RES/61/106 (CRPD) art 18 (1).
[85] Shachar (n 1) 1005.
[86] A Shachar *The birthright lottery: Citizenship and global inequality* (Harvard University Press 2009).
[87] Bauböck (n 9) 69.

However, attributing citizenship at birth is not as subjective a criterion as is commonly thought, rather it has been deemed arbitrary in character. The issue has been receiving widespread attention from scholars involved in the normative debate on citizenship, which concerns who ought to be included or excluded in a polity.[88] Notably, Ayelet Shachar in her seminal work, *The Birthright Lottery: Citizenship and Global Inequality* harshly criticizes such practice, comparing the birth criterion to an inherited property right. She argues that birthright citizenship perpetuates inequalities, since belonging to a specific political community is the basis upon which rights, benefits, privileges, opportunities, and resources are allocated. Hence, the individuals acquire such entitlements without having done anything to deserve them due to what the author calls the 'birthright lottery'. Shachar proposes an alternative criterion for citizenship attribution: *ius nexi*, which would be based on a person's connection to a polity according to domicile or residence. [89]

Nevertheless, as the dissenting Justices of the Supreme Court of the United States argued in *United States v. Wong Kim Ark* (1898) – a seminal case concerning the scope of application of the Fourteenth amendment to individuals born in the U.S. to foreign parents – there are 'two sources of citizenship, and two sources only: birth and naturalization'.[90]

Citizenship is ascribed at birth *ex lege* by states applying either the principle of *ius soli* – i.e. the criterion of place of birth, where countries confer their nationality upon children who are born in their territory – or *ius sanguinis* – i.e. the criterion of descent, meaning that children acquire by birth the nationality which at the time of their birth their parents possess[91].

Before delving into these two modalities, it is necessary to address **two preliminary issues**. **First**, the new wave of comparative citizenship studies[92] departs from traditional literature and does not evaluate the two modes as two mutually exclusive alternatives, since most countries combine *ius sanguinis* provisions with *ius soli* clauses.[93] For example, traditionally *ius sanguinis*-based regimes such as Belgium and Germany have integrated *ius soli* provisions granting citizenship to second and third generations of immigrants in the country. On the other hand, Ireland and the United Kingdom have progressively restricted *ius soli* criteria because of immigration.[94] **Second**, the two principles have increasingly – and mistakenly – been associated with contrasting conceptions of national models enunciated by Brubaker and exemplified through France and Germany. *Ius soli* began to embody the French civic conception of nationhood. This model is deemed more democratic and inclusive, since

[88] J Džankić and MP Vink 'Citizenship & Migration' in P Scholten (ed) *Introduction to Migration Studies* (IMISCOE Research Series 2022) 357, 361.
[89] Shachar (n 86).
[90] *United States v Wong Kim Ark* 169 US 649 (1898) Dissenting opinion of Chief Justice MW Fuller.
[91] Dörr (n 7) ch C paras 12-13.
[92] Defined as such by Shaw (n 6) 17.
[93] MP Vink and others 'The Global State of Citizenship 2025 – Gender equality, migrant inclusion, and security of status' (Global Citizenship Observatory 2025) 4.
[94] Vink and De Groot (n 72) 4.

in the modern globalized world the territorial criterion enables second-generation immigrants to acquire the nationality in the country in which they reside. Conversely, *ius sanguinis* represented the German ethnic conception of nationhood, thus a more exclusionary nationality regime with limited accessibility to citizenship for aliens.[95] Nevertheless, such simplification cannot be held true, since the inclusiveness of a citizenship regime does not rely merely on citizenship acquisition for long-term residents.[96] Hence, no criterion is normatively superior to another, since they are flexible legal mechanisms[97] and not pure expressions of contrasting ideologies. Interpreted in relation to historical, political, and demographic circumstances, they can accommodate the needs of different conceptions of national identity; but their inclusiveness must be assessed in light of the broader citizenship regime.

2.3.1 Birthright Citizenship Attribution: *Ius Sanguinis* and *Ius Soli*

***Ius sanguinis* is** the predominant principle for conferring nationality worldwide,[98] although only 27% of countries[99] exclusively use it for citizenship attribution. This mode of citizenship acquisition is generally associated with civil law jurisdictions[100] and is a legacy of the French revolutionary ideals (see Chapter 2 Paragraph 2). Firstly codified in the 1804 French Civil Code, it bestowed fathers – as citizens – the right to transfer their status of political membership to their offspring at birth, regardless of whether the child was born in France or abroad.[101] During the 19th century, *ius sanguinis* was adopted by many European states through codification and imitation, it was further spread due to legal transplant and colonization.[102]

There are three variables that can affect the practical functioning of *ius sanguinis*, namely the civil status of the parents at birth, the individual's country of birth, and the sex of the parent transmitting the citizenship status.

Generally, all states assume that the husband of the mother is the father of the child, unless additional evidence proves the contrary. The same does not hold true if the child is born out of wedlock: in such case, a family relationship must be determined. Typically, to acquire citizenship *ex lege*, the relationship must be established before the child reaches the age of majority. Notable exceptions are Germany, where the age limit is set at 23 years old,[103] and Spain, which provides that

[95] I Honohan 'The Theory and Politics of *Ius Soli*' (EUDO Citizenship Observatory 2010) 2-3.
[96] Vink and Bauböck (n 74) 625.
[97] Defined as such in C Joppke 'Citizenship Between De- and Re-Ethnicization' (2003) 44(3) European Journal of Sociology 435-436.
[98] Shachar (n 1) 1008.
[99] Vink and others (n 93).
[100] Shachar (n 1) 1008.
[101] *Code civil des Français* 1804 art 10.
[102] Shachar (n 1) 1009.
[103] Nationality Act (*Staatsangehörigkeitsgesetz*) [*StAG*] of 22 July 1913 (Reich Law Gazette I 583 – Federal Law Gazette III 102-1), as last amended by Article 1 of the Act of 22 March 2024 (Federal Law Gazette I no. 104) art 4 (1) (DEU).

family relationship can be determined at any point of the child's life (that is, also after the age of 18) and from that moment the individual can opt for Spanish nationality within 2 years.[104] Furthermore, a child born out of wedlock can be 'legitimated' for citizenship attribution purposes by a subsequent marriage between the parents, before the child reaches the majority age.[105]

Specific descent issues arise when advances in reproductive technologies are involved, specifically assisted reproduction technologies. This is especially because of the lack of univocal regulation at international level in a context where doctors, embryos, and parents move globally to avoid excessive costs for procedures or to overcome particularly restrictive national regulations. Consequently, in countries that oppose surrogacy, such as Japan, the surrogate mother is considered the legal mother of the child, even if they are not genetically related.[106] According to this reasoning, the surrogate's husband is the presumed father of the child.

The feature whereby citizenship can be transmitted regardless of place of birth makes *ius sanguinis* a useful political tool for building relationships with diaspora.[107] However, this sometimes raises problematic issues such as acquisition across multiple generations based on special ties, even though there is a lack of genuine links to the emigration country.[108] For this reason, a substantial number of states limit transmission of citizenship in case of birth abroad.[109] Specifically, limitations can be imposed based on the number of generations born abroad. For example, after the 2000 reform, '*Die deutsche Staatsangehörigkeit wird nicht nach Absatz 1 erworben bei Geburt im Ausland, wenn der deutsche Elternteil nach dem 31. Dezember 1999 im Ausland geboren wurde und dort seinen gewöhnlichen Aufenthalt hat*'.[110] Similarly, Ireland limits citizenship transmission to the first generation born abroad, except for children of public servants.[111] Limitations can also be imposed relating to parents' civil status: according to Danish law on nationality, a child born out of wedlock abroad from a Danish father and a non-Denish mother cannot be registered as a citizen.[112] However, even when generational limits are in place, *ius sanguinis*-based regimes usually incorporate facilitated ways (e.g. reduced residence requirement) through which ethnic kins can reacquire citizenship by means of naturalization.

[104] *Código Civil [CC]* art 17.2.
[105] Vink and De Groot (n 72) 15.
[106] C Dumbrava and R Bauböck 'Bloodlines and belonging: Time to abandon ius sanguinis?' (EUDO Citizenship Observatory 2015) 2.
[107] Shaw (n 6) 111.
[108] Vink and Bauböck (n 74) 631.
[109] Vink and De Groot (n 72) 9-12.
[110] *StAG* (n 103) art 4(4). Official translation by the German government: 'German citizenship is not acquired in accordance with subsection (1) by children born abroad if the German parent was born abroad after 31 December 1999 and is ordinarily resident abroad'.
[111] Irish Nationality and Citizenship Act (1956) s 7(2).
[112] Danish Nationality Act cf Consolidated Act No 113 of 20 February 2003 with the amendments following from Act No 311 of 5 May 2004 art 1(1).

Historically, only fathers could transmit their citizenship to their progeny and women would acquire their husband's nationality (thus, losing their own). Over the last century, many countries have reformed their citizenship laws eliminating direct sex-based discriminations. Such inequities have been eradicated in Oceania and Europe[113] – where some countries also implemented reparations clauses for individuals who would have acquired citizenship of the country, had the equal treatment between men and women been introduced earlier. However, discrimination persists in Asia (especially in the Middle East) and in North Africa.[114]

Another form of discrimination that derives from distorted applications of the criterion of descent is ethnic discrimination. This usually occurs in African countries, such as Uganda,[115] where only children of parents belonging to specific ethnic communities can be registered as nationals.

The second criterion to attribute citizenship is *ius soli*. This mode is traditionally associated with common law systems[116] – in fact, it is the preferred method for citizenship acquisition in the United States of America, Canada, and the Latin America and Caribbean region. In the latter area, it is a legacy of the 1812 Cadiz Constitution, which defined Spaniards as all free men born in or resident in the territories of the Spains (sic) and their children.[117] *Ius soli* is a colonial heritage also in the U.S. and in Canada. It traces its origin to the landmark *Calvin's Case*: in the 1608 judgement – which involved the inheritance of properties in England by a Scottish national after the union of the two Crowns five years before – Lord Edward Coke established that British subjecthood was acquired by virtue of being born within the territory of the Kingdom. Even though the principle was firstly conceived as 'ligeance and obedience to the Sovereign',[118] in its modern concept such duties are transposed towards the sovereign people. For this reason, *Calvin's Case* was the legal precedent for citizenship in the United States before the Fourteenth Amendment came into force.[119]

Since citizenship is attributed to all those born within the borders of the state, regardless of the status of their parents, contemporary *ius soli* is seen as democratic and inclusive. However, this form of unconditional *ius soli* has been in retreat, being in force only in a small number of Western countries. In fact, throughout the time most African countries have abandoned their territorial-based models, which is once more a colonial inheritance, in favor of *ius sanguinis.*[120] Conversely, European countries have progressively adopted *ius soli* provisions, especially conditional ones granting citizenship at birth to a child if one or both parents are lawfully residents of the country,[121] signaling

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[113] European Convention on Nationality CETS Treaty Series No 166 (1997) art 5.
[114] Vink and others (n 93)12.
[115] Citizenship and Immigration Control Act (as amended to 2015) cap 66 (1999) art 12 (a) (UGA).
[116] Shachar (n 1) p 1006.
[117] Pedroza and Palop-García (n 46).
[118] *Calvin's Case* 77 Eng Rep 377 (KB 1608) 382.
[119] Dicosola (n 1) 18.
[120] Shaw (n 6) 103.
[121] Ibid.

the political will to recognize immigration as a permanent phenomenon and the desire to prevent a substantial group of second – and third-generation immigrants to access citizenry only via naturalization.[122] Other than this, there are other reasons underlying changes in *ius soli* citizenship, such as declining populations, international conventions and norms of anti-discrimination, and states learning from, or competing, with each other.[123]

Even though *ius soli* provisions are based on the place of birth of an individual, they may apply at birth or at some point after birth.[124]

The principal forms of *ius soli* at birth are: pure *ius soli*, *ius soli* conditional to parental residence, double *ius soli*.

Pure *ius soli* entails that all children born in a state become citizens automatically. The most notable examples of such configuration can be found in the Americas. The Brazilian Constitution attributes citizenship to '*os nascidos na República Federativa do Brasil, ainda que de pais estrangeiros, desde que estes não estejam a serviço de seu país*'.[125] The most famous articulation of the principle, however, is found in the opening sentence of the Fourteenth Amendment to the U.S. Constitution granting citizenship to '*All persons born or naturalized in the United States*'[126], thereby reversing the 1859 *Dred Scott* judgment and granting citizenship to African Americans. Similarly to Brazil, in the United States children of diplomats and of members of armies waging war on U.S. territory are excluded and not able to acquire American citizenship.[127] This is a general provision stemming from the fact that this category of children is not subject to the jurisdiction of that country.[128] In the European context, pure *ius soli* citizenship is not common – the only exception being Malta until 1989.[129] However, many states have implemented safety provisions in their citizenship laws to cover people who would otherwise be stateless. This is not a phenomenon circumscribed to Europe: for example, in 2019 Colombia granted citizenship to babies born within its borders from August 2015 to August 2021 to Venezuelan refugee mothers who would otherwise be stateless.[130]

Citizenship at birth via *ius soli* might be conditional on prior parental residence in the country. This is the most common articulation of the territorial criterion in Europe. For example, in the United Kingdom, since the 1981 British Nationality Act entered into force, an individual born in the U.K.

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[122] Vink and De Groot (n 72) 20.
[123] Honohan (n 95) 17.
[124] Ibid 5-6.
[125] *Constituição da República Federativa do Brasil de 1988* art 12 (I) (a). Official translation by the Organization of American States: 'those born in the Federative Republic of Brazil, even if of foreign parents, provided that they are not at the service of their country'.
[126] US Constitution amend 14th s 1.
[127] Shaw (n 6) 105.
[128] Vink and others (n 93) 6.
[129] Honohan (n 95) 10.
[130] Shaw (n 6) 110.

can claim citizenship if '*his father or mother is* (…) *settled in the United Kingdom*'[131] – that is: under immigration laws they are ordinarily residents without being subject to any restriction on the period for which they can remain.

Citizenship can also be attributed to children whose father or mother was also born on the territory of the state involved. This configuration is often called double *ius soli* and has been at the heart of the French citizenship law since it was introduced for the first time in 1851. The rationale of this provision is that the second generation of immigrants born in the country is deemed to have such a close link to the state of birth that the authorities should not prevent citizenship acquisition.[132] The rule can still be found in the French Civil Code[133] and in other states such as Portugal.[134] This is not an exclusive European practice: in Tunisia it is present with the form of triple *ius soli*, meaning that the father and the paternal grandfather must be born there.[135]

As previously mentioned, citizenship can be acquired via *ius soli* after birth too.

The first mode is citizenship acquired automatically or, more commonly, by lodging a declaration of option at a point in childhood or at majority for those born in the country. Such provisions are very common, as they are currently used in 60 countries.[136] France represents a unique case of automatic acquisition *ex lege* at majority. Otherwise, countries normally require a formal declaration (either oral or written) that can be submitted if specific requirements, usually residence, are met. Residence prerequisites span from five years, like in Finland,[137] to uninterrupted legal residence since birth, as required in Italy.[138] Other criteria might be further necessary, such as having completed schooling in the country of birth or a time requirement (e.g. lodging the declaration before a certain age).[139]

The second, and final, after birth modality is facilitated naturalization – namely, the conditions for naturalization are less demanding for those born in the country compared to other candidates. These provisions comprise a very broad range: for example, while Greek and Romanian laws stipulate that individuals must have lived in the country since birth, at the other end of the spectrum the Spanish residence requirement is 1 year.[140]

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[131] British Nationality Act 1981 (entered into force 1983) art 1 (b).
[132] Vink and De Groot (n 72) 26.
[133] *Code Civil* art 19-3.
[134] Portuguese Nationality Law (Law No 37/81) art 1(1)(d).
[135] Code de la Nationalité Tunisienne (1956) art 7.
[136] Vink and others (n 93) 8.
[137] Finnish Nationality Act (Law 359/2003) art 28(2).
[138] *Legge 5 febbraio 1992 n 91 "Nuove norme sulla cittadinanza"* art 4 co 2.
[139] Vink and De Groot (n 72) 26-28.
[140] Honohan (n 95) 11.

2.3.2 Citizenship Attribution After Birth: Naturalization

The only method to acquire citizenship other than birthright is by naturalization. It is a derivative citizenship, meaning that it applies at a later stage following a formal request, which represents a social process implying the mitigation of differences that enable an alien to become part of a given political community.[141] Such form of access has been practiced since Rome.[142] In fact, the word *naturalization* derives from Latin *nasci*, which means to be born, therefore indicating a political re-birth into the new membership community. This is symbolically marked by the public ceremony culminating the naturalization process, during which applicants pledge allegiance to their new home country or to its Constitution.[143] Generally, naturalization was not accepted in the 19th century since the possibility of switching country's allegiance was not conceived. Among the first cases of birthright citizenship withdrawal in order to acquire a new nationality via naturalization there is the British 1870 Naturalization Act.[144] In the current globalized world, where human mobility is standard practice, the opportunity to naturalize is crucial. However, it is not a viable option for nine million foreign-born immigrants (ca. 3% worldwide), who live in one of the 13 countries that lack any ordinary naturalization procedure –including China, Liberia, and Sri Lanka.[145]

Naturalization's main feature is its voluntary character: aliens living in a state may be conferred nationality of the involved country upon special application and the fulfillment of other requirements, among which prolonged lawful residence.[146] It is a process that requires agency and action, other than expressed consent by the individual and acceptance by the political community into which they emigrated. Such procedure is not simple. The first hurdle is entering the country: each polity is obliged to allow entrance to its territory to its nationals; however, such obligation does not stand for non-citizens. This is relevant because the lightning of some requirements to naturalize has been accompanied by stricter immigration entry laws.[147] Overall, naturalization provisions are deemed to be 'gatekeepers', since they are designed to include in a country's citizenry the desired people and exclude the undesired. For this reason, naturalization holds a prominent role in inquiries related to national identity, since it reflects the idea of what kind of nation a State wants to be.[148]

Beyond the general requirements to naturalize, some countries facilitate naturalization on special grounds, which entail shorter residence periods or less requirements.[149] Such provisions apply

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[141] Gatti (n 66) 103.
[142] Acosta-Pumarejo (n 18) 285.
[143] Shachar (n 1) 1013.
[144] Shaw (n 6) 119.
[145] Vink and others (n 93) 17.
[146] Dörr (n 7) ch C s 2 para 18.
[147] Shachar (n 1) 1013.
[148] Shaw (n 6)120.
[149] Vink and others (n 93) 8.

to: individuals married to a national, nationals of countries regarded as culturally akin[150] and former nationals reacquiring citizenship. Further exceptions are made for people considered to have made extraordinary contributions to the country in sports, arts or science, and for economic investors (i.e. *ius pecuniae*).[151]

Requirements for ordinary naturalization vary greatly country by country. They fulfil the need to verify the effective links between the applicant and their prospective new country.[152]

As previously mentioned, the universal basic requirement is that the applicant must have resided continuously in the admitting country for several years. Globally, the average residence period is set at seven years, with most countries (58%) requiring a five-year long residence. The two ends of the spectrum are the Dominican Republic (two years) and Equatorial Guinea (forty years).[153] In Europe, the residence requirement is set at ten years, as per art. 6(3) of the 1997 European Convention on Nationality.

Another condition to naturalize in a country is not to have a criminal record – the so-called good character. [154] Its rationale is that among a state's core duties, maintaining peace and security for its citizens is crucial. There is significant variation in which crimes can disqualify an applicant: in Austria, even several administrative fines for minor traffic violations can affect eligibility.[155]

Furthermore, some countries impose the condition of basic knowledge of the language, sometimes along with the knowledge of the country's political system and form of government. Europe is the region with most countries demanding a formal test or interview, which has sparked controversies around the fact that 'the Common European Framework of Reference for Languages (CEFR) was never intended to be used as a form of access to rights and citizenship'.[156]

Another criticized requirement is economic self-sufficiency, which is considered discriminatory in principle on the basis that for nearly a century universal suffrage has established that an individual sex, religion or socio-economic status are not conditions for full and equal franchise. This requirement is believed to perpetuate inequalities of economic class in political participation rights, which is further exacerbated by the fact that most countries require (rightfully

[150] See the discrepancy between Italy L 91/1992 art 9 co 1 lett d and lett f.
[151] Defined as such by Shaw (n 6) 121.
[152] Vink and others (n 93) 17.
[153] MP Vink and others *GLOBALCIT Citizenship Law Dataset v3.0 Country-Year-Mode Data* (Global Citizenship Observatory 2025).
[154] The notion of *good character* is a broad and somewhat indeterminate legal standard. In practice is used primarily to assess whether an applicant lacks criminal record and, depending on the jurisdiction, further consideration is given to matters such as immigration compliance, financial conduct, and honesty. This notion can be found, for example in: British Nationality Act (1981) art 41A; Immigration and Nationality Act, 8 USC § 1427 d; *Código Civil Español [CC]* art 22.
[155] Vink and others (n 93) 19.
[156] Ibid 20.

so) sufficient employment income to cover their family's cost without state support – e.g. unemployment and social assistance – or property ownership.[157]

Traditionally, naturalization was conceived as complete assimilation into the new country and complete separation from the state of origin. As such, the renouncement of one's previous nationality was a standard requirement. However, this has been progressively abandoned due to the rise of acceptance of dual nationality.[158] Notably, Germany changed the obligation for applicants to renounce their citizenship in June 2024.[159]

However, naturalized citizens are 'less equal than others'[160] as they are often discriminated against, compared to citizens by origin. Most inequalities are related to access to public offices and can be found in a country's Constitution. Probably, the most famous example is the American President, who must be '*a natural born Citizen*'[161]. Similar provisions characterize also Constitutions in Spain and in Latin American countries. In the latter the difference concerns the enjoyment of a set of prerogatives including the capacity to be the King's tutor[162], the possibility to retain Spanish nationality when acquiring the nationality of a certain set of countries which Spain has historical and cultural ties with[163], and the right not to be deprived of Spanish nationality against one's will.[164]

The most significant discrimination concerns the stripping of citizenship, which exposes some citizens to greater precariousness than others. This practice has received increased attention with the securitization of nationality, that is the possibility of losing one's citizenship due to criminal offenses.[165] Other criteria according to which citizenship can be revoked are military and non-military service to a foreign country. Nationality can also be lost voluntarily through a withdrawal procedure.

The major concern with stripping mechanisms is that their implementation as security measures often raises issues relating to the respect for fundamental human rights: not only limited to the avoidance of statelessness[166] but also including principles such as the prohibition of discrimination[167] and the right to a fair trial.[168] In fact, by targeting naturalized citizens, citizenship deprivation measures might result in indirect discrimination on the grounds of ethnicity, race or religion, and therefore be deemed arbitrary under international law.[169] Furthermore, questions may

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[157] Vink and others (n 93) 22.
[158] Ibid 23.
[159] *StAG* (n 103) repealed art 10 s 1 no 4 (before the amending Act of 22 March 2024).
[160] L van Waas and S Jaghai, 'All Citizens are Created Equal, but Some are More Equal Than Others' (2018) 65 Netherlands International Law Review 413.
[161] US Constitution art 2 sec 1.
[162] *Constitución Española [CE]* (1978) art 60.1.
[163] *CE* (n 162) art 11.3; *CC* (n 154) art 24.
[164] *CE* (n 162) art 11.2; *CC* (n 154) art 25.
[165] van Waas and Jaghai (n 160) 426.
[166] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 15.
[167] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 2.
[168] UNGA International Covenant on Civil and Political Right (adopted 16 December 1966) 999 UNTS 171 art 14.
[169] van Waas and Jaghai (n 160) 423.

arise when deprivation occurs automatically by law, rather than through an individualized process respecting the international standards of fair trial, and both the grounds for stripping and the competent authorities are not legally clear.[170]

The issue of citizenship deprivation is considered particularly problematic by international legal scholars because of its profound consequences – namely the forfeiture of the rights associated with it and, in some cases, becoming stateless, consequently preventing individuals from returning to any country.[171]

2.4 Citizenship *qua* Rights: The Practical Contents of Citizenship

Most notably, Hannah Arendt defined citizenship as 'the right to have rights' following her own experience of statelessness.[172] Such definition was then incorporated in contemporary jurisprudence[173] by Chief Justice Earl Warren in the United States Supreme Court case Perez *v.* Bromwell,[174] transposing this political thought concept into the legal realm.

In the wake of the mass denationalizations characterizing the inter-war period and the Second World War, international legal scholars and advocates raised awareness on the wrongful and harmful nature of statelessness. Indeed, if 'not considered a national by any State under its law',[175] an individual is exposed to insecurity because of limited access to basic rights and resources, as well as to vulnerability to arbitrary power.[176] Consequently, several international treaties on human rights included the right to have a nationality in their frameworks.[177]

Arendt's definition of the right to nationality is twofold. On one hand it relates to the need to attribute individuals to nation-states in an international system organized in sovereign states. In this sense, nationality rights concern entitlements with an international scope, meaning right and duties of the state of nationality in relations to other countries. On the other hand, the right to citizenship relates to the right to belong to a political community and the relationship of rights and duties between a state and its nationals.[178]

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[170] CB Robertson and ID Manta, '(Un)Civil Denaturalization' (2019) 94 New York University Law Review 452; Institute on Statelessness and Inclusion (ISI), 'Principles on Deprivation of Nationality as a Security Measure (ISI 2020); V Levni, 'The Boundaries of Discrimination in Citizenship Revocation: Legal and Ethical Dilemmas for Naturalized Immigrants' (2025) 3(1) The Boğaziçi Law review 99.
[171] Vink and others (n 93) 25.
[172] H Arendt *The Origins of Totalitarianism* (Mariner Books Classics 1973) 297.
[173] A Shachar, 'Introduction: citizenship and the 'right to have rights'' (2014) 18(2) Citizenship Studies 114.
[174] *Perez v Bromwell* (1958) 356 US 44, 46.
[175] UNGA Convention Relating to the Status of Stateless Persons (adopted 28 September 1954) 360 UNTS 117 Art 1.
[176] D Owen, 'On the Right to Have Nationality Rights: Statelessness, Citizenship and Human Rights' (2018) 65 Netherlands International Law Review 299, 301.
[177] Most notably: the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
[178] A Kesby *The right to have rights: citizenship, humanity, and international law.* (Oxford University Press 2012) 52.

Under international law, the most important consequence of being endowed with a nationality is diplomatic protection, that is the capacity of a State to invoke the responsibility of a third State for an internationally wrongful act inflicted on its nationals.[179] Traditionally, this was the only way for an individual to seek reparations after an international injury, but the current mechanisms for human rights protection make some scholars question whether diplomatic protection is still relevant. Its advocates observe that in several cases – such as for detainees in Guantánamo Bay – the human rights protection mechanisms prescribed in international treaties proved to be weak, while the customary-established diplomatic protection was more effective.[180] However, the right to diplomatic protection is conceived as a right of the State, thus not belonging to the individual, and it largely relies on the government's discretion. Due to the lack of an international obligation to intervene, there is only a recommendation to States to take into consideration the possibility to protect their nationals, especially when a significant injury has occurred.[181]

It is important to underscore that the term *diplomatic protection* can also be used informally when referring to diplomatic and consular missions abroad, whose main functions are the protection of the interests of the State and its nationals in the host country.[182]

The right to nationality not only protects individuals from third States abroad, but it also gives them a place to legally return to. In fact, the most relevant right attached to nationality is the right of abode, that is the right to enter the State. This right is grounded in the idea that in a system where a state exercises sovereignty over entry to its territory, the only individuals exempted from immigration restrictions are its citizens (along with permanent residents, in some jurisdictions such as the U.S.).[183] The right to enter one's own country is inherently linked to the right to stay and reside in that state. For this reason, it is considered a keystone right – that is a prerequisite right that enables the individual to enjoy civil, political, and social rights.[184] In fact, nationality functions not only as the foundation for international protection, but also as the gateway to the enjoyment of key rights at the domestic level.[185]

Domestic rights are established by national sources of law. Chief among these is the country's Constitution, which generally sanctions the rights – often deemed as fundamental – of citizens and identifies the institutions responsible for protecting those rights. The standard palette of rights

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[179] International Law Commission (ILC) Draft Articles on Diplomatic Protection 2006 Art 1.
[180] Kesby (n 178) 53.
[181] International Law Commission (ILC) Draft Articles on Diplomatic Protection 2006 Art 19(1).
[182] UN Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95 Art 3(b).
[183] PJ Spiro, 'The (dwindling) rights and obligations of citizenship' (2012) 21 William & Mary Bill of Rights Journal 899, 911.
[184] K Henrard, 'The shifting parameters of nationality' (2018) 65(3) Netherlands International Law Review 269, 288.
[185] *Proposed Amendments to the Naturalisation Provision of the Constitution of Costa Rica* Advisory Opinion OC-4/84 Inter-American Court of Human Rights (19 January 1984).

includes those related to the individual's presence on the territory (the aforementioned right to leave and to return to one's country), the rights associated with democracy and the role of the People (namely, the right to vote, to stand for election, and to hold office), as well as those concerning the sharing of the collective resources of the country (i.e. social and economic rights).[186]

The link between citizenship and rights was first, and most notably, developed by T.H. Marshall during a series of lectures in Cambridge in 1949. The sociologist argued that the development of citizenship, which inherently entails equality among the community's members, had a positive impact in eliminating inequality in England. Here, citizenship is understood in its horizontal conception, which refers to the relationships among citizens as holders of equal rights and obligations, rooted in solidary interdependence[187] (e.g. the so-called agreement for pension schemes whereby one generation pays for the one which has already retired, assuming that the following generation will do the same).[188]

In studying the development of the rights linked to citizenship, Marshall identified three 'elements of citizenship': civil, political, and social.

He argued that civil rights, namely those necessary for individual freedom, developed around the 18th century and their establishment was facilitated by the consolidation of the rule of law and the possibility for courts to advance these ideals thanks to the elasticity of common law. Among these rights are the liberty of the person, freedom of speech, thought and faith, the right to own property, and the right to justice (this latter is considered particularly relevant by the author since it embodies the right to defend and assert one's rights in terms of equality with others and by due process of law).

Conversely, the 19th century political rights did not involve the creation of new rights to enrich the status of citizenship, rather they comprised the grant of political rights to new sections of the population, namely middle-class men. These rights include the right to participate in the exercise of political power as a member of a political institution or as an elector of such body.

Finally, Marshall recognized the existence of a social element of citizenship, which concerns rights relating to social benefits in case of sickness, unemployment, old age, and the right to education. Even though social rights were first conceived at the end of the 19th century, they were linked to citizenship only at the beginning of the 20th century and developed alongside the English welfare state. According to Marshall, these rights were critical in mitigating the social consequences of a *laissez-faire* economic system. In his opinion, the most important social right is the right to education:

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[186] Shaw (n 6) 150-151.

[187] R Bauböck and V Guiraudon, 'Introduction: realignments of citizenship: reassessing rights in the age of plural membership and multi-level governance' (2009) 13 (5) Citizenship Studies 439, 442.

[188] T Faist, 'The Concept of Citizenship: A Short Overview' (2020) 173 Working Papers - Center on Migration, Citizenship and Development 6.

it is deemed a *genuine* social right that is granted to children, although the true bearer is their future adult selves.[189]

While this tripartition offers an interpretative map to understand which rights were historically connected to the citizenship status, it does not effectively represent the current features and dynamics of citizenship rights. In fact, since the late 20th century, citizenship rights (specifically civil and social rights) have been progressively disconnecting from citizenship status.[190]

This disconnection is likely related to the fact that often the people living in a country do not include only the citizens of said state. Given the gradual enjoyment of rights by immigrants, in 1990 Tomas Hammar adopted the term *denizenship*[191] to describe the status of immigrants who enjoy most rights of citizenship – the only exception being political participation.[192] Referring to the U.S. context, Peter Spiro defined the differences between citizens and non-citizens 'inconsequential'[193] claiming that 'the real prize is legal residence and not citizenship',[194] since only people who have lived in the U.S. for less than five years are not eligible for public benefits.[195]

The progressive convergence of rights between citizens and non-citizens[196] is signaled by the fact that civil rights are generally attributed by Constitutions to *everyone*, that is all people falling within the jurisdiction of the State regardless of their citizenship status.[197] Also social rights are generally granted to non-citizens,[198] either by virtue of their constitutional recognition as fundamental rights of the individual,[199] or through welfare state arrangements that extend social protection to lawful residents.[200] Accordingly, such rights are granted not only to permanent residents, but also to temporary workers, who are eligible for social benefits related to their work and domestic status (e.g. unemployment and healthcare).[201]

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[189] TH Marshall 'Citizenship and Social Class' in TH Marshall and T Bottomore *Citizenship and Social Class* (Pluto Press 1987).
[190] T Bottomore 'Citizenship and Social Class, Forty Years On' in TH Marshall and T Bottomore *Citizenship and Social Class* (Pluto Press 1987) 84.
[191] T Hammar *Democracy and the Nation State: Aliens, Denizens, and Citizens in a World of International Migration* (Avebury 1990).
[192] E Arona, 'A Theory of Citizenship Rights' (2018) 13 Nordicum-Mediterraneum 2.
[193] Spiro (n 183) 914.
[194] PJ Spiro *Beyond Citizenship* (University of Chicago Press 2008) 159.
[195] Spiro (n 183) 904.
[196] G Azzariti, 'La cittadinanza. Appartenenza, partecipazione, diritti delle persone' (2011) 2 Diritto pubblico 425, 438.
[197] Shaw (n 6) 153.
[198] Bauböck and Guiraudon (n 187) 444.
[199] For a more detailed account on fundamental social rights see DM Davis, 'Socio-Economic Rights' in M Rosenfeld and A Sajó (eds) *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012); G Katrougalos and P O'Connell, 'Fundamental social rights' in M Tushnet, T Fleiner and C Saunders *Routledge Handbook of Constitutional Law* (Routledge 2012).
[200] Spiro (n 187) 904-906.
[201] Arona (n 192) 13.

It can be gathered that, generally, rights relating to public education, healthcare or social security benefits are granted to people based on their contribution to the country, hence they are linked to residence within the state's borders.

Conversely, political rights remain exclusively reserved to citizens. Indeed, political participation is considered the maximal degree of membership to a political community.[202] Participating in the political life of one's country is so intrinsic to the concept of citizenship, that also citizens residing abroad or those holding multiple nationalities are granted such entitlement. In fact, over 100 states in the world now enable external voting,[203] which, along with the construction of special constituencies in the national parliament, is a well-established right in some Constitutions.[204]

Only in some cases, voting rights are extended to immigrants, who might be granted the right to vote in local elections, but not in national elections.[205] The best known case of *alien suffrage* is the EU: based on the Maastricht Treaty, all Member States are required to confer the right to vote in municipal and EU Parliament elections on second-country residents (i.e. non-national residents from EU countries).[206] Conversely, in the U.S., only declarant aliens – that is, those who are starting the process to naturalize as Americans – can vote in elections.[207]

These developments attest to the idea that citizenship is currently a *gradient status*, [208] due to the progressive loosening of the link between citizenship and territory. Such disconnection deeply challenges the core of citizenship as a way to identify a People within a bounded territory, shifting instead towards different forms of membership forged by transnational phenomena or supranational aggregation.

2.5 Legal Challenges to the Citizenship Concept

So far, the concept of citizenship has been presented in its original form. Such understanding was created within a context that conceived the relationship between institutions, territory, and individuals as overlapping: the sovereignty of the State was exercised on the people living in the bounded territory of the Nation-State.[209]

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[202] Ibid 17.
[203] Shaw (n 6) 171.
[204] *Costituzione della Repubblica Italiana* (promulgated on 27 December 1947 and entered into force on 1 January 1948) art 48.
[205] E Codini *La cittadinanza. Uno studio sulla disciplina italiana nel contesto dell'immigrazione* (G. Giappichelli Editore 2022) 3.
[206] *Consolidated Version of the Treaty on the Functioning of the European Union* (TFEU) (2012) OJ C326/47 Art 20(2)b.
[207] Spiro (n 183) 907.
[208] Shaw (n 6)152.
[209] S Umpierrez de Reguero and M Vink, 'Pathways to external citizenship: the global extension of dual citizenship and voting from abroad' (2025) 51(20) Journal of Ethnic and Migration Studies 5262, 5264.

However, since the 1990s, this traditional idea of citizenship has been challenged by new understandings of the concept. Specifically, an increasing number of scholars consider that the nature of citizenship has been changing, thus leaving behind its exclusively State-centered understanding.[210]

In this context, scholars developed the terms *postnational* and *transnational* citizenship to describe, respectively, situations in which the boundaries between citizens and non-citizens in the same jurisdiction are blurred, and situations where membership to clearly demarcated national jurisdictions overlap. These circumstances are a byproduct of migration, hence relating to the previously mentioned concept of *denizenship* (i.e. resident non-citizens being granted citizens' rights) and to the extension of rights to citizens residing abroad (i.e. the so-called *external citizenship*).[211] In this latter sense, the traditional understanding of citizenship is challenged by the detachment of citizenship from its territorial dimension and its extension across borders. The possibility of extending citizenship rights out of the State is closely linked to the growing acceptance of dual citizenship worldwide. In fact, such legitimization has normalized membership to multiple political communities, thus undermining the exclusivity inherent to the traditional idea of citizenship. Currently, 75% of countries allow their citizens to retain multiple nationalities.[212]

Citizens' rights can be extended not only outside territorial boundaries, but also to higher jurisdictions transcending the national level.[213] In fact, the political community whose membership is determined through citizenship is not necessarily a national community, but it could be also *supranational*.[214]

Similarly to dual nationality, this is a recent phenomenon which is driven by the European experience of the EU citizenship established by the 1992 Maastricht Treaty.[215] To this day, European Union citizenship is a distinctive form of supranational membership, especially due to its strong institutions compared to other regional organizations. Indeed, also regional organizations have developed their own citizenship systems which grant to their Member States' nationals the rights of free movement, free residence, and employment throughout their territory. This is the case of the Economic Community of West African States (ECOWAS), which established its supranational citizenship in 1982,[216] and of the Southern Common Market (MERCOSUR), which is still developing its citizenship system.[217]

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[210] Bosniak (n 1) 190.
[211] Umpierrez (n 209).
[212] MP Vink and others MACIMIDE Global Expatriate Dual Citizenship Dataset (2020) V5 Harvard Dataverse.
[213] S Falcke and F Peters, 'Rescaling citizenship: revisiting debates on territory, rights, and membership' (2025) 51(20) Journal of Ethnic and Migration Studies 5213, 5214.
[214] Acosta-Pumarejo (n 18) 284.
[215] Treaty on European Union (TEU) (Maastricht Treaty) art 9.
[216] Protocol A/P3/5/82 Relating to the Definition of Community Citizen (signed 29 May 1982) Official Journal of ECOWAS 4,11.
[217] MERCOSUR CMC Decision n° 64/10 on the Statute of MERCOSUR Citizenship (entered into force 16 December 2010).

Supranational citizenship defies its original concept because it does not present a direct legal relationship between the individual and the State, rather it is a *derived* citizenship complementing the national one.[218] This means that to hold EU citizenship, an individual must be a citizen of one of EU's Member States.

The following paragraphs will explore dual (and multiple) nationality and EU citizenship as examples of transnational and multilevel citizenship.

2.5.1 Transnational Citizenship: The Case of Dual and Multiple Nationality

Dual, or multiple, nationality is a situation where an individual holds the nationality of more than one State.[219] This occurrence stems from migration, either when people naturalize in a new country of residence while being able to maintain their birth citizenship, or when a child is born abroad and the interaction of *ius sanguinis* and *ius soli* grants them both their country of birth's citizenship and their parents' nationality. In the latter case, the child might acquire multiple (more than two) nationalities, if the parents are citizens of different countries.

Originally, dual nationality was a byproduct of migration that first emerged following the independence of some European colonies, such as in the case of the U.S. In fact, dual nationality manifested as a bureaucratic drawback stemming from the lack of provisions allowing people to withdraw from a nationality to acquire a new one. Indeed, in the past it was unthinkable for a person to leave their country permanently and switch allegiance to a new country. Furthermore, such situation was not compatible with the 18th century mercantilist conception of State's population, according to which losing a citizen meant losing a potential soldier, thus representing an intolerable loss of strength for the State.[220]

The first signs of decline of the perpetual allegiance doctrine became evident only at the turn of the 20th century through the codification of the right to expatriate – namely, the right to renounce one's citizenship. However, such provisions did not envision the retention of citizenship upon naturalization.[221] Hence, confirming that States should 'as soon tolerate a man with two wives as a man with two countries' and that double allegiance was to be rejected.[222] Consequently, in those cases where double nationality was caused by the interaction of *ius sanguinis* and *ius soli* provisions, the individual had to elect which nationality to keep at coming of age.[223]

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[218] Protocol A/P3/5/82 art 1; TFEU art 20(1); CMC n° 64/10 art 2.
[219] Dörr (n 7) ch C s 3 para 21.
[220] PJ Spiro *At Home in Two* Countries – *The Past and the Future of Citizenship* (NYU Press 2016) 1-16.
[221] Naturalization Act 1870 (33 & 34 Vict c 14) (UK).
[222] Senate Executive Document No 38 36th Congress 1st session 160 (1850) (Bancroft to Lord Palmerston 26 January 1849).
[223] Spiro (n 220) 32.

Beyond conflicting with the notion of exclusive allegiance, dual nationality posed also practical problems concerning diplomatic protection and national military service.

Diplomatic protection for dual nationals created risks in the relations between countries. In fact, dual citizens could strategically invoke the protection of one of their countries of nationality against the other, hence challenging the principle that a State had full discretion on its citizens and turning the issue into an international matter. In this sense, a country would risk the interests of its polity for a national who might not have actual ties to it.[224]

Military service, instead, created a much greater problem for nations. In an era when military service was compulsory, States did not regard such obligation lightly. This was also why most countries codified that serving in a foreign military entailed loss of citizenship.[225]

Such issues were systematically analyzed for the first time at the 1930 Hague Convention on Codification of International Law. The resulting Convention did not aim to reduce the incidence of dual nationality, but rather to manage the problems it created. The recommended solution for diplomatic protection entailed that a State could not invoke such right for one of its nationals against a State whose nationality they also possessed.[226] This principle is an international law custom currently codified in the 2006 Draft Articles on Diplomatic Protection.[227]

The matter of military service was addressed in a separate Protocol, which assigned military obligations according to residence.[228] However, the 1930 Hague Convention was probably too ambitious and was ratified by few countries. Nonetheless, several countries finalized bilateral agreements to solve the issue of military service using the Convention approach. This occurred especially after the Second World War.

Efforts to prohibit dual nationality largely ceased around the 90s. At the time, the suspicions that such status raised among worldwide governments were mitigated by the end of the Great Wars, the fall of the Berlin Wall, and the perception that a unipolar global order was being established. Between 1990 and 2013, the percentage of States which automatically revoked citizenship following naturalization in another country dropped from 55% to 33%.[229] Thus, confirming the decoupling of territory and citizenship.

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[224] Ibid 52-55.
[225] Ibid 59.
[226] League of Nations Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930) 179 LNTS 89 arts 4 and 5.
[227] International Law Commission (ILC) Draft Articles on Diplomatic Protection (2006) art 7.
[228] League of Nations Protocol Relating to Military Obligations in Certain Cases of Double Nationality (1935) 178 LNTS 227 art 1.
[229] Spiro (n 220) 70.

The recognition of dual nationality was especially advocated for by emigrants, who wanted to maintain their original citizenship both for 'sentimental and bureaucratic'[230] reasons (namely, avoiding requesting a visa to enter the country they were born in).[231]

This seemed a reasonable request considering that the world was increasingly mobile. In this regard, the accommodation was not only a matter of emulating norms with global scope adopted by other countries, but it also responded to more strategic objectives for States and politicians.[232]

For example, increasing economic flaws from emigrants. Even though only two countries directly tax their non-resident citizens (i.e. the U.S. and Eritrea),[233] most diaspora policies leverage external citizenship to maximize remittances – that is, private money that emigrants voluntarily send to friends and family back home.[234]

Abroad diaspora is also deployed strategically during elections.[235] As previously mentioned, most countries – 60% circa[236] – maintain the right to vote for abroad citizens. Such practice challenges the traditional idea that governance happens within a bounded territory engaging the eligible voters residing there. External voting is now globally established, since it responds to the democratic principle according to which political rights are to be enjoyed by all citizens on equal basis.

However, this was not always the case: traditionally, it was believed that non-resident citizens did not have a claim on voting. Even today, many remain skeptical because external voters do not have to bear the consequences of their vote.[237]

Nonetheless, such claims are only partly generalizable as there are different modalities of external voting. Some countries (such as Italy, Spain, and the U.S.) allow absentee voting by mail. Other countries set up polls at the embassy or consulates, as is the case of France, Poland, and the Philippines.[238] Another group of countries places the costs of casting the ballot on citizens: emigrants must travel back home and vote in their usual electoral district (this happens, for example, in Israel, Liberia, and Nicaragua).[239] Most countries, in fact, do not provide specific representation for non-resident citizens and incorporate their vote in the district where they last resided. This is called assimilation representation and is typical of countries where districting is enshrined in the

[230] Ibid 90.
[231] Ibid.
[232] Umpierrez (n 209) 5266.
[233] Spiro (n 183) 921.
[234] S Kalm, 'Diaspora Strategies as Technologies of Citizenship' (2013) 27(3) Global Society 379, 380.
[235] This is the case of Italy, where the 2006 general elections result depended heavily on the overseas vote. B Mascitelli and S Battiston, 'Towards a common model of expatriate voting rights? The case of Italian, Greek and Irish nationals abroad' in M Lobo, V Marotta and N Oke (eds) *Intercultural relations in a global world* (Common Ground Research Networks 2011) 6.
[236] Umpierrez (n 209) 5270.
[237] Spiro (n 220) 98.
[238] Spiro (n 220) 95.
[239] Kalm (n 234) 386.

Constitution, such as the U.S.[240] The opposite approach is known as discrete representation: it entails the reservation of specific seats in Parliament for non-resident voters by establishing overseas districts – this is the case of countries such as Cape Verde, France, and Italy.[241]

Dual nationality has regained prominence in the last decade due to the perception that an increasing number of people is acquiring a second citizenship for instrumental reasons. That is, citizenship being used for economic and personal advancement rather than because of genuine identitarian connections with a country. Scholars participating in the normative citizenship debate have largely discussed that citizenship is being 'desacralized'[242] due to this practice.

There are three main examples of instrumentalization of citizenship. The first concerns individuals who obtain a second passport based on their ancestors' ethnic origins via facilitated naturalization, according to which no residence period is required to claim citizenship. This practice is considered instrumentalization insofar it is primarily circumscribed to people who do not have ties with their new country and pursue a new nationality to enhance their mobility.[243] Second, the so-called *Olympic citizenship* refers to those instances where top athletes are quickly naturalized on the grounds of descent, state discretion, or a hefty check. This is usually a tactic used by athletes who are not good enough for their national team but could qualify for others. Finally, programs of investment citizenship (mentioned in paragraph 2.3 as *ius pecuinae*) are considered a commodification of citizenship. In fact, they allow people to obtain citizenship of a country just by making substantial investments in the national industry.[244] Among the countries providing these programs there are Saint Kitts and Nevis[245] (similarly to most of Caribbean countries) and Malta. However, in the latter case the program was struck down by the EU Commission in 2023.[246] This episode is particularly significant, as it underscores that citizenship no longer operates only within the exclusive domain of the state or its territorial borders, despite traditionally being considered a core expression of state sovereignty.

2.5.2 Multilevel Citizenship: The Case of EU Citizenship

European Union citizenship constitutes a unique example of supranational citizenship, thus representing a *unicum* in the international legal order.[247]

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[240] Spiro (n 220) 106.
[241] Kalm (n 234) 386.
[242] C Joppke, 'The Inevitable Lightening of Citizenship' (2010) 51(1) European Journal of Sociology/Archives Européennes de Sociologie 9, 17.
[243] C Joppke, 'The instrumental turn of citizenship' (2019) 45(6) Journal of Ethnic and Migration Studies 858, 873.
[244] Spiro (n 220) 140-145.
[245] Saint Christopher and Nevis Citizenship Act 1984 Part II Sec 3(5).
[246] Malta Case (*European Commission v Republic of Malta*) Case C-181/23 (2025).
[247] A Nato, 'La 'cittadinanza sociale' nella giurisprudenza della Corte di giustizia dell'Unione Europea' (2023) 2 La Cittadinanza Europea 143, 146.

It has been deemed the new frontier of citizenship, although this characterization has not always been positive. In fact, EU citizenship has been defined as a 'citizenship without identity'[248] given that it does not indicate belonging to a specific political community. In fact, it is an 'additional'[249] citizenship deriving from holding Member States' nationalities and it 'does not aim to replace' them.[250] As a result, critics argue that *Eurocitizenship* amounts to a 'rights only citizenship'.[251] However, even these rights appear irrelevant insofar they replicate the rights granted to Member States' nationals independently of the possession of the additional EU citizens' status.[252]

Despite these criticisms, EU citizenship is a well-established reality not only in the Court of Justice of the European Union (CJEU) jurisprudence and legal scholarship, but also among people living in the European Union.

The idea of endowing the EU with its own citizenship had always permeated the Community legal order, but it was only with the Maastricht Treaty that it was formally enshrined.[253]

The specific provision on citizenship is to be found in the Treaty on the Functioning of the European Union (TFEU): Article 20 TFEU establishes both the personal[254] and the material[255] scope of EU citizenship.

This first codification of the Union citizenship, which was strongly criticized for being empty, was subsequently crafted by the CJEU thanks to the interactions between the judicial branch of the EU and the Member States national courts.[256] The Court's action has been twofold. On one hand, it focused on giving substance to the EU citizenship concept, defining the status as 'fundamental' and moving beyond the criticisms concerning the recognition of rights already granted by other legal instruments.[257] On the other hand, it addressed the competence issues stemming from the need for Member States to comply with EU law[258] in a domain that quintessentially represents state sovereignty, that is citizenship attribution and loss. Indeed, since EU citizenship derives from holding a Member State's nationality, it encompasses a patchwork of twenty-seven citizenship regimes to claim such status.[259]

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[248] Joppke (n 243) 870.
[249] TFEU art 20(1).
[250] TEU art 9.
[251] Joppke (n 42) 21.
[252] Azzariti (n 196) 441.
[253] TEU art 9.
[254] TFEU art 20(1).
[255] TFEU art 20(2).
[256] N Nic Shuibhne *EU Citizenship Law* (Oxford European Union Law Library 2023) 19.
[257] Grzelczyk Case (*Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*) Case C-184/99 (2001).
[258] Micheletti Case (*Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria*) Case C-369/90 (1992).
[259] Bauböck and Guiraudon (n 187) 444.

A landmark case in solving competence issues concerning citizenship was the *Rottman Case*.[260] It marks the beginning of a new strand of the Court's jurisprudence characterized by the expansion of the scope and impact of Union law in the citizenship domain. The ruling dealt with loss of citizenship, providing the CJEU with the opportunity to establish a key principle: all similar situations were to fall within the scope of EU law, since losing nationality of a Member State entailed also the withdrawal from EU citizenship and the consequent loss of the attached rights. The judgement not only posed limits to States' sovereignty, but also inherently linked Eurocitizenship with specific EU rights, thus virtually disconnecting EU citizenship from the Member States' authority.[261]

This interpretation is further expanded in the *Ruiz Zambrano* judgement,[262] which concerned third-country nationals challenging the rejection of their Belgian residence permits on the grounds that their minor children were Belgian (hence, also EU) citizens. The Court ruled that the denial of residency was against Article 20 TFEU, since it would deprive the Zambrano kids of enjoying the rights derived from their EU citizens status. This is a full-fledged reversal of traditional citizenship by descent, whereby children secure residency status for their parents.[263] But most notably, the CJEU departed from previous doctrine requiring a cross-border element to trigger EU law competence by addressing, for the first time, a domestic situation. [264]

Nonetheless, in the immediate subsequent judgements, the CJEU made considerable efforts to limit this interpretation. Specifically, in the *McCarthy* ruling the Court stated that the rejection of McCarthy's husband resident permit did not affect her rights as an EU citizen, since it did not compel her to leave her country or the territory of the EU.[265] The idea that the fundamental right of Eurocitizenship is to not be obligated to leave the Union was confirmed in the *Dereci Case*.[266]

In this sense, the problematic relationship between EU citizenship and its attached rights is evident. Such issue stems from the fact that EU citizenship was first conceived as a 'market citizenship',[267] hence it was predominantly related to the rights attached to work, establishment, and services.[268] In fact, the first right enounced in Article 20(2) TFEU is the right to free movement, which is inherently connected to the original objective behind European integration: economic integration.

Since the rights enshrined in Articles 20 to 25 TFEU are primarily tied to the common market rationale, it has been often challenging to determine which special rights EU citizenship confers upon

[260] Rottman Case (*Janko Rottman v Freistaat Bayern*) Case C-135/08 (2010).
[261] A Baraggia, 'Dimensione sostanziale della cittadinanza europea e i diritti fondamentali: una storia appena cominciata' (2014) 24/2014 Federalismi.it.
[262] Ruiz Zambrano Case (*Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)*) Case C-34/09 (2011).
[263] Shachar (n 1) 1017.
[264] AM Russo, 'La cittadinanza 'sostanziale' dell'UE alla luce della proposta del gruppo di Heidelberg: verso una 'reverse Solange'?' (2014) 1/2014 Federalismi.it 10.
[265] McCarthy Case (*Shirley McCarthy v Secretary of State for the Home Department*) Case C-434/09 (2011).
[266] Dereci Case (*Dereci and others v. Bundesministerium für Inneres*) Case C-256/11 (2011).
[267] D Kochenov *EU Citizenship and Federalism: The Role of Rights* (Cambridge University Press 2017) 15.
[268] Nic Shuibhne (n 256) 7.

individuals. Throughout time, the work of the CJEU and of the EU legislator has been fundamental in expanding the material scope of EU citizenship. As a result, the rights listed in the TFEU are currently those that citizens enjoy '*inter alia*'.[269]

The rights codified in Part Two of the TFEU also appear in Title Five of the Charter of Fundamental Rights of the European Union (CFR), which has the same legal value as the Treaties since the entry into force of the Lisbon Treaty in 2007.[270] The jurisprudence of the CJEU has been progressively referring to the fundamental rights enshrined in the CFR, whose purpose is to complement the Member States' national rights protection mechanisms.[271] However, in the past such references did not spill over the citizenship cases presented before the Court, thus creating interpretative problems concerning the notion of 'substance of the rights'.[272] Only in more recent judgements[273] the Court has begun to invoke the CFR.

The will to elevate EU citizenship as a fundamental status with its own set of rights is observed in the adoption of the Citizenship Directive,[274] a secondary legislative measure codifying in a single act the various legal sources governing the free movement of individuals,[275] which separates the free movement provisions for EU citizens from those relating to workers, self-employed persons, students, and others.[276] It is precisely the free movement, residency, and non-discrimination rights enshrined in the Directive that allowed the Court to develop the social dimension of EU citizenship, that is the possibility for EU citizens to access the social services and benefits of the Member State where they choose to settle, according to its national rules. The Court's jurisprudence is continually evolving in this area. Over the past ten years, it has considerably increased the possibility for second-country nationals, particularly economically inactive ones, to access social assistance in Member States. [277]

Overall, the concept of EU citizenship as such is constantly evolving thanks to the CJEU jurisprudence. Notably, in 2025 the Court addressed for the first time a case concerning the attribution, rather than the loss, of citizenship in the judgement of *Commission v. Republic of Malta* (C-181/23), which will be analyzed in the following paragraph.

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[269] Nic Shuibhne (n 256) 5.
[270] TEU art 6 (as amended by Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community 2007 art 8).
[271] Melloni Case (*Stefano Melloni v Ministerio Fiscal*) Case C-399/11 (2013).
[272] Alokpa Case (*Adzo Domenyo Alokpa and Others v Ministre du Travail, de l'Emploi et de l'Immigration*) Case C-86/12 (2013).
[273] Tjebbes Case (*M.G. Tjebbes and Others v Minister van Buitenlandse Zaken*) Case C-221/17 (2019).
[274] Directive 2004/38 (Citizenship Directive).
[275] R Schütze *European Union Law* (Oxford University Press 2025) 676.
[276] E Guild, S Peers and J Tomkin *The Citizenship Directive: A Commentary* (Oxford University Press 2019) 13.
[277] A Nato, 'La giurisprudenza della Corte di giustizia dell'Unione europea sulla dimensione sociale della cittadinanza europea al tempo della crisi economica' (2017) 1 La Cittadinanza Europea 93.

2.5.2.1 *European Commission v. Republic of Malta*

The case presented before the CJEU concerned the citizenship by investment scheme introduced by Malta in 2013,[278] which was amended in 2020[279] at the Commission's request[280] to include a residence requirement.[281] However, the Commission observed that such modifications did not alter the transactional nature of the scheme, thus infringing Article 20 TFEU and Article 4(3) TEU.[282] Consequently, the Commission sent a reasoned opinion on the issue to Malta and since Malta did not comply with the opinion within the period laid down,[283] the Commission referred the matter to the CJEU pursuant to Article 258 TFEU.[284]

In its judgement delivered on 25 April 2025, the CJEU began by rejecting the argument presented by Malta that, although the exclusive competence of Member States in matters of nationality attribution must be exercised in compliance with EU law, such duty cannot undermine the national identity of the State[285] and, accordingly, citizenship attribution is not comparable to situations of withdrawal of nationality, where the loss of EU citizenship is at stake.[286] Indeed, the Court argued that since Union citizenship and all its attached rights[287] derive directly from holding the nationality of a Member State and since there is no explicit exception to compliance with EU law regarding citizenship attribution, the rules on attribution are akin to those of loss of nationality on this matter.[288]

The Court subsequently asserted that 'Union citizenship constitutes the fundamental status of nationals of the Member States',[289] therefore embodying the solidarity at the basis of the process of integration that represents an integral part of the EU constitutional framework.[290] This understanding of EU citizenship is inherently linked to the foundational principles of mutual trust and mutual recognition which allow the establishment of an area without internal borders.[291] Furthermore, the CJEU reminded that in virtue of the principle of sincere cooperation, the power to both grant and

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[278] Act XV of 2013 amending the Maltese Citizenship Act (1965); Individual Investor Programme of the Republic of Malta Regulations (Subsidiary Legislation 188.03 of the Laws of Malta) enacted under Legal Notice 47 of 2014.
[279] Act XXXVIII of 2020 amending the Maltese Citizenship Act (1965); Granting of citizenship for Exceptional Services Regulations (Subsidiary Legislation 188.06 of the Laws of Malta) enacted under Legal Notice 437 of 2020.
[280] European Commission, *Letter of Formal Notice to Malta concerning investor citizenship schemes* (20 October 2020).
[281] The residence requirement was set at 36 months for payments amounting to € 600,000, but it could be reduced to a minimum of 12 months for exceptional investments over € 750,000 as per Granting of citizenship for Exceptional Services Regulations of 2020 (n 284) part III and IV.
[282] European Commission, *Additional Letter of Formal Notice urging Cyprus and Malta to stop "selling" EU citizenship* (9 June 2021).
[283] European Commission, *Reasoned Opinion to Malta regarding its investor citizenship scheme* [INFR(2020)2301] (6 April 2022).
[284] TFEU art 258(2). The application was lodged on 22 March 2023 according to the account in the Opinion of Advocate General Collins in Case C-181/23 *European Commission v Republic of Malta* (4 October 2024).
[285] TEU art 4(2).
[286] Malta Case (n 246) paras 63-66.
[287] Ibid paras 86-90.
[288] Ibid paras 82-83.
[289] Ibid para 92.
[290] Ibid paras 91-93.
[291] Ibid paras 84-90.

withdraw European citizenship is not unlimited and shall be compatible with EU values and principles.[292]

The Court then proceeded to determine that the bond of nationality of a Member State is rooted in 'the special relationship of solidarity and good faith between the State and its nationals and the reciprocity of rights and duties'.[293] Since EU citizenship derives from a Member State's nationality, this *special relationship* represents also the basis of the rights and duties attributed to EU citizens by the Treaties.[294] It is worth noting the lack of reference to the *genuine link*, which was central in the Commission's submission. In fact, the Court decided against adopting the controversial International Court of Justice's concept and preferred grounding its reasoning in EU's constitutional principles.[295] Indeed, the rights conferred by EU citizenship, which are exercisable throughout the Union, are founded on the relationship of mutual trust among Member States.[296]

In the most relevant passage of the judgement,[297] the CJEU found that by establishing a naturalization scheme based on a transactional procedure, a Member State does not comply with the requirement of *special relationship of solidarity and good faith*, thereby breaching Article 20 TFEU and the *principle of sincere cooperation*.[298] In its analysis of the Maltese investor citizenship program,[299] the Court found that the transactional procedure amounted to the commercialization of EU citizenship, not only for its characteristics, but also because it was explicitly portrayed as a scheme to obtain the benefits arising from EU citizenship.[300] Moreover, the CJEU raised concerns that such programs might pose serious risks to security and to EU policies by facilitating money laundering, tax evasion, and regulatory circumvention.[301]

While the judgement was welcomed on ethical grounds because it prevented the commodification of EU citizenship,[302] it came as a surprise to experts.[303] The main critic to the judgement is that not only the Court disregarded the Advocate General's Opinion[304] and academic literature, but it also 'invented the law'.[305] This is particularly significant, considering that the Court's

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[292] Ibid para 95.
[293] Ibid para 96.
[294] Ibid para 97-98.
[295] E De Falco, 'The End of Citizenship for Sale? A Legal Turning Point in Commission v. Malta (C-181/23)' (2025) EU Law Live.
[296] M Inglese, 'L'acquisizione e la perdita della cittadinanza dell'Unione europea: dai limiti alle competenze degli Stati membri all'incidenza sui diritti politici dei cittadini' (2025) 1/2025 Il Diritto dell'Unione Europea 5.
[297] Malta Case para 99.
[298] TEU art 4(3).
[299] Malta Case paras 102-121.
[300] Ibid paras 119-121.
[301] De Falco (n 302); K Lamprinoudis, 'Money Cannot Buy Everything! Catharsis Reached in the *Commission v. Malta* Tragedy?' (2025) EU Law Live.
[302] Lamprinoudis (n 301).
[303] C Baudenbacher, 'After *Commission v. Malta* – What Are Switzerland's Prospects?' (2025) EU Law Live.
[304] Opinion of Advocate General Collins (n 284).
[305] Baudenbacher (n 303);D Kochenov, 'Never Mind the Law, again: *Commission v. Malta* (C181/23)' (2025) EU Law Live.

reasoning – regarded by some commentators as ill-founded[306] – generated far-reaching constitutional implications, affecting both the special nature of EU citizenship and the allocation of power between the Union and the Member States.[307]

In this sense, the Malta judgement is particularly significant for the future of EU citizenship. Specifically, a reform on citizenship matters appears increasingly necessary. Such revision could entail either the harmonization of the twenty-seven national citizenship regimes, or the effective disconnection of EU citizenship from Member States' nationality.[308]

This is an additional reason that attests the relevance of examining Member States's citizenship regimes and understanding their foundations.

[306] First of all, the state of the rule of law of the EU is called into question, since in infringement proceedings under Article 258 TFEU the Commission bears the burden of proof and if the CJEU deems the Commission's arguments unconvincing it must dismiss the case, rather than providing different grounds to reach the same conclusion as the Commission. See G Iñiguez, 'On Genuine Links, Burdens of Proof, and Declaration No. 2: Some Musings on the Court's Reasoning in *Commission v. Malta* (C-181/23)' (2025) EU Law Live; Kochenov (n 305). Furthermore, the principles on which the Court grounded its argument are not deemed suitable to provide a solid doctrinal foundation to the Court's reasoning. See S Poli and L Lonardo, 'The attribution of national citizenship by Member States and its impact on EU values' (2026) Federalismi.it; S Poli, 'The End of the Reserved Domain on Citizenship Attribution?' (2025) EU Law Live. Finally, several questions arise relating to the dismissal of Declaration No. 2, given that such Declaration annexed to the Maastricht Treaty were traditionally understood to have significant interpretative importance. See Iñiguez.

[307] Lamprinoudis (n 301); Poli (n 306).

[308] S Marino, 'Limiti alla discrezionalità degli Stati membri nella disciplina della cittadinanza: tanto rumore per una giurisprudenza costante?' (2025) 1/2025 Il Diritto dell'Unione Europea 13.

3.
The Evolution of Citizenship Law in France, Italy, and Spain

3.1 Codification of Citizenship as Nation-Building

The first codification of citizenship in France, Italy, and Spain must be situated within the broader context of nation-building processes that characterized the 19th century.[1] During this period, the legal delineation of membership in the political community was central for emerging states seeking to stabilize sovereignty and to create a 'uniform and integrated society'[2] bound by allegiance to the State and capable of sustaining its institutions.

Taking into consideration the different paths through which the three countries formed as Nation-States, the following paragraphs will explore how each approached the institutionalization of belonging through criteria such as descent, birth, and residence in the country.

3.1.1 France

As previously illustrated (see Chapter 2 Paragraph 2), the French Revolution broke with the tradition of birthright citizenship attribution via *ius soli* in favor of a descent-based system, underscoring the disconnect between citizenship and subjecthood.[3] Indeed, the 1804 French Civil Code attributed French nationality at birth to children born to a French father, either in France or abroad.[4]

[1] P Kettunen, 'Modern citizenship and nation-state building' in M Garcia Cabeza and T Faist (eds) *Encyclopedia of Citizenship Studies* (Edward Elgar 2024) 47.
[2] B Turner, 'Citizenship, Nationalism and Nation-Building' in G Delanty and K Kumar (eds) *The SAGE Handbook of Nations and Nationalism* (SAGE 2006) 225.
[3] P Weil and A Spire, 'France' in R Bauböck and others *Acquisition and Loss of Nationality | Volume 2: Country Analysis. Policies and Trends in 15 European Countries* (Routledge 2006) 188.
[4] *Code civil des Français* 1804 art 10.

By the end of the century this provision became outdated owing to the need to increase the number of individuals eligible for military service. In fact, during the 19th century France became the first European country of immigration, but immigrants – and specifically their children born in France – did not naturalize to avoid the military service required from citizens. [5]

To solve this issue, a new *Loi sur la nationalité* was promulgated in 1889.[6] This law marked the establishment of the principle of double *ius soli* that still characterizes the French law on nationality. In fact, the amendments to the Napoleonic Civil Code prescribed the automatic attribution of citizenship at birth to third generation immigrants.[7] Similarly, individuals born in France to foreign parents were considered French citizens if they resided in France upon reaching the age of majority.[8]

Furthermore, to prevent French nationals from evading military service, the 1889 law altered the provision related to dual nationality. Naturalization abroad would not result in the loss of citizenship as long as the individual was still bound to the obligations of military service.[9]

The new law also established for the first time the criteria for naturalization: access to citizenship was linked to a set period of authorized domicile or residence (three and ten years respectively) and to marriage to a French citizen (one year).[10]

With the outbreak of the First World War, France became increasingly skeptical of the loyalty of naturalized citizens.[11] Specifically, in response to the Delbruck Law adopted in Germany in 1913[12] – which allowed German citizens naturalized abroad to hold dual citizenship[13] – the French government established for the first time[14] denaturalization provisions for newly naturalized citizens from enemy powers, for individuals who bore arms against France,[15] and subsequently for all citizens who presumptively retained their original nationality.[16]

However, this attitude towards naturalization quickly changed at the end of the conflict.[17] In fact, the French government prioritized demographic restoration following the loss of lives during the war. The severe loss of men in the younger cohorts of the population (1 in 6 men drafted died at the front, amounting to 4.5% of the French population) provoked such gender imbalance within the

[5] Weil and Spire (n 3) 188.
[6] *Loi du 26 juin 1889 sur la nationalité*.
[7] *Code Civil* [C civ] art 8 al 3, as amended by *Loi du 26 juin 1889*.
[8] Ibid art 8 al 4.
[9] Ibid.
[10] Ibid art 8 5°.
[11] G Léger, 'La législation relative à la nationalité française durant la Première Guerre mondiale' (2014) 2014/4 Revue critique de droit international privé 751.
[12] Nationality Act of 22 July 1913 (Reich Law Gazette I p 583 – Federal Law Gazette III 102-1) (DEU).
[13] Ibid s 25.
[14] Léger (n 11).
[15] *Loi du 7 avril 1915 autorisant le gouvernement à rapporter les décrets de naturalisation obtenus par d'anciens sujets de puissances en guerre avec la France*.
[16] *Loi du 18 juin 1917 modifiant la loi du 7 avril 1915 autorisant le gouvernement à rapporter les décrets de naturalisation obtenus par d'anciens sujets de puissances en guerre avec la France*.
[17] Weil and Spire (n 3) 189.

population that caused the disruption of the marriage market and the plummeting of births.[18] To restore the population gap in the postwar period, the French parliament adopted the most *liberal*[19] citizenship legislation in the history of the country.

The 1927 *Loi sur la nationalité*[20] abrogated the articles on nationality in the Civil Code[21] and established an autonomous *Code de la Nationalité* for the regulation of citizenship.[22] The most important change concerned naturalization: the new law broke from the 18th century rationale that conceived naturalization as the culmination of integration into France following the establishment of authorized domicile. The new provision aimed at rapidly assimilating desirable immigrants, even if they were yet to be fully integrated in French society.[23] As such, the residence requirement dropped from ten to three years.[24]

At the same time, concerns relating to the incomplete social integration associated with such quick naturalization led Parliament to keep the provisions on denaturalization established during the Great War[25] and to restrict access to certain rights attached to citizenship, which were granted only after ten years from naturalization.[26]

Another notable change stemming from the 1927 law was the abolishment of the gendered approach to citizenship established by the 1889 law:[27] the new provisions put an end to the automatic acquisition of nationality through marriage for both French and foreign women,[28] and enabled French women to transmit their nationality via *ius sanguinis*.[29]

Although the 1927 law achieved its intended demographic objectives, it soon clashed with the reality of widespread xenophobia characterizing the Great Depression. Beginning in 1932, a series of restrictive measures were adopted, virtually making naturalized people second-class citizens.[30] Most notably, their rights were further limited (e.g. naturalized citizens were excluded from certain professions)[31] and the grounds for deprivation of nationality were extended to comprise any crime or

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[18] V Gay and P Grosjean, 'Morts Pour la France: A database of French fatalities of the Great War' (2023) 90 Explorations in Economic History.

[19] Here, the adjective *liberal* is used to denote policies making citizenship available to individuals on a non-discriminatory and inclusive basis, as commonly defined in citizenship studies debates in the past 20 years. See I Honohan, 'The Theory and Politics of Ius Soli' (EUDO Citizenship Observatory 2010).

[20] *Loi du 10 aout 1927 sur la nationalité*.

[21] Ibid art 13.

[22] Weil and Spire (n 3) 198.

[23] M Anceil, 'French Law of Naturalization' (1935-1936)10 Tulane Law Review 231, 236.

[24] *Loi du 10 aout 1927 sur la nationalité* art 6 1°.

[25] Ibid arts 9 and 10.

[26] Ibid art 6.

[27] C civ art 17 al 1, as amended by *Loi du 26 juin 1889*.

[28] *Loi du 10 aout 1927 sur la nationalité* art 8.

[29] Ibid art 1 3°.

[30] *Loi du 10 aout 1927 sur la nationalité* art 6 as amended by *Décret-loi du 12 novembre 1938 relatif a la situation et a la police des étrangers*.

[31] *Loi du 10 aout 1927 sur la nationalité* art 6 as amended by *Loi du 19 juillet 1934 accession des naturalises a certaines fonctions*; *Loi du 10 aout 1932 protégeant la main d'œuvre nationale*.

offence punishable by a one-year prison sentence.[32] Overall, these reforms blurred the distinction between foreigners and naturalized citizens, subjecting the latter group to increased surveillance and creating a climate of suspicion around them.

3.1.2 Italy

Italy's peculiarity, in comparison with France and Spain, lies in the fact that in the 19th century it had not yet become a nation-state, rather it was a nation without a state and fragmented across multiple polities on the Italian peninsula. Italy achieved political unification under the aegis of the Kingdom of Piedmont and Sardinia:[33] while the new nation-state was proclaimed in 1861,[34] the unification process was considered completed only after the end of the First World War with the annexation of the *terre irredente* (irredentist territories).[35]

The newly formed State came into being as an enlargement of the Kingdom of Piedmont and Sardinia. As such, the reigning house remained the same (the House of Savoy), as did the capital (which was moved to Rome in 1871) and the legal order.[36]

Most notably, the Kingdom of Italy inherited the *octroyé* constitution[37] of the "previous" Kingdom: the *Statuto Albertino*.[38] The Statute (as well as the 1837 Albertine Civil Code)[39] did not define membership to the Kingdom, rather it established civil and political rights[40] for the people residing in the Kingdom's territory.

Membership was regulated only concerning matters of conflict of sovereignty and cases of doubt, such as the status of expatriates (and their families)[41] and of foreign residents.[42] Indeed,

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[32] Ibid art 10 4°.
[33] M Arena, B Nascimbene and G Zincone, 'Italy' in R Bauböck and others *Acquisition and Loss of Nationality | Volume 2: Country Analysis. Policies and Trends in 15 European Countries* (Routledge 2006) 333.
[34] On 17 March 1861 the Parliament of the Kingdom of Piedmont and Sardinia approved a single article law establishing that the King Victor Emanuel assumed the title of King of Italy. See *Legge 17 marzo 1861 n 4671*.
[35] The term *irredentist territories* is used to indicate the territories who remained under foreign rule after the last war between the Kingdom of Italy and the Habsburg Empire, namely Trentino, South Tyrol, eastern Friuli, the city of Trieste, Istria, Dalmatia, and the city of Fiume. See A Tamaro, 'Irredentismo' (1933) XIX Enciclopedia Italiana 567.
[36] G Zincone and M Basili, 'Country Report: Italy' (EUDO Citizenship Observatory 2013) 3.
[37] A *granted (octroyé) constitution* is a constitutional charter unilaterally conferred by the monarch as an act of sovereign authority (*octroi*), rather than created by or derived from the constituent power of the people. This form of constitution was particularly common during the European Restoration, especially between 1814 and 1848, when monarchs sought to reconcile dynastic sovereignty with post-revolutionary demands for rights and representation. Its legitimacy rested on the idea that the monarchy preceded the constitution and remained its source, with the constitution functioning as a self-limitation voluntarily imposed by the sovereign while preserving its primacy. Therefore, granted constitutions did not found the monarchy and did not represent a democratic act, rather they often were presented as a paternal concession made "for the good of the people". See L Lacchè, 'Granted Constitutions. The Theory of octroi and Constitutional Experiments in Europe in the Aftermath of the French Revolution' (2013) 9 European Constitutional Law Review 285.
[38] *Statuto Fondamentale del Regno* 1848 *(Statuto Albertino)*.
[39] *Codice Civile per gli Stati di S.M. il Re di Sardegna* (1837).
[40] *Statuto Albertino* 1848 art 24.
[41] *Codice Civile* arts 19, 20, 34, 38
[42] Ibid arts 24, 26, 42.

citizenship was generally attributed according to the principle of *ius soli*, conditional upon the stable residence of the individual's father in the territories of the Kingdom of Piedmont and Sardinia.[43]

Such lacuna rendered the Statute out of date since the very moment it entered into force,[44] even more so when it became the second-hand Constitution of the new Italian nation-state, which deeply needed a strong formal relationship between membership of the State and membership of the Nation (understood as the People).[45]

The shortcoming was soon remedied by the promulgation of a new Civil Code in 1865.[46] Similarly to other European countries, the provisions concerning nationality took inspiration from the French experience of *ius sanguinis*. Indeed, according to the 1865 Code: '*è Cittadino il figlio di padre cittadino*'.[47] The rationale behind attributing citizenship by descent dovetailed with the notion of shared belonging to the nation[48] that founded the State.

The Code also regulated acquisition of nationality by marriage, granting citizenship to foreign women married to Italian men[49] and depriving Italian women of their nationality upon marriage to foreigners.[50] Conversely, naturalization did not rely on criteria established by law and was granted discretionarily by royal decree.[51] At the same time, the legislation provided for the attribution of citizenship to individuals born in Italy to foreign parents who had resided in Italy for ten uninterrupted years.[52]

It is noteworthy that the 1865 Civil Code lacked a provision relating to ethnic Italians living in the *terre irredente*. In fact, such individuals were already nationals of foreign States, and consistent with the prevailing practice of the time, dual nationality was not allowed.[53] However, this restriction was not rigidly applied. Specifically, during the Great Emigration[54] (when around 14 million Italians left the country between 1890 and 1910),[55] Italian nationality was attributed on the basis of descent to individuals born abroad even though they had acquired their country of birth's citizenship via *ius*

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[43] This can be inferred from Articles 20 and 24 of the Albertine Civil Code.
[44] Arena, Nascimbene and Zincone (n 33) 225.
[45] Zincone and Basili (n 36) 5.
[46] *Codice Civile del Regno d'Italia* 1865.
[47] Ibid art 4. Translation: 'A child born to a citizen father is a citizen'.
[48] Here still understood as an ethno-cultural people.
[49] *Codice Civile del Regno d'Italia* art 9.
[50] Ibid art 14.
[51] Ibid art 10.
[52] Ibid art 8.
[53] Ibid arts 11 co 2.
[54] The term Great Emigration (*Grande Migrazione* in Italian) refers to the first wave of the long-lasting mass emigration of Italians between the end of the 19th century and the beginning of the 20th century. European destinations included France, Austria, Germany, and Switzerland; while overseas hosting countries included the United States of America, Argentina, and Brazil. See G Rosoli, 'Un quadro globale della diaspora italiana nelle Americhe' (1992) Altreitalie Centro Studi Emigrazione Roma; Enciclopedia Treccani, 'Emigrazione italiana' (2010) Dizionario di Storia; Centro Studi Emigrazione Roma, 'Le emigrazioni tra l'Unità e la grande guerra' (2022).
[55] Rosoli (n 54) 4.

soli, thus limiting loss of nationality to cases of formal renunciation.[56] This approach was aimed at preventing a significant demographic loss for the newly founded State, as well as at guaranteeing the inflow of remittances and eliminating all deterrents to the return of emigrants.[57]

Although this *de facto* arrangement proved to be effective, it did not represent a permanent way to solve the issue. As a result, a new law was adopted in 1912 specifically to encourage the repatriation of emigrants.[58]

In general terms, the 1912 Law on Italian Citizenship,[59] which abrogated the provisions on nationality contained in the Civil Code,[60] confirmed the attribution of citizenship at birth through *ius sanguinis*[61] as well as through a combination of parental *ius domicilii*[62] and children's *ius soli* (for Italian-born children of foreign parents who had resided in Italy for more than ten years).[63]

The clauses addressing the Italian diaspora were contained in Articles 7 and 9. The new law allowed dual nationality for Italians born abroad who acquired the nationality of their country of birth on the basis of *ius soli*.[64] Furthermore, upon returning to Italy, Italian nationals who had lost their citizenship through naturalization abroad were eligible for facilitated naturalization with reduced residence requirements.[65]

3.1.3 Spain

The regulation of nationality in Spain traces back to its constitutional experience at the beginning of the 19th century. The 1812 Cádiz Constitution only identified as Spaniards '*todos los hombres libres nacidos y avecindados en los dominios de las Españas, y los hijos de estos*'[66] and relinquished the in-depth regulation of nationality to subsequent legal frameworks that were never enacted.[67]

The issue of nationality became salient following the independence of the Spanish colonies in Latin America. In fact, the bilateral treaties between Spain and the newly founded countries provided

[56] *Codice Civile* art 11 co 1.
[57] Zincone and Basili (n 36) 7.
[58] Arena, Nascimbene and Zincone (n 33) 338.
[59] *Legge 13 giugno 1912 n 555 "Sulla cittadinanza italiana"*.
[60] Ibid art 17.
[61] Ibid art 1.
[62] Latin for 'right of residence', it is the principle according to which anyone present in the territory of a state has the right to citizenship after a residence threshold is met. Therefore, it usually indicates residence-based citizenship acquisition. See A Stavila, ''Citizens-Minus' and 'Citizens-Plus' A normative Attempt to defend Citizenship Acquisition as an Entitlement Based on Residence' (DPhil thesis, European University Institute 2013).
[63] L 555/1912 art 3.
[64] Ibid art 7.
[65] Ibid art 9.
[66] *Constitución política de la monarquía española* Cadiz promulgated on 19 March 1812 art 5.1. Translation: 'all free men born and residing in the territories of the Spains (sic!), and their children'.
[67] R Rubio Marín, 'Spain' in R Bauböck and others *Acquisition and Loss of Nationality | Volume 2: Country Analysis. Policies and Trends in 15 European Countries* (Routledge 2006) 480.

for the possibility for first-generation Spanish settlers and their descendants to acquire the nationality of their country of residence, while maintaining their status as Spaniards.[68] This framework, which balanced the demographic interests of the new countries and the protection of Spaniards abroad, is still a cornerstone of Spanish Nationality Law, thus underscoring its enduring aim of regulating the ties between Spain and its diaspora.[69]

The first attempt to comprehensively define Spanish nationality was with the 1889 Civil Code,[70] whose consolidated version still represents the main source of citizenship regulation. It devoted twelve articles (from 17 to 28) to nationality, which were criticized because of the large degree of judicial discretion allowed in their application.

This citizenship regime presented 'a strong component of *ius sanguinis*, a relatively generous application of *ius soli* and a rather naïve application of naturalization by residence'.[71] Indeed, Spanish citizenship was attributed through descent regardless of the place of birth,[72] thereby enabling emigrants to transmit it to their descendants born abroad, provided that dual nationals at birth registered with consular authorities.[73] Dual nationality, however, was not permitted for individuals born in Spain to foreign parents, who had to renounce their previous citizenship if they opted for Spanish nationality at the age of majority.[74]

Conversely, foreigners not born in Spain could acquire Spanish nationality either through *carta de naturaleza*[75] or by residence.[76] The initial provision limited the requirements for naturalization to the renunciation of the previous nationality[77] and did not provide for a specific residence prerequisite, which was introduced in 1916 and set at ten years.[78]

Spanish nationals who had lost their citizenship after naturalizing abroad[79] could reacquire their citizenship by facilitated naturalization, namely through a declaration of intent before the Civil Registry.[80] Similarly, children of Spaniards who had lost their nationality could submit such declaration before the relevant embassy or consulate abroad.[81]

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[68] The first treaty, used as a model for the subsequent ones, was the *Tratado Definitivo de Paz y Amistad entre la Republica Mexicana y S.M.C. la Reina Gobernadora de España* signed in Madrid in 1836.
[69] R Rubio Marín and others, 'Country Report on Citizenship Law: Spain' (EUDO Citizenship Observatory 2015) 6.
[70] *Código Civil Español* [CC] *1889. Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil.*
[71] FJ Moreno Fuentes, 'Migration and Spanish Nationality Law' in R Hansen and P Weil (eds) *Towards a European Nationality. Citizenship, Immigration and Nationality Law in the EU* (Palgrave 2001) 118, 124.
[72] CC art 17.2.
[73] Ibid art 26
[74] Ibid arts 17.1, 18 and 19.
[75] Ibid art 17.3. The procedure of *Carta de naturaleza* indicates the acquisition of nationality of discretionary nature by Royal Decree.
[76] CC art 17.4.
[77] Ibid art 25.
[78] *Real Decreto de 6 noviembre de 1916 dictando disposiciones relativas al modo de ganar los extranjeros vecindad en España.*
[79] CC art 20.
[80] Ibid art 21.
[81] Ibid art 24.

This framework remained largely unchanged until the advent of the Second Republic (1931-1938), when the 1889 citizenship regime was overhauled, together with most of the Spanish legal system.

The 1931 Constitution[82] established a rudimentary citizenship regime, composed of two articles providing, respectively, for citizenship acquisition and citizenship loss.[83] The Spanish Republican experience was short-lived due to the outbreak of the Spanish Civil War and the establishment of Franco's regime; however, its citizenship regulation is extremely important since it inspired several characteristics of the current nationality law.[84]

Based on the idea of *Hispanidad*,[85] the 1931 Constitution laid the foundations for the privileged relationship concerning nationality between Spain and its former colonies within domestic law, rather than relying solely on general clauses contained in bilateral treaties. Specifically, the 1931 Constitution explicitly regulated dual nationality with the '*Países hispánicos de America*',[86] where Spaniards could naturalize without losing their Spanish citizenship. Conversely, the voluntary acquisition of the nationality of a non-Hispanic country implied the loss of Spanish citizenship.[87]

The privileged relationship between Spain and its former colonies in the Americas was also set in the naturalization by residence provision contained in a 1931 Decree[88] abrogating the 1916 Royal Decree.[89] Although the new decree maintained the general ten-year requirement,[90] it was reduced to two years for nationals of the '*Republicas hispanoamericanas, Portugal y Brasil*'[91] as well as for nationals of the Moroccan areas under Spanish protectorate.[92]

In addition to the special relationship with former colonies, the 1931 Constitution also aimed to better protect emigrants abroad and to increase the Spanish population.[93] As such, it provided for a more generous application of *ius sanguinis*, especially for emigrants who were not required to

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[82] *Constitución de la República Española del 9 de diciembre de 1931*.
[83] *Constitución de la República Española Titulo II Nacionalidad.*
[84] Rubio Marín and others (n 69) 8.
[85] Literally meaning "Hispanicness", *Hispanidad* refers to the cultural and biological background shared by Spain and its former colonies, which together are believed to form a community of Hispanic nations. This cultural interconnection is celebrated on 12 October (the day in which Christopher Columbus made landfall in the Americas), which is called *Dia de la Hispanidad* (i.e. Day of Hispanicness). See M Casas-Cortés and S Cobarrubias Baglietto, 'Articulating Europe from the Sephardic Margin. Restoring Citizenship for Expulsed Jews, and not Muslims, in Spain?' in K Loftsdóttir, B Hipfl and S Ponzanesi *Creating Europe from the Margins* (Routledge 2024) 31-33.
[86] *Constitución de la República Española* art 24.2. Translation: 'Hispanic nations of the Americas'.
[87] Ibid.
[88] *Decreto disponiendo se ajuste en lo sucesivo a las reglas y condiciones que se establecen la justificación y declaración de haber ganado vecindad los extranjeros en España del 29 de abril 1931 publicado en la Gaceta de Madrid num 120 de 1931*.
[89] *RD de 6 noviembre de 1916 dictando disposiciones relativas al modo de ganar los extranjeros vecindad en España*.
[90] *Decreto disponiendo se ajuste en lo sucesivo a las reglas y condiciones que se establecen la justificación y declaración de haber ganado vecindad los extranjeros en España del 29 de abril 1932* art 2.
[91] Translation: 'Hispano-American republics, Portugal and Brazil'.
[92] *Decreto disponiendo se ajuste en lo sucesivo a las reglas y condiciones que se establecen la justificación y declaración de haber ganado vecindad los extranjeros en España del 29 de abril 1932* art 4.
[93] Rubio Marín (n 67) 484.

register at embassies or consulates abroad in order to maintain their Spanish nationality,[94] thus enabling them to transmit it indefinitely.

3.2 Citizenship under Authoritarian Regimes and in the Aftermath of the Second World War

The period analyzed in the following paragraphs is characterized by major historical events that repeatedly reshaped the understanding and regulation of citizenship in France, Italy, and Spain.

In the aftermath of the First World War, citizenship law was altered to respond to the social consequences of the Great War and to domestic political developments, including the emergence of authoritarian regimes. These regimes, which were established in all three countries through different paths, instrumentalized citizenship as an exclusionary tool, therefore affecting the grounds for both attribution and loss of nationality. Conversely, the transition towards democracy led to the adoption of citizenship regimes aligned with the emerging principles of equality and political pluralism enshrined in democratic Constitutions.

3.2.1 France

This paragraph traces the evolution of French nationality law from the beginning of the Second World War until the mid-1980s debates that paved the way to the 1993 reform. Beginning with a short overview of the changes during the Vichy Regime, this section then considers the establishment of the 1945 *Code de la Nationalité* promoted by de Gaulle, and its subsequent reforms after decolonization.

The relevance of the Vichy Regime (1940-1944) in the context of citizenship is linked to the extensive use of expedited naturalization procedures established by the 1927 Nationality Law, allowing the conferral of French citizenship to approximately 200,000 individuals at the outbreak of the Second World War in order to make those residents liable for military service.[95] In fact, all naturalizations submitted and finalized under the 1927 law were subjected to revision under one of the first acts of the regime.[96] Further laws[97] were enacted resulting in the deprivation of nationality of around 15,000 people.[98] Even if not overtly targeted, the most affected community were the French

[94] *Constitución de la República Española* art 23.1.
[95] Weil and Spire (n 3) 190.
[96] *Loi du 22 juillet 1940 révision des naturalisations depuis la loi du 10 août 1927* art 1.
[97] Ibid art 2; *Loi du 23 juillet 1940 relative à la déchéance de la nationalité à l'égard des français ayant quitté la France* art 1.
[98] B Laguerre, 'Les dénaturalisés de Vichy 1940-1944' (1988) 20 Vingtième Siècle. Revue d'histoire 3, 11-14; MR Marrus and RO Paxton *Vichy France and the Jews: with a new Foreword [1995] by Stanley Hoffmann* (Stanford University Press 1995) 4.

Jews (ca. 6,000 were stripped of their citizenship), whose statelessness is understood to have facilitated their deportation.[99]

The severe population loss caused by such measures, together with the lives lost during the conflict, prompted the adoption of population growth policies in the postwar period. Against this background, in 1945 General de Gaulle, as the Chairman of the Provisional Government of the French Republic, mandated the promulgation of a new Nationality Code as part of the broader plan aimed at '*appeler à la vie les douze millions de beaux bébés qu'il faut à la France en dix ans'* as well as introducing selected immigrants.[100]

Compared to the 1927 law, the most significant change introduced by the 1945 Nationality Code[101] in the attribution of citizenship by descent was the step back in terms of gender equality. In fact, French mothers could transmit their nationality to their children only if they were born out of wedlock[102] or to a father who was either stateless or whose nationality was not known.[103] Nonetheless, responding to the rationale of maximizing the French population, French women would not lose their nationality upon marriage to a foreigner, unless they declared their will to acquire their husband's nationality before the celebration.[104] Conversely, foreign women marrying French men would automatically acquire their nationality after the marriage.[105]

Turning to the attribution of citizenship via *ius soli*, the code established the possibility to opt for French nationality at the age of majority for individuals born in France to foreign parents.[106] Furthermore, the new law confirmed the principle of double *ius soli* as the heart of the French citizenship regime.[107]

Beyond attribution at birth, the naturalization provisions contained in the 1945 law likewise reflected the underlying logic of population growth articulated by de Gaulle. In fact, it provided for an open approach with a general residence requirement set at five years.[108] Notably, the French government enacted a preferential treatment for individuals who were considered easier to assimilate. For example, foreigners born in France or married to a French woman,[109] as well as those holding a French university diploma,[110] qualified for naturalization after two years of residence. Similarly, no

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[99] *Loi du 3 octobre 1940 portant statut des juifs*.
[100] C de Gaulle, Discours devant l'Assemblée consultative provisoire (2 March 1945). Translation by Weil and Spire (n 3) 191: 'securing the twelve million children that France will need in the next ten years'.
[101] *Ordonnance n° 45-2441 du 19 octobre 1945 portant Code de la nationalité française*.
[102] *Code de la nationalité française* 1945 art 17 2°.
[103] Ibid art 18 1°.
[104] Ibid art 94.
[105] Ibid art 37.
[106] Ibid arts 44, 45, 47.
[107] Ibid art 23.
[108] Ibid art 62.
[109] Ibid art 63 1°.
[110] Ibid art 63 2°.

residence requirement needed to be fulfilled by foreigners who voluntarily enlisted in the armed forces during times of war.[111]

These provisions reflect the general rationale underlying the French nationality regime over the past century, according to which the French identity associated with citizenship is not necessarily linked to a shared ethnic background, but rather to the republican culture and values shared by the French community.[112]

Notably, the 1945 *Code de la nationalité* was amended in the aftermath of decolonization. In 1961 a new paragraph was added to Article 64[113] concerning the acquisition of French nationality without residence requirements, an opportunity that was extended to '*le ressortissant ou ancien ressortissant des territoires et Etats sur lesquels la France a exercé soit la souveraineté, soit un protectorat, un mandat ou une tutelle*'.[114] Such practice, which became little known especially after the adoption of the current 1993 Citizenship Law,[115] was officially repealed in 2006.[116]

The code was further amended after the independence of Algeria. A 1962 *Ordonnance*[117] allowed French nationals established in Algeria to retain their citizenship regardless of whether they were considered also Algerian citizens.[118] Conversely, Algerian nationals who did not hold French citizenship could be recognized as French citizens by declaration upon moving to France.[119] These provisions were subsequently set to expire on 19 March 1967, therefore providing for an *ex ante* loss of French citizenship dating back to the beginning of 1963.[120]

A substantial reform of the Code was enacted in 1973, notably impacting the rules on attribution by descent, dual citizenship, and double *ius soli*.[121]

First of all, the new law re-established gender equality for the transmission of nationality relating both to *ius sanguinis*[122] and double *ius soli*[123]. Furthermore, marriage would not impact the

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[111] Ibid art 64 8°.
[112] A Gatti, 'Forme e contenuti delle nuove cittadinanza: una prospettiva di diritto comparato' in A Di Stasi, MC Baruffi and L Panella (eds) *Cittadinanza europea e cittadinanza nazionale* (Editoriale Scientifica 2023) 99, 104.
[113] *Code de la nationalité française* 1945 art 64.
[114] *Code de la nationalité française* 1945 art 64 10° as amended by *Loi n°61-1408 du 22 décembre 1961 complétant et modifiant les art. 44, 45, 64, 82, 83, 106, 107 et 144 du code de nationalité française et relative a diverses dispositions concernant la nationalité française*. Translation: 'A person who is, or was formerly, a national of territories or states under French sovereignty, protectorate, mandate, or trusteeship'.
[115] *Loi n° 93-933 du 22 juillet 1993 réformant le droit de la nationalité.*
[116] *Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration* art 82 abrogating art 21-19 paragraphs 1, 2, 5 of the Civil Code.
[117] *Ordonnance n° 62-825 du 21 juillet 1962 relative à certaines dispositions concernant la nationalité française, prises en application de la loi n° 62-421 du 13 avril 1962*.
[118] Ibid arts 1 and 4.
[119] Ibid art 2.
[120] *Loi n°66-945 du 20 décembre 1966 modifiant l'ordonnance 62825 du 21-07-1962 relative a certaines dispositions concernant la nationalité française* art 1.
[121] *Loi n° 73-42 du 9 janvier 1973 complétant et modifiant le code de la nationalité française et relative à certaines dispositions concernant la nationalité française*.
[122] Ibid art 17.
[123] Ibid art 23.

status civitatis of the bride, who could maintain her nationality regardless of her husband's citizenship.[124] French citizenship could be acquired through marriage upon submission of a declaration, which the government nonetheless retained the power to oppose.[125]

The second major innovation of the 1973 code was the recognition of dual nationality. For the first time, French citizens living abroad could naturalize in their country of residence without losing their French nationality.[126] They could also transmit French citizenship indefinitely to their descendants.[127] However, the French government reserved the right to deprive of nationality, by judicial decision, those individuals who had never resided in France and who derived their French citizenship from ancestors who had likewise never lived in France for the preceding fifty years.[128]

Finally, the 1973 code addressed issues arising from the emergence of new states during decolonization[129] and it also introduced a special title containing the provisions concerning French overseas territories.[130]

The most notable effect of the new law on former colonial territories stemmed from a legal asymmetry affecting the application of double *ius soli* to children of Algerian parents.[131]

Due to France's colonial history, Algerian parents born in Algeria prior to independence were legally considered as having been born in France (since Algeria was administratively integrated into metropolitan France).[132] As a result, their children born in France after 1962 automatically acquired French citizenship at birth.

This mode of attribution became increasingly problematic in the 1980s. On the one hand, young Algerians residing in France demanded the possibility to opt for French citizenship at majority.[133] On the other hand, policymakers (especially right-wing politicians) advocated against automatic conferral of citizenship to this cohort of 'young unassimilated citizens' who neither identified as French nor shared republican values.[134]

Tensions became so acute that in 1986 the right-wing government led by Prime Minister Jacques Chirac sought to pass a bill modifying double *ius soli* by making the acquisition of citizenship conditional upon a declaration.[135] Such a solution, if not withdrawn, could have been welcomed by both parties.

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[124] Ibid art 37.
[125] Ibid arts 37 1° and 38
[126] Ibid art 87.
[127] Ibid arts 17 and 19.
[128] Ibid art 95.
[129] Ibid *Titre VII Des effets sur la nationalité française des transferts de souveraineté relatifs à certains territoires*.
[130] Ibid *Titre VIII Dispositions particulières concernant les territoires d'outre-mer*.
[131] *Loi n° 73-42* art 23.
[132] Ibid *Titre VII Des effets sur la nationalité française des transferts de souveraineté relatifs à certains territoires*.
[133] Weil and Spire (n 3) 195.
[134] R Brubaker, *Citizenship and nationhood in France and Germany* (Harvard University Press 1998) 148.
[135] Ibid 198.

3.2.2. Italy

Unlike France, Italy did not adopt racist and antisemitic laws because of German occupation during the Second World War, indeed such measures were introduced by Italy's own authoritarian regime.

Mussolini's fascist regime was first established in 1922, when he was entrusted by King Victor Emmanuel III to form a new government following the March on Rome, and it consolidated as an authoritarian regime in 1925.

Among the first laws enacted to shape the Italian State along fascist lines (the so-called *leggi fascistissime*),[136] a 1926 act provided for the deprivation of citizenship by decree to individuals whose conduct, in Italy or abroad, was deemed to undermine Italy's prestige, regardless of whether it amounted to a criminal offence.[137] In practice, this provision primarily resulted in the loss of citizenship of those Italians who chose exile following Mussolini's rise to power.[138]

In these early years, the Fascist regime was not antisemitic.[139] This approach changed after the allegiance with Nazi Germany in 1936.[140] In fact, soon after, Fascist Italy adopted special provisions towards foreign Jews,[141] which forbade alien Jews from settling in Italy[142] and acquire Italian citizenship. This latter clause provided for a retroactive effect, thereby depriving of their Italian citizenship all Italian Jews naturalized after 1 January 1919.[143]

Conversely, independently of German influence, Fascist Italy developed a racist character that was particularly prominent in the relations with its African colonies.[144] In fact, the provisions relating to nationality in the colonies at the beginning of the 20th century – which granted Italian citizenship to mixed children of Italian fathers[145] and allowed an easy path to naturalization for colonized populations[146] – were progressively dismantled.

First, in 1927 the acquisition of Italian citizenship was transformed into an arbitrary concession subject to stricter requirements.[147] Second, the inhabitants of the colonial territories were

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[136] F Cammarano, G Guazzaloca and MS Piretti *Storia contemporanea Dal XIX al XXI secolo* (Le Monnier 2015) 138.
[137] *Legge 31 gennaio 1926 n 108 "Modificazioni ed aggiunte alla legge 13 giugno 1912, n. 555, sulla cittadinanza"*.
[138] Arena, Nascimbene and Zincone (n 33) 340.
[139] E Hobsbawm *Age of Extremes. The Short Twentieth Century 1914-1991* (Abacus 1995) 116-117.
[140] The partnership was established by an Understanding signed on 24 October 1936, famously defined by Mussolini as the Rome-Berlin Axis, and enshrining a policy alignment between Nazi Germany and Fascist Italy. Central to the development of the Axis was the support that Germany offered Italy during the colonial war against Ethiopia (October 1935-May 1936) and during the period of economic sanctions imposed on Italy by the League of Nations for having invaded the only independent African State. See A Torre, 'Asse' (1948) Enciclopedia Italiana – II Appendice.
[141] *Regio decreto-legge 7 settembre 1938 n 1381 "Provvedimenti nei confronti degli ebrei stranieri"*.
[142] Ibid art 1
[143] Ibid art 3.
[144] R Ben-Ghiat *Fascist modernities. Italy, 1922-1945* (University of California Press 2001) 124.
[145] *Regio decreto-legge 31 ottobre 1919 n 2401 "Che approva le norme fondamentali per l'assetto della Cirenaica"* art 1.
[146] Ibid art 34.
[147] *Legge 26 giugno 1927 n 1013 "Legge organica per l'amministrazione della Tripolitania e della Cirenaica"* art 33.

assigned the status of *subjects* rather than *citizens*.[148] Third, marriages between Italian men and African women were forbidden and punishable by imprisonment ranging from one to five years.[149] These reforms culminated with the prohibition on Italian fathers to formally acknowledge their mixed-race children,[150] who were consequently assigned the status of *sudditi*.[151]

Within this increasingly racialized context, a new rationale grounding Italian citizenship was introduced by fascist laws. For the first time, a co-ethnic principle was clearly stated, namely that '*gli italiani non regnicoli non sono considerati stranieri*',[152] and thus that individuals who were Italians by 'custom and culture'[153] (e.g. people residing in Malta or in neighboring territories like the city of Nice and the region of Savoy)[154] were legally considered belonging to the "Italian race".

At the end of the Second World War and after the death of Mussolini, Italy underwent a democratization process starting with the 1946 Referendum[155] proclaiming Italy a republic and culminating with the adoption of the new democratic Constitution at the end of 1947.[156]

The Constitution did not regulate nationality as such, but in line with the principle of non-discrimination enshrined in Article 3,[157] it explicitly prohibited the deprivation of citizenship on political grounds.[158] However, notwithstanding its non-discriminatory character, the Constitution re-established a preferential treatment for co-ethnics, who could be placed on equal footing with citizens regarding access to public office and elective positions.[159]

Despite these structural changes, no comprehensive reform of the nationality law was adopted, but the need for new legislation was underscored by two issues that emerged around the 1970s: dual nationality and gender equality.

The postwar Italian governments, taking inspiration from the Spanish experience, tried to solve dual nationality issues by concluding bilateral agreements with countries hosting significant segments of the Italian diaspora.[160]

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[148] *Regio decreto-legge 1 giugno 1936 n 1019 "Ordinamento e amministrazione dell'Africa Orientale Italiana"* art 28.
[149] *Regio decreto-legge 19 aprile 1937 n 880 "Sanzioni per i rapporti d'indole coniugale fra cittadini e sudditi"*.
[150] *Legge 13 maggio 1940 n 822 "Norme relative ai meticci"* arts 3 and 4.
[151] Ibid arts 1 and 2.
[152] *Regio decreto-legge 17 novembre 1938 n 1728 "Provvedimenti per la difesa della razza italiana"* art 4. Translation: 'Italians outside the Kingdom are not considered foreigners'
[153] Zincone and Basili (n 36) 8.
[154] M Baccigalupi, 'Il principio della razza e lo stato di cittadinanza' (1938) 1(4) La Difesa della Razza 43, 45.
[155] *Decreto legislativo luogotenenziale 23 aprile 1946 n 219 "Norme per lo svolgimento del "referendum" istituzionale e per la proclamazione dei risultati di esso"*.
[156] *Costituzione della Repubblica Italiana [Cost]* (promulgated on 27 December 1947 and entered into force on 1 January 1948).
[157] *Cost* art 3.
[158] *Cost* art 22.
[159] *Cost* art 51 co 2.
[160] F Pastore, 'La comunità sbilanciata. Diritto alla cittadinanza e politiche migratorie nell'Italia post-unitaria' (2002) 7 Centro Studi di Politica Internazionale 3, 12.

However, the only successful agreement was signed with Argentina in 1971.[161] The Agreement allowed dual citizens to retain both nationalities by making dormant the *status civitatis* of the State they did not reside in, together with the rights and duties attached to it[162] (most notably the right to vote and the duty to perform military service)[163] which would be reactivated upon relocating to the other country.[164]

Even so, the solution was not appreciated either by the Italian legal doctrine, which did not agree with the idea of the '*cittadinanza sospesa*'[165] or by Italians abroad, who demanded to be recognized as full citizens.[166]

The promulgation of a new citizenship law was accelerated by the need to bring the Italian citizenship regime into line with the principle of gender equality enshrined in the Constitution, as women's citizenship status was still dependent on their husband's pursuant to Articles 2 and 10 of the 1912 Citizenship Law.[167]

The discrimination was first found in a 1975 case concerning the breach of a purchase contract of a print by a (former) Italian woman who had married an Austrian national. The Constitutional Court, when seized by the Court of Florence, held that Article 10 of the 1912 law was not '*in armonia con il principio generale di eguaglianza di cui all'art. 3 della Costituzione, concretandosi in una tipica discriminazione per ragione di sesso*'.[168] This judgement was incorporated a month later in the Family Reform Act, which established that women who had lost their Italian citizenship due to marriage to a foreigner could reacquire it by means of declaration.[169]

Subsequently, in a 1983 judgement relating to the attribution of nationality to a child born to a Portuguese father and an Italian mother, the Constitutional Court held that a proper application of the principle of gender equality entailed the attribution of Italian citizenship by descent not only through the father but also through the mother, regardless of the father's acknowledgement of the child.[170] This principle was confirmed three months later by the Council of State, who determined that the effects of this ruling were retroactive to 1 January 1948, that is the date on which the Constitution entered into force and the conflict between the provisions arose.[171]

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[161] *Accordo di cittadinanza tra la Repubblica italiana e la Repubblica Argentina* (signed 29 October 1971 and entered into force 19 May 1973).
[162] Ibid art 1.
[163] Ibid art 3.
[164] Ibid art 4.
[165] Pastore (n 175) 13. Translation: '" suspended" citizenship'.
[166] Ibid.
[167] L 555/1912 arts 2 and 10
[168] *Corte cost 16 aprile 1975 n 87*. Translation: 'consistent with the general principle of equality enshrined in Article 3 of the Constitution, amounting to a typical form of discrimination on the grounds of sex'.
[169] *Legge 19 maggio 1975 n 151 "Riforma del diritto di famiglia"* art 219.
[170] Corte cost 28 gennaio 1983 n 30.
[171] *Consiglio di Stato Parere n 105 15 aprile 1983*.

These incompatibilities called for the adoption of a new nationality law consistent with the Constitution.

3.2.3 Spain

Similarly to Italy, after the First World War, Spain experienced an authoritarian regime. The Francoist regime, named after its dictator Francisco Franco, started in 1938 and ended with Franco's death in 1975.

Following the victory of the *Bando nacional*[172] in the Spanish Civil War, the 1931 Republican Constitution was abrogated, and the 1889 Civil Code was re-established as the main framework regulating nationality.[173]

The new regime did not consider the regulation of nationality as a priority, and the first reform on this matter was enacted in 1954.[174]

The amendments primarily targeted emigrants in the former colonies, despite the fact that at the time Spaniards were mostly moving to central European countries,[175] as this trend was considered temporary.[176] The central issue addressed by the new legislation related to the number of generations entitled to retain Spanish nationality abroad. In this sense, the 1954 reform was much more liberal than the original 1889 provision, since it mandated registration only from the third generation of emigrants onwards to guarantee a connection with Spain.[177] Furthermore, Francoist Spain reincorporated in Article 22 of the Civil Code[178] the idea of *Hispanidad*, originally established by the 1931 Constitution,[179] and signed twelve bilateral agreements on nationality during the last twenty years of the regime.[180]

This privileged framework involved not only Spaniards abroad, but also Latin American nationals establishing their residence in Spain, who enjoyed a shortened residence requirement (two years) for naturalization.[181]

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[172] The term is used to designate the coalition of military rebels and civilian supporters who rose against the Second Spanish Republic. It was led by General Francisco Franco and brought together a heterogeneous alliance including conservative monarchists, the fascist *Falange*, sectors of the Catholic Church, and landowners. See Cammarano, Guazzaloca and Piretti (n 156) 166.

[173] Rubio Marín (n 67) 485.

[174] *Ley de 15 de julio de 1954 por la que se reforma el Titulo Primero del Libro Primero del Código Civil, denominado "De los españoles y extranjeros".*

[175] Specifically, Germany, France, Belgium, Luxembourg, the Netherlands, and Switzerland. See Rubio Marín (n 67) 485.

[176] Rubio Marín and others (n 69) 10.

[177] CC art 26, as amended by *Ley de 15 de julio de 1954*.

[178] CC art 22, as amended by *Ley de 15 de julio de 1954*.

[179] *Constitución de la República Española del 9 de diciembre de 1931* art 24.2.

[180] The treaties include those signed with Chile (24 May 1958), Peru (16 May 1959), Paraguay (15 June 1959) Nicaragua (15 June 1961), Guatemala (28 July 1961), Bolivia (12 October 1961), Ecuador (4 March 1964), Costa Rica (8 June 1964), Honduras (15 June 1966), Dominican Republic (15 March 1968), Argentina (14 April 1969), and Colombia (27 June 1979).

[181] Translation: 'Ibero-American countries or the Philippines'.

Beyond the special relations with former colonies, two aspects of the 1954 reform should be underscored.

First, the legislation introduced for the first time the double *ius soli* principle, which is still in force.[182]

Second, the law maintained the original 1889 provisions discriminating against women, specifically those establishing that marriage determined loss and acquisition of nationality.[183] These clauses were subsequently abrogated through the 1975 reform of the Civil Code,[184] which overhauled family law in order to recognize to women '*un ámbito de libertad y de capacidad de obrar en el orden jurídico que es consustancial con la dignidad misma de la persona*'.[185] Nevertheless, women remained unable to transmit their Spanish citizenship to their children, except in cases where the father failed to acknowledge the child.[186]

3.3 Current Citizenship Regimes

The contemporary citizenship regimes of France, Itay, and Spain emerged from the democratic consolidation of the mid-twentieth century. These frameworks are shaped by constitutional constraints, most notably gender equality in citizenship transmission and prohibition of arbitrary deprivation of nationality. At the same time, nationality law has increasingly become a salient issue in political debates, particularly in relation to immigration and integration. In fact, citizenship has turned into a highly polarizing issue, in part driven by the anti-immigration stances on which certain parties base their programs and policy positions.[187]

Consequently, the analysis in the following sections will focus on the stability of the core principles for citizenship attribution at birth and on the frequent adjustments to the legislation on nationality acquisition after birth.

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[182] CC art 17.3, as amended by *Ley de 15 de julio de 1954.*
[183] CC arts 22, 21 and 23.3.
[184] CC art 21, as amended by *Ley 14/1975 de 2 de mayo sobre reforma de determinados artículos del Código Civil y del Código de Comercio sobre la situación jurídica de la mujer casada y los derechos y deberes de los cónyuges*.
[185] *Ley* 14/1975 preamble. Translation: 'a domain of freedom and legal capacity within the legal order that is intrinsic to the very dignity of the person'.
[186] CC art 17.2, as amended by *Ley de 15 de julio de 1954*.
[187] C González Enríquez, 'Spanish public opinion on immigration and the effect of VOX' (2021) Real Instituto Elcano.

3.3.1 France

As previously introduced (Chapter 3 Paragraph 2.1), at the end of the 20th century citizenship became central in the French political debate, especially relating to issues of immigration and integration.[188]

In 1987, following the withdrawal by the second Chirac government of a controversial bill[189] seeking to reform nationality law by making the attribution of nationality under the double *ius soli* principle conditional upon declaration, a *Commission de la nationalité*[190] was established to produce a comprehensive and systematic report of the issues at stake in reforming the citizenship regime.[191]

It was against this backdrop that the 1993 Law on Nationality was developed.[192] This law, which established the reincorporation of nationality rules in the French Civil Code,[193] is part of a broader set of laws promulgated during Summer 1993 to set immigration constraints.[194] In fact, the most remarkable amendments incorporated in the 1993 law concerned the attribution of nationality via *ius soli*,[195] via double *ius soli*,[196] and through marriage.[197] Specifically, the new provisions introduced temporal constraints or requirements that significantly narrowed the number of people entitled to French nationality by simple *ius soli*, double *ius soli*, and naturalization via marriage.

Specifically, children born in France to foreign parents were no longer automatically granted French citizenship at the age of majority; but rather were required to manifest their will between the age of sixteen and twenty-one, as well as to prove their residence in France during the five years prior to the manifestation of will.[198]

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[188] C Bertossi, 'Country Report: France' (EUDO Citizenship Observatory 2010) 8.

[189] A Chalandon, Discours au Conseil des ministres du 12 Novembre 1986 Le Code de la nationalité française.

[190] The Nationality Commission, also known as the *Long Commission* after its chair Marceau Long, was a temporary and independent advisory body established in France in 1987 by the Prime Minister to examine French nationality laws. Its mandate was to assess the necessity and the appropriateness of reforming the Nationality Code by analyzing the issue 'without preconceived positions' and by considering a plurality of perspectives. Indeed, the Commission was composed of experts from diverse professional and academic backgrounds. The Commission's work was carried out in three phases. First, the members familiarized themselves with the nationality law and its issues. Second, they held hearings with mayors, representatives of political and civic associations, and experts in academy and civil service. Finally, they took part in field visits to observe the concrete application of administrative procedures related to nationality. The Commission submitted its final report to the Prime Minister on 7 January 1988. See D Schnapper, 'La Commission de la Nationalité, une instance singulière (Entretien avec Jacqueline Costa-Lascoux)' (1988) 4(1) Revue européenne des migrations internationals 9.

[191] Bertossi (n 188) 9.

[192] *Loi n° 93-933 du 22 juillet 1993 réformant le droit de la nationalité*.

[193] The French nationality rules were contained in the Civil Code from 1803 until 1927. During the 20th century, however, debates over whether nationality should be regarded as a matter of public or private law led to the relocation of these provisions and to the creation of an autonomous *Code de la Nationalité*. See Weil and Spire (n 3) 198. This was established by *Loi n° 93-933 du 22 juillet 1993 réformant le droit de la nationalité* art 50.

[194] Specifically, two other laws were adopted: *Loi n° 93-992 du 10 août 1993 relative aux contrôles et vérifications d'identité* that facilitated increased surveillance and *Loi n° 93-1027 du 24 août 1993 relative à la maîtrise de l'immigration et aux conditions d'entrée, d'accueil et de séjour des étrangers en France* that restricted the conditions of entry into the country. See Bertossi (n 188) 9.

[195] *Code de la nationalité française* Title II Chapter III Section III, as amended by *Loi n° 73-42*.

[196] Ibid arts 23 and 24.

[197] Ibid Title II Chapter III Section II.

[198] *Code de la nationalité française* art 44, as amended by *Loi n° 93-933*.

Similarly, the scope of double *ius soli* was restricted, notably excluding children of immigrants from former colonies, since '*la décolonisation appartient au passé*'[199]. In particular, French citizenship was granted only to individuals born before 1 January 1994 to parents born in a territory that, at the time of the parents' birth, was still a French colony or an overseas territory.[200] In the specific case of Algeria, individuals were not only required to have been born in France before the end of 1993 to a parent born in Algeria before independence, but also to prove their parent had resided in France for the five years preceding the child's birth.[201] This change was highly contested, since under the French rule Algeria was neither a colony nor an overseas territory, but rather a department of metropolitan France.[202]

Finally, foreign spouses of French nationals, instead of simply naturalizing through a declaration upon marriage,[203] were required to wait two years after the date of the marriage before declaring their will to become French.[204] Furthermore, the couple was required to prove that during that time they had been living together continuously and that the French national did not lose their citizenship.[205]

This 1993 framework, however, was short-lived. The left-wing government which took office after the 1997 elections commissioned a new report,[206] aiming to reconcile the positions on *ius soli* of politicians seeking to return to the previous legislation and of jurists advising against new modifications of the Nationality Law due to their impact on the status of second-generation immigrants.[207]

At the end, a new Law on Nationality was promulgated in 1998,[208] which amended the most controversial aspects of the 1993 law and overcame its shortcomings.[209]

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[199] M Long *Être français aujourd'hui et demain: rapport de la Commission de la nationalité* (1988) Tome 2 168. Translation: 'decolonization belongs to the past'.
[200] *Code de la nationalité française* art 23 al 2, as amended by *Loi n° 93-933*.
[201] Ibid art 23 3°.
[202] Bertossi (n 188) 10.
[203] *Code de la nationalité française* art 37-1, as in force following *Loi n° 73-42*.
[204] *Code de la nationalité française* art 37-1, as amended by *Loi n° 93-933*.
[205] Ibid.
[206] *Mission d'étude des législations de la nationalité et de l'immigration: rapports au Premier ministre,* also known as *Rapport Weil* after its chair.
[207] Weil and Spire (n 3) 200.
[208] *Loi n° 98-170 du 16 mars 1998 relative à la nationalité*.
[209] Weil and Spire (n 3) 200.

3.3.1.1 The Stable Birthright Citizenship Rules and the Recurrent Amendments to Naturalization Requirements

Since the 1998 reform, the provisions concerning birthright citizenship have remained unchanged in their contents, confirming the application of both *ius sanguinis* and *ius soli* when attributing French nationality.

The former principle, which has not been subject to reforms since 1973 when gender equality in nationality transmission was established, is enshrined in Articles 18 and 18-1 of the French *Code Civil*: a child born to at least one French parent is French, regardless of their place of birth.[210]

The latter principle is applied from birth to foundlings (Article 19),[211] to children who would be otherwise stateless (Article 19-1),[212] and to individuals born to a foreign parent also born in France, including children of Algerians who were born in Algeria before independence (Article 19-3).[213]

Instead, French citizenship is acquired automatically at majority, on the basis of simple *ius soli* after birth, by children born to foreign parents who have been living in France for five years (consecutive or not) after reaching the age of eleven (Article 21-7).[214] These individuals may also opt for an early acquisition of French nationality from the age of sixteen by submitting a declaration of will, or from the age of thirteen through a claim submitted by a parent on their behalf, provided that the five-year residence requirement is met (Article 21-11).[215]

This stability stands in sharp contrast to the evolution of naturalization procedures, which have been frequently amended in the past twenty-five years. The amendments did not affect the residence requirement – which has been set at five years since 1945 – but focused on the criteria used to operationalize assimilation into the French community. Most notably, they concerned the waiting periods after marriage and the knowledge of French language and culture.

Since the 1945 *Code de Nationalité* promoted by de Gaulle, the government has retained the discretion to deny French citizenship to foreigners on the grounds of *défaut d'assimilation*,[216] when applicants failed to demonstrate a sufficient knowledge of the French language[217] during the assessment process.[218]

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[210] C civ art 18, as amended by *Loi n° 93-933*.
[211] Ibid art 19.
[212] C civ art 19-1, as amended by *Loi n° 98-170*.
[213] Ibid art 19-3.
[214] Ibid art 21-7.
[215] Ibid art 21-11.
[216] Translation: 'insufficient assimilation'.
[217] *Code de la nationalité française* art 69.
[218] Ibid art 71.

Following the relocation of these provisions into the Civil Code (Articles 21-24 and 21-25),[219] the contents of the *control de assimilation* have changed several times.

In particular, in 2003, alongside the linguistic requirement, applicants were also required to demonstrate the knowledge of the rights and duties conferred by French nationality.[220] Both linguistic and civic knowledge were assessed during an individual interview carried out by an officer of the prefecture or the relevant consular authority.[221]

Subsequently, a 2011 law provided for additional knowledge to be tested during the interview:[222] French history, culture and society, as well as the adherence to fundamental principles and values of the Republic.[223] Notably, a Decree issued in the same year formally established the language proficiency requirement by reference to the Common European Framework of Reference for Languages (CEFR), setting it at level B1. This requirement was to be fulfilled through possession of a certificate issued by state-accredited bodies attesting to a level equal or higher than B1.[224]

Similarly to the procedure of naturalization by residence, naturalization through marriage has also been subject to frequent amendments, relating both to the level of assimilation of the foreign spouse and to the duration of marriage necessary for the acquisition of French nationality.

After the 1998 reform set the delay for claiming French citizenship at one year after the celebration of the marriage,[225] in 2003 the requirement was diminished to two years, which increased to three years if, at the moment of the declaration, the foreign spouse had not lived on a continuous and uninterrupted basis in France for at least one year.[226] Furthermore, the applicant was required to demonstrate sufficient knowledge of the French language, as well as the material and affective community of life between the spouses since marriage.[227] The cessation of such community of life within twelve months from the declaration of intent to acquire French nationality constituted a presumption of fraud, therefore providing grounds for challenge by the public prosecutor.[228]

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[219] C civ arts 21-24 and 21-25, as amended by *Loi n° 93-933*; *Décret n°93-1362 du 30 décembre 1993 relatif aux déclarations de nationalité, aux décisions de naturalisation, de réintégration, de perte, de déchéance et de retrait de la nationalité française* art 43.

[220] C civ art 21-24, as amended by *Loi n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité*.

[221] *Décret n°93-1362* art 43, as amended by *Décret n° 2005-25 du 14 janvier 2005 modifiant le décret n° 93-1362 du 30 décembre 1993 relatif aux déclarations de nationalité, aux décisions de naturalisation, de réintégration, de perte, de déchéance et de retrait de la nationalité française*.

[222] *Décret n°93-1362* art 41, as amended by *Décret n° 2012-126 du 30 janvier 2012 relatif au niveau et à l'évaluation de la connaissance de l'histoire, de la culture et de la société françaises requis des postulants à la nationalité française au titre de l'article 21-24 du code civil*.

[223] C civ art 21-24, as amended by *Loi n° 2011-672 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité*.

[224] *Décret n°93-1362* art 37, as amended by *Décret n° 2011-1265 du 11 octobre 2011 relatif au niveau de connaissance de la langue française requis des postulants à la nationalité française au titre des articles 21-2 et 21-24 du code civil et à ses modalités d'évaluation*.

[225] C civ art 21-2, as amended by *Loi n° 98-170*.

[226] C civ art 21-2, as amended by *Loi n° 2003-1119*.

[227] Ibid.

[228] C civ art 26-4, as amended by *Loi n° 2003-1119*.

A subsequent amendment in 2006 further extended the waiting period to submit the declaration after marriage to four years, which increased to five years if the foreign spouse had not completed three years of uninterrupted residence at the time of the declaration.[229]

A later amendment in 2011 added a new paragraph to the provision, establishing that language proficiency was to be assessed in accordance with the procedures set by the Council of State, mirroring those applicable to naturalization by residence[230] (B1 proficiency level to be demonstrated through an official certificate).[231]

This framework governing naturalization underscores the assimilationist character of the French citizenship regime.[232] According to the paradigm of *assimilation*, foreigners residing in France are virtually required to sever ties with their countries of origin and to adopt French language and culture as their own.[233]

In this context, Islam has emerged as a particularly sensitive matter for the assessment of assimilation, revealing the extent to which cultural and religious practices are scrutinized as indicators of national belonging during the naturalization process.[234] In practice, refusals of naturalization on the grounds of *défaut d'assimilation* have disproportionately affected Muslim women due to the wear of hijab or niqab or to the adoption of a lifestyle deemed to be not compatible with French republican values, specifically gender equality, by civil servants conducting the naturalization.[235]

This approach has been shaped both by the government through circulars issued by the *Direction de la population et des migrations* and by the jurisprudence of the *Conseil d'État*. These sources established how to discern cultural practices consistent with assimilation in French culture (i.e. the 'traditional headscarf') from conducts indicating affiliation with fundamental Islam (namely, wearing niqab[236] and following a lifestyle imposing a subaltern and discriminatory status to women).[237]

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[229] C civ art 21-2, as amended by *Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration*.
[230] C civ art 21-2, as amended by *Loi n° 2011-672*.
[231] *Décret n°93-1362* art 14, as amended by *Décret n° 2011-1265*.
[232] D Porena, 'C'è spazio anche in Italia per una concezione "culturalista" della cittadinanza? Brevi profili comparatistici e spunti di riflessione in vista di una revisione della legislazione nazionale' (2012) 2/2012 Federalismi.it 6.
[233] C Beauchemin, H Lagrange and M Safi, 'Transnationalism and immigrant assimilation in France: Between here and there?' (2011) Imiscoe Annual Conference, Workshop 6: Integration and transnationalism: how are the two connected?; D de Palo, R Faini and A Venturini, 'The social assimilation of immigrants' (2006) Discussion Paper No. 2439 Institute for the Study of Labor (IZA).
[234] Bertossi (n 188) 25.
[235] Ibid 26.
[236] *Circulaire DPM n° 2000-254 du 12 mai 2000 relative aux naturalisations, réintégrations dans la nationalité française et perte de la nationalité française*.
[237] *Circulaire du 27 juillet 2005 relative à la procédure d'acquisition de la nationalité française par déclaration à raison du mariage*; *Conseil d'État [CE]* (2ème et 7ème sous-sections réunies), 286798, 27 *juin* 2008.

The same assimilationist logic that governs access to French citizenship has also influenced the conditions under which French nationality might be lost. In this respect, the Civil Code provides for specific grounds of deprivation of nationality applicable to naturalized citizens.

Specifically, they might be deprived of their citizenship by decree (provided that this does not result in statelessness) within ten years following acquisition, if they have engaged in acts '*incompatibles avec la qualité de Français et préjudiciables aux intérêts de la France*'[238] for the benefits of a foreign State. In addition, they might be stripped of their citizenship if convicted based on a felony or misdemeanor constituting an infringement of the fundamental interests of the nation, an act of terrorism, an offence 'against public administration committed by people exercising a public function',[239] or for having evaded obligations imposed under the *Code du service national*.[240]

3.3.2 Italy

A new formulation of the Italian nationality law was passed by the Italian Parliament on 5 February 1992,[241] abrogating all previous legislation on nationality[242] and ensuring the conformity of nationality rules with the Constitution.

The cornerstone of the 1992 Nationality Law is the *ius sanguinis* principle, according to which '*è Italiano alla nascita il figlio di padre o madre cittadini*'.[243] Notably, the legislation did not establish generational limits or residence requirements for descendants of emigrated Italians, who could obtain the recognition of Italian citizenship provided that their Italian ancestor had never renounced it through naturalization abroad.[244]

Preferential treatment for Italian emigrants and their descendants was further reinforced by the recognition of dual nationality, since the acquisition of a foreign citizenship no longer entailed the automatic loss of Italian nationality.[245] Under the new law, Italian citizenship could be lost only in a limited set of circumstances, including public office or military service with a foreign State or an international organization not involving Italy against a governmental order to relinquish such service.[246] To address situations where citizenship was lost because of the previous legal framework

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[238] C civ art 25 4°, as amended by *Loi n° 98-170*. Translation: 'incompatible with the status of French national and harmful to the interests of France'.
[239] *Code Pénal Chapitre II du Titre III du Livre IV.*
[240] C civ art 25, as amended by *Loi n° 98-170*.
[241] *Legge 5 febbraio 1992 n 91 "Nuove norme sulla cittadinanza".*
[242] Ibid art 26.
[243] Ibid art 1 lett a. Translation: 'an individual is Italian at birth if born to an Italian father or mother'.
[244] Zincone and Basili (n 36) 10.
[245] Ibid art 11.
[246] Ibid art 12.

prohibiting dual nationality, the 1992 law provided for a two-year timeframe to reacquire it[247] (which was extended twice by later legislation).[248]

Alongside this expansive approach towards the Italian diaspora, the new framework established a privileged relationship with ethnic Italians. Specifically, individuals who formerly resided in territories that belonged to the Austro-Hungarian Monarchy and emigrated before 1920, as well as their descendants, could acquire Italian citizenship through a preferential procedure.[249] (See Chapter 4 Paragraph 3.2).

However, such provisions centered on *ius sanguinis* and on the inclusion of diaspora were increasingly at odds with Italy's demographic reality at the time.[250] Indeed, from 1973 onwards, the number of immigrants residing in Italy outnumbered the number of emigrants leaving the country.[251]

As such, the inadequacy of the 1992 law stemmed from the virtual lack of *ius soli* provisions. In fact, Italian citizenship is acquired at birth by virtue of being born in Italy solely by foundlings or by individuals who would otherwise be stateless.[252] By contrast, the general rule applicable to children born in Italy to foreign parents requires continuous residence in the country until the age of majority[253] to be able to submit a declaration to claim Italian citizenship within the following twelve months.[254]

Over the years, numerous bills were introduced in Parliament with the aim of remedying this shortcoming.[255]

3.3.2.1 Not only *Ius Sanguinis*: Failed and Partial Reforms of Territory- and Residence-based Citizenship Acquisition

The initial proposals seeking to change the attribution of Italian nationality by territory generally provided for the adoption of conditional *ius soli*.

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[247] L 91/1992 art 17.

[248] *Legge 22 dicembre 1994 n 736 "Modifica dell'articolo 17 della legge 5 febbraio 1992, n. 91, concernente la proroga del termine per il riacquisto della cittadinanza italiana"* art 1; *Legge 23 dicembre 1996 n 662 "Misure di razionalizzazione della finanza pubblica"* art 2 co 195.

[249] Originally, this rule was contained in Article 18 of the 1992 law. But the provision was repealed in 2000 and replaced by a five-year timeframe to declare one's will to become Italian (*Legge 14 dicembre 2000 n 379 "Disposizioni per il riconoscimento della cittadinanza italiana alle persone nate e già residenti nei territori appartenuti all'Impero austro-ungarico e ai loro discendenti"*). A subsequent Act amended the 1992 law by introducing a specific pathway to the acquisition of Italian nationality for individuals who resided in the territories ceded to Yugoslavia at the end of the Second World War (*Legge 8 marzo 2006 n 124 "Modifiche alla legge 5 febbraio 1992, n. 91, concernenti il riconoscimento della cittadinanza italiana ai connazionali dell'Istria, di Fiume e della Dalmazia e ai loro discendenti"*).

[250] Zincone and Basili (n 36) 15.

[251] Ibid.

[252] L 91/1992 art 1.

[253] The age of majority is set at eighteen in Italy pursuant to *Codice civile* art 2, as amended by L 39/1975.

[254] L 91/1992 art 4 co 2.

[255] Between 1992 and 2017, more than 150 bills were presented. See G Milani, 'Cittadinanza e integrazione. L'influenza del diritto comparato sulla disciplina italiana e sulle proposte di riforma' (2018) Federalismi.it.

For example, the *Amato Bill* underscored the need to reform Italian citizenship law to take into account '*le varie situazioni che contraddistinguono la presenza degli stranieri nel nostro Paese*'.[256]

The bill sought to introduce the attribution of citizenship through simple *ius soli* to children born in Italy to a foreign parent who had resided in the country for five uninterrupted years before the child's birth, as well as via double *ius soli*.[257] In both cases, one parent had to satisfy an income requirement equivalent to that required for the issuance of a European Community residence permit.

The reform also aimed to introduce the possibility of citizenship acquisition after birth for minors not born Italy on the basis of *ius culturae*, that is the acquisition of citizenship by virtue of the completion of an education cycle at an Italian school.[258] Specifically, a foreign minor residing in the country for five years who had completed either an educational cycle or a vocational training program, or who had worked for a year in the country, could claim Italian citizenship upon a declaration submitted by their parents, provided that at least one of them satisfied the same residence and income requirements also enshrined for the application of *ius soli*. Furthermore, under the reform Italian citizenship would have been granted at the age of majority to foreigners who had lived in Italy for at least five consecutive years.[259]

Nevertheless, the Amato Bill failed to advance through the legislative process and ultimately lapsed with the dissolution of the Fifteenth Legislature.[260]

By contrast, the so-called *Ius Soli Bill*[261] proved more successful, having been approved by the Chamber of Deputies on 13 October 2015. Nonetheless, it failed to obtain approval in the Senate before the dissolution of Parliament on 28 December 2017.

Similarly to the *Amato Bill*, the 2015 proposal envisaged the granting of Italian citizenship through *ius soli* to children born to a foreign parent holding an Italian or an EU long-term resident permit.[262]

Furthermore, the bill proposed to extend Italian citizenship, on the basis of *ius culturae*, to individuals born in Italy or to those residing in the country since the age of twelve.[263] In both cases, citizenship would have been granted upon reaching majority, following a declaration of will submitted before the individual's eighteenth birthday by the individual concerned or by their parents.

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[256] *Lavori preparatori Atto Camera n 1607 (presentato il 30 agosto 2006) XV Legislatura*. Translation: 'the different circumstances that characterize the presence of foreigners in our country'.
[257] Ibid art 1.
[258] E Codini, 'Ius scholae. Luci e ombre di un progetto' (2022) Fondazione ISMU.
[259] *Lavori preparatori Atto Camera n 1607* art 2.
[260] Milani (n 255) 2.
[261] *AS n 2092 XVII Legislatura*.
[262] Ibid art 1 co 1 lett a.
[263] Ibid art 1 co 1 lett d.

Despite the failure of comprehensive reform proposals, limited amendments concerning the status of foreign nationals born in Italy were adopted.

Most notably, since 2013 it is impossible to impute administrative shortcomings or parental errors to applicants.[264] Furthermore, municipal civil registrars are legally required to inform the individual, within six months prior to their eighteenth birthday, of their eligibility to acquire Italian citizenship pursuant to Article 4(2).[265]

A further characteristic of the Italian citizenship regime established in 1992 that underscores its inadequacy in the current context is its naturalization clause, which did not consider the fact that, at the time of the law's adoption, the immigrant population in Italy already exceeded half a million and that during the first decade of the 21st century that figure rose to 9.5 million.[266]

Since the adoption of the act, the residence requirement has not changed: four years for EU country nationals[267] and ten years for third-country nationals.[268]

Similarly to the case of individuals born in Italy to foreign parents, several bills were presented to amend the residence requirement for third-country nationals. Such proposals, e.g. the aforementioned *Amato Bill*, usually envisaged a five-year requirement,[269] as established in the 1912 Law on Nationality.[270] Conversely, the 2015 *Ius Soli Bill* proposed a preferential treatment for foreigners who entered the national territory before reaching the age of majority. In fact, they would have been eligible to claim Italian citizenship if they had resided in the country for six years and had attended an educational cycle, or a three- or four-year vocational training program, attaining the final qualification. [271]

In addition to naturalization by residence, a foreign national could also acquire Italian citizenship through marriage, which was subject to less stringent requirements. In fact, the 1992 regime required foreign spouses to have resided in Italy for six months or, alternatively, to wait three years after the celebration of the marriage if the couple's domicile was abroad.[272] However, this provision was amended in 2009: under the current framework, the residence requirement is set to two

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[264] *Decreto-legge 21 giugno 2013 n 69 "Disposizioni urgenti per il rilancio dell'economia" convertito con modificazioni dalla L 9 agosto 2013 n 98* art 33 co 1.
[265] Ibid art 33 co 2.
[266] ISTAT, 'Stranieri residenti in Italia per sesso e regione ai censimenti 1981, 1991, 2001, 2011 e al 31 dicembre 2012, 2013 e 2014' Serie Storiche.
[267] L 91/1992 art 9 co 1 lett d.
[268] Ibid art 9 co 1 lett f.
[269] *Lavori preparatori Atto Camera n 1607* art 4 co 2.
[270] L 555/1912 art 4 co 2.
[271] *Lavori preparatori Atto Camera n 1607* art 1 co 1 lett e.
[272] L 91/1992 art 5.

years for couples living in Italy and three for those living abroad,[273] but both time limits are halved if the couple has children.[274]

The most notable reform concerning naturalization, both through residence and through marriage, was adopted in 2018 in the context of a "security package".[275] The so-called *Decreto Salvini* prescribed an additional requirement for naturalization, namely proficiency in Italian at CEFR level B1 to be demonstrated through a certificate issued either by a body or by a public school accredited by the Ministry of Education, Universities and Research and by the Ministry of Foreign Affairs and International Cooperation.[276]

Interestingly, this requirement applies only to individuals who do not hold a EU long-term residence permit or who have not signed the *Accordo di integrazione*.[277] As a result, third-country nationals are generally required to satisfy the A2 level of language proficiency required for residence permits.[278]

3.3.3 Spain

Following Franco's death in 1975, Spain began a democratic transition towards a parliamentary liberal democracy. A key milestone in this process was the adoption of a new democratic Constitution in 1978.[279]

The Constitution did not provide for a comprehensive regulation of Spanish nationality, rather it delegated the task to ordinary legislation[280] and laid general principles, namely the prohibition of citizenship deprivation for citizens "by origin"[281] and the capacity to conclude dual nationality treaties with Ibero-American States or with countries having a special relationship with Spain.[282] This latter clause confirms the recognition, even during this new democratic stage of Spanish history, of the

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[273] L 91/1992 art 5, as amended by *Legge15 luglio 2009 n 94 "Disposizioni in materia di sicurezza pubblica"*.
[274] Ibid art 5 co 2.
[275] *Decreto-legge 4 ottobre 2018 n 113 "Disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata" convertito con modificazioni dalla L 1 dicembre 2018 n 132*.
[276] L 91/1992 art 9.1, as amended by DL 113/2018.
[277] *Decreto legislativo 25 luglio 1998 n 286 "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero"* art 4-bis co 2. The *Integration Agreement* is a necessary prerequisite for the issuance of a residence permit. It consists in the definition of specific integration objectives to be achieved during the period of validity of the residence permit.
[278] D lgs 286/1998 art 9 co 2-bis; *Decreto del Presidente della Repubblica 14 settembre 2011 n 179 "Regolamento concernente la disciplina dell'accordo di integrazione tra lo straniero e lo Stato, a norma dell'articolo 4-bis, comma 2, del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286"* art 2 co 4 lett a.
[279] *Constitución Española [CE]* 1978.
[280] Ibid art 11.1.
[281] Ibid art 11.2
[282] Ibid art 11.3.

existence of a Hispano-American community rooted in the shared historical ties among these nations.[283]

Consistent with the Constitution, the provisions governing Spanish citizenship can be found in their traditional location, that is Articles 17 to 28 of the Civil Code. Similarly to Italy's process of democratization (see Chapter 3 Paragraph 2.2), these articles were not immediately amended to bring them into conformity with the principles enshrined in the new Constitution. Indeed, the first reform undertaken in this sense took place in 1982.[284]

The impact of the 1978 Constitution on nationality provisions was threefold. First, Article 17(1) regulating nationality by descent was adapted to the principle of gender equality,[285] thereby allowing mothers to transmit Spanish citizenship to their children[286] from 1982 onwards.[287]

Second, the regime on loss of nationality[288] was aligned with Article 11(3) of the Constitution, according to which E*spañoles de origen*[289] could lose their nationality only after a declaration of will subject to specific conditions laid down by law,[290] while naturalized citizens were subject to stricter provisions.[291]

Third, a generous regime on dual nationality was established, thereby weakening the traditional idea of nationality historically upheld by the Spanish citizenship regime.[292] In accordance with the broad definition of '*países iberoamericanos o aquellos que hayan tenido o tengan una particular vinculación con España*'[293] provided by the Constitution,[294] Article 23 of the Civil Code provided that dual nationals by birth[295] and Spaniards by origin[296] were entitled to keep their Spanish citizenship when holding dual nationality of the specific set of countries set by law.[297]

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[283] See n 85.
[284] *Ley 51/1982 de 13 de julio de modificación de los artículos 17 al 26 del Código Civil*.
[285] CE art 14.
[286] CC art 17(1), as amended by *Ley* 51/1982.
[287] The adjustment to the constitutional principle was not given retroactive effect to the date on which the Constitution entered into force. See *Instrucción de 16 de mayo de 1983 de la Dirección General de los Registros y del Notariado sobre nacionalidad española* s I.
[288] CC arts 22 and 23, as amended by *Ley* 14/1975.
[289] Translation: 'Spaniards by origin'.
[290] CC art 22, as amended by *Ley* 51/1982.
[291] Ibid art 24. These rules included the conviction for fraud or related offences during the process of acquisition, as well as holding public office for a foreign country or serving in a foreign army, irrespective of any instruction issued by the Spanish government.
[292] P Abarca Junco, 'La reforma del derecho de la nacionalidad de 1990' (1992) 1/1992 Boletín de la facultad de derecho UNED 65, 68.
[293] Translation: 'Ibero-American States or those countries that have had or continue to have a special connection with Spain'.
[294] CE art 11.3.
[295] CC art 23 par 2.
[296] Ibid art 23 par 4.
[297] These countries were enunciated in Article 23 of the Civil Code: Ibero-American States, Andorra, the Philippines, Equatorial Guinea, Portugal, and any other country with which Spain would conclude a bilateral agreement.

Although the 1982 legislation brought the nationality rules into conformity with the new constitutional principles, therefore laying the foundations of the current citizenship regime, the framework was effectively consolidated by a 1990 Act.[298] This reform was considered necessary, since the 1982 provisions on nationality had created interpretative issues due to their lack of clarity, which were of particular concern given the fundamental nature of nationality law.[299]

Notwithstanding these difficulties, the 1990 reform did not change the ideas and principles underlying the law on nationality.[300]

3.3.3.1 The Three Decades of Structural Stability of the Spanish Nationality Law

Within this framework, the most significant change introduced in the post-Franco citizenship regime was the structural distinction between *nacionalidad originaria*, i.e. automatic acquisition or at birth attribution of citizenship, and *nacionalidad derivativa*, i.e. those instances where nationality is acquired non-automatically after birth.[301] The main implication of this distinction lies in the set of prerogatives reserved to Spaniards by origin, namely those deriving from Article 11 of the Constitution (the prohibition of citizenship deprivation[302] and the possibility to retain Spanish nationality when naturalizing in certain countries)[303] and the capacity to be the King's tutor.[304]

According to the current legislation, citizenship by origin is mostly attributed by descent.[305] It may also be acquired via simple *ius soli* by foundlings[306] and by children who would otherwise be stateless,[307] as well as through double *ius soli*.[308]

Conversely, there are two modes to acquire derivative Spanish citizenship: option and naturalization.

Acquisition by option represents a privileged form of acquisition for people with special ties to Spain.[309] The first formulation of this provision included, for example, individuals who are or have been under parental authority.[310]

Acquisition through naturalization includes two modalities: *carta de naturaleza* and residence. The former is a discretionary attribution by Royal decree used in exceptional

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[298] *Ley 18/1990, de 17 de diciembre, sobre reforma del Código Civil en materia de nacionalidad*.
[299] Ibid preamble.
[300] Rubio Marín (n 67) 490.
[301] Rubio Marín and others (n 69) 20.
[302] CE art 11.2; CC art 25, as amended by *Ley* 18/1990.
[303] CE art 11.3; CC art 24, as amended by *Ley* 18/1990.
[304] CE art 60.1.
[305] CC art 17.1, as amended by *Ley* 18/1990.
[306] Ibid art 17.1.d.
[307] Ibid art 17.1.c.
[308] Ibid art 17.1.b.
[309] Rubio Marín and others (n 69) 21.
[310] CC art 19, as amended by *Ley* 51/1982; CC art 20, as amended by *Ley* 18/1990.

circumstances, which are not better defined.[311] The latter mode establishes that people living interruptedly in Spain for ten years are eligible to claim Spanish citizenship.[312] However, several categories of applicants enjoy shorter residence requirements. Most notably, nationals of Ibero-American countries, Andorra, the Philippines, Portugal, Equatorial Guinea and Sephardic Jews enjoy a privileged regime requiring the fulfillment of a two-year residence requirement.[313]

Additional requirements for naturalization include *buena conducta cívica*[314] and a sufficient level of integration in Spanish society.[315] The latter requirement is demonstrated through certification of language proficiency at CEFR level A2 and by passing a specific examination (CCSE) assessing the knowledge of the historical, constitutional, and sociocultural values of Spain[316] – both assessments are designed and administered by the *Instituto Cervantes*.[317]

Despite the numerous exceptions characterizing the Spanish naturalization regime, over the years the general ten-year residence requirement has been subject to constant criticism and to bills trying to lower it to five years, given the growing presence of immigrants in Spain.[318]

Most notably, in 1998 the *Comisión de Política Social y Empleo* of the Spanish Congress developed a special report focused on both Spanish emigrants and immigrants living in Spain.[319] The document underscored the need for a new approach to immigration[320] and for a reassessment of the nationality law that considered the presence of long-term emigrants in the country.[321]

However, the Congress ultimately decided to focus only on the first part of the report on Spanish emigrants to develop the 2002 Civil Code reform.[322] The changes in question overall aimed at facilitating the acquisition of Spanish nationality for the descendants of emigrants.

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[311] CC art 21, as amended by *Ley* 18/1990.
[312] Ibid, art 22.1
[313] Ibid.
[314] This criterion of *good civic conduct* is not specified further. Applicants are asked to present certificates proving a lack of criminal record and 'good behavior' issued both by the Spanish authorities and those of the country of origin. See Rubio Marín (n 69) 26.
[315] CC art 22.4.
[316] *Real Decreto 1004/2015 de 6 de noviembre por el que se aprueba el Reglamento por el que se regula el procedimiento para la adquisición de la nacionalidad española por residencia* art 6.1.
[317] Ibid art 6.2. The *Instituto Cervantes* is a non-profit organization founded by the Spanish Government in 1991. Its mission is to promote the teaching of Spanish and the co-official languages of Spain, as well as to foster knowledge of the cultures of Spanish-speaking countries. See Instituto Cervantes, 'La institución'on their website.
[318] Rubio Marín and others (n 69).
[319] Congreso de los Diputados, Informe de la Subcomisión para estudiar la situación de los españoles que viven afuera, así como la de los inmigrantes y refugiados que han llegado a nuestro país; conocer a fondo sus necesidades y reivindicaciones prioritarias; proponer las medidas – legales y sociales – que sea conveniente adoptar para conseguir solucionar los problemas existentes (154/8) (1998).
[320] Ibid 18.
[321] Ibid 14.
[322] Preamble of *Ley 36/2002 de 8 de octubre de modificación del Código Civil en materia de nacionalidad*.

Specifically, the new provisions granted citizenship by option[323] to individuals born to a parent who was '*originariamente Español y nacido en España*',[324] without setting age limits,[325] and introduced a facilitated mode of naturalization for foreign-born grandchildren of former Spaniards. Furthermore, emigrants and their descendants were exempted from any residence requirement for the reacquisition of Spanish nationality.[326]

Along the same lines, the provision related to loss of nationality was amended. Most notably, Spaniards born abroad were required to declare their intention to retain Spanish nationality before the civil registry within three years of reaching the age of majority.[327] Similarly, Spaniards by origin were allowed to acquire (or exclusively use) a second nationality without losing the Spanish one by declaring their will to do so within three years from naturalization.[328] Conversely, naturalized Spaniards would lose Spanish nationality if, for a period of three years following acquisition, they made exclusively use of their original citizenship.[329]

No further comprehensive reforms on Spanish nationality were adopted since then.[330] However, in the early 2000s complementary legislation was enacted, creating temporary windows for the preferential acquisition of Spanish citizenship for specific categories of individuals.

The first law of this kind was promulgated in 2007 and is commonly known as *Ley de la Memoria Histórica*.[331] Its main objective was to publicly condemn the Francoist regime for its severe violations of human rights and to 'help close the still open wounds' of people affected by the Civil War and the subsequent dictatorship.[332]

The law provided for the acquisition of Spanish citizenship for the grandchildren of those who had lost it due to exile,[333] as well as for the possibility for combatants of the International Brigades to acquire Spanish nationality through *carta de naturaleza* without renouncing their original nationality.[334] (See Chapter 4 Paragraph 3.3).

Subsequently, in 2015, a second reacquisition program established the possibility for Sephardic Jews to acquire Spanish citizenship as part of a broader process of reconciliation with the

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[323] In this case, Spanish citizenship is considered acquired in its derivative form.
[324] CC art 20.1.b, as amended by *Ley* 36/2002. Translation: 'Spanish by origin and born in Spain'.
[325] Ibid art 20.3.
[326] Ibid art 22.2.
[327] Ibid art 24.3.
[328] Ibid art 24.1.
[329] Ibid art 25.1.a.
[330] Rubio Marín and others (n 69) 37.
[331] *Ley 52/2007 de 26 de diciembre por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura*.
[332] Ibid preamble.
[333] Ibid *Disposición adicional séptima*.
[334] Ibid art 18. A similar provision had already been established in *Real Decreto 39/1996 de 19 de enero sobre concesión de la nacionalidad española a los combatientes de las Brigadas Internacionales en la guerra civil española*.

Sephardic community, which aimed to officially 'reopen the doors' after five centuries of exile.[335] (See Chapter 4 Paragraph 3.3).

3.4 Recent Amendments (2020-2025)

As can be gathered from the previous sections of this chapter, nationality law is a highly dynamic field. The following paragraphs will examine the most recent reforms adopted between 2020 and 2025 in France, Italy, and Spain, whose practical effects and long-term implications have yet to be assessed. Accordingly, the analysis will focus on the legal content and declared rationale of these amendments.

3.4.1 France

Since the 1980s, nationality issues – and specifically naturalization – have progressively been framed within the broader apparatus of immigration control, which led to the growing convergence between nationality and immigration laws.[336] From the early 2000s, reforms on these matters have aligned with the paradigm of *immigration choisie*.[337] This policy aimed at breaking with post-colonial family-based immigration and at facilitating economically driven immigration by "selecting" immigrants based on their profile, skills, as well as (indirectly) their origin and perceived capacity to adapt to French culture and society.[338] In this context, integration no longer functions as a criterion for naturalization eligibility, but rather as a precondition to enter France.[339]

Against this backdrop, in January 2024, France adopted its 118th law on immigration since 1945[340] (*Loi Darmanin*).[341] Notably, the law significantly tightened France's immigration regime by increasing the enforcement of removal of irregular immigrants, by reforming asylum procedures to speed up decisions, and by systematically linking asylum refusals to the administrative measure of *Obligation de Quitter le Territoire Française* (OQTF).[342] Moreover, it introduced a trial one-year residence permit for workers in shortage occupations.[343]

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[335] *Ley 12/2015 de 24 de junio en materia de concesión de la nacionalidad española a los sefardíes originarios de España.*
[336] Bertossi (n 188) 20.
[337] Ibid 22.
[338] C Bertossi, 'France: the State strives to shape "chosen" immigration' (2008) Country Papers Politiche migratorie e modelli di società – Centro Studi di Politica Internazionale 3.
[339] Bertossi (n 188) 23.
[340] R Imbach, M Vaudano and S Pierre, 'Une "nouvelle loi" sur l'immigration qui s'ajoutera à une longue série de 118 textes depuis 1945' (14 October 2024) Le Monde.
[341] *Loi n° 2024-42 du 26 janvier 2024 pour contrôler l'immigration, améliorer l'intégration.*
[342] *Loi n° 2024-42* arts from 1 to 19.
[343] *Code de l'entrée et du séjour des étrangers et du droit d'asile* art L. 435-4, as amended by *Loi n° 2024-42*.

With regard to nationality, the Darmanin Law amended the language requirement for naturalization by raising the level of proficiency expected of immigrants.[344]

A subsequent decree promulgated in July 2025[345] clarified that the new standard corresponded to CEFR level B2[346] and further introduced a formal written *examen civique* (civic test) that applicants must pass in order to be eligible for naturalization.[347] The test consists of forty[348] multiple choice questions[349] to be answered in forty-five minutes.[350] The topics include five macro areas: principles and values of the French Republic; institutions and political systems; rights and duties; history, geography and culture; and living in French society.[351] These provisions started to be applied on 1 January 2026.[352]

The original text of the law also included two provisions relating to the modification of *ius soli*, which were struck down by the *Conseil Constitutionnelle* due to a procedural defect.[353]

Most notably, the bill sought to restrict the citizenship-by-territory regime of Mayotte. The peculiar regime on *ius soli* was introduced in 2018 in response to irregular immigration from the Comoros.[354] Specifically, it provided that children born to foreign parents could claim French nationality at the age of majority only if at the time of their birth one of their parents had been lawfully resident in Mayotte for three months.[355]

Although the provisions on *ius soli* were excluded from the final text of the 2024 law, a few months later a new act successfully amended Mayotte's regime.[356] Currently, both parents must have been lawful residents for one year before their child's birth.[357]

3.4.2 Italy

This paragraph follows the three lines of reforms regarding Italian citizenship. Proceeding in chronological order, it first addresses the issue of attribution of citizenship to Italian-born children of

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[344] C civ art 21-24, as amended by *Loi n° 2024-42*.
[345] *Décret n° 2025-648 du 15 juillet 2025 portant modification du décret n° 93-1362 du 30 décembre 1993 modifié relatif aux déclarations de nationalité, aux décisions de naturalisation, de réintégration, de perte, de déchéance et de retrait de la nationalité française*.
[346] *Décret n°93-1362* art 37, as amended by *Décret n°2025-648*.
[347] Ibid art 37 last three al.
[348] *Arrêté du 10 octobre 2025 relatif au programme, aux épreuves et aux modalités d'organisation de l'examen civique* art 3.
[349] Ibid art 2.
[350] Ibid art 4.
[351] Ibid art 5.
[352] *Décret n° 2025-648* art 11.
[353] *Conseil Constitutionnelle Décision n° 2023-863 DC du 25 janvier 2024.*
[354] D Turpin, 'La loi n° 2024-42 du 22 janvier 2024 pour contrôler (beaucoup) l'immigration, améliorer (un peu) l'intégration' (2024) 2024/2 Revue française de droit administratif 15.
[355] C civ art 2493, as amended by *Loi n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie*.
[356] *Loi n° 2025-412 du 12 mai 2025 visant à renforcer les conditions d'accès à la nationalité française à Mayotte*.
[357] C civ art 2493, as amended by *Loi n° 2025-412.*

immigrants, then examines the changes to the provisions on attribution via descent, and finally turns to the attempted modification of the residence requirement for naturalization.

In recent years, the long-standing pattern of proposing bills concerning the possibility to acquire Italian citizenship for children born in Italy to foreign parents has persisted.

The new amendments increasingly abandoned the idea of conditional *ius soli* and shifted towards the so-called *ius culturae*.[358]

Most notably, in 2022 the *Ius Scholae Bill* sought to introduce the possibility for children born or residing in Italy before the age of twelve to acquire Italian citizenship before majority if they had attended '*per almeno cinque anni uno o più cicli scolastici o percorsi di istruzione e formazione professionale*'.[359] However, this bill stalled in the Chamber of Deputies.

Subsequently, at the end of 2024 a new bill, called by its sponsors '*ius Italiae*', envisaged the acquisition of Italian citizenship at sixteen for foreign minors who (1) were born in Italy or entered the country before the age of five; (2) had resided in Italy for ten years; (3) had attended and passed all the schooling years of compulsory education.[360]

Importantly, this bill also contained a provision introducing a generational limit to the transmission of Italian citizenship by descent for nationals living abroad: foreigners "with Italian blood" would not acquire Italian citizenship if their ascendants up to the third grade were not born in Italy.[361]

The inclusion of this provision in the bill, still pending discussion in the Chamber of Deputies, is particularly significant in the light of the amendments adopted in the first half of 2025. In fact, on 28 March 2025 a decree-law concerning a similar amendment was promulgated.[362]

The so-called *Decreto Tajani*, named after the Minister of Foreign Affairs,[363] called into question the traditional framework of the Italian nationality law, under which the *italiani oriundi* – that is individuals of Italian ancestry permanently residing abroad – could be recognized as Italian citizens regardless of how far back their last Italian-born ascendant was.

Specifically, the Preamble of the Decree states that the recognition of Italian citizenship to an ever-growing number of individuals lacking a genuine link with Italy – who instead are connected to another country by citizenship status, as well as culture and identity – poses a serious threat to national security and to the security of other EU countries.[364]

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[358] Codini (n 258).
[359] *AC 105 e abb (presentato il 29 giugno 2022) XVIII Legislatura* art 1 amending L 91/1992 art 4 co 2. Translation: 'at least for five years, one or more school cycles or vocational education and training programs'.
[360] Ibid art 1c creating L 91/1992 art 4 co 2-bis.
[361] Ibid art 1a creating L 91/1992 art 1 co 1-bis.
[362] *Decreto-legge 28 marzo 2025 n 36 "Disposizioni urgenti in materia di cittadinanza"*.
[363] G Bonato, 'Il decreto-legge n. 36 del 28 marzo 2025: la "Grande Perdita" della cittadinanza italiana' (2025) Judicium. Il processo civile in Italia e in Europa.
[364] DL 36/2025 preamble.

Converted into statute in May 2025, the decree-law introduced a new Article 3-bis into the Nationality Law, providing that '*è considerato non aver mai acquistato la cittadinanza italiana chi è nato all'estero*',[365] subject to a series of exceptions.[366] (See Chapter 4 Paragraph 2.2).

The same rationale, i.e. limiting the transmission of Italian citizenship, was extended to other provisions governing acquisition and reacquisition of nationality.[367]

In parallel to these restrictive measures in the attribution of nationality by descent, in June 2025 Italians were called to the polls to vote on a popular referendum question concerning the abrogation of Article 9(f) of the Nationality Law, which establishes a ten-year residence requirement for the naturalization of non-EU nationals.[368] Despite the support from civil society actors, including immigration lawyers,[369] the referendum failed to reach the required quorum,[370] thus rendering the consultation invalid.[371]

3.4.3 Spain

The lack of legislative reforms amending the Spanish citizenship regime over the last decade reflects the marginal role that nationality issues have played in the country's political discourse.

However, two complementary measures were adopted in 2022.

First, on 1 April 2022,[372] the 2021 Agreement on Nationality between France and Spain entered into force.[373] The Agreement allows Spaniards to acquire French nationality (and vice versa) without renouncing their original citizenship.[374] This development is significant, since Spanish nationality law generally requires foreigners to renounce their previous nationality to acquire Spanish citizenship[375] and provides for the loss of nationality for Spaniards naturalizing abroad. As stated in previous sections of this chapter, the exceptions to these rules are nationals of Ibero-American countries, Andorra, the Philippines, Equatorial Guinea, and Portugal, who are allowed to hold dual

[365] Translation: 'an individual born abroad is deemed never to have acquired Italian citizenship'.
[366] *Legge 23 maggio 2025 n 74 "Conversione in legge, con modificazioni, del decreto-legge 28 marzo 2025, n. 36, recante disposizioni urgenti in materia di cittadinanza"* art 1 creating L 91/1992 art 3-bis.
[367] Ibid arts 4 and 14.
[368] *Decreto del Presidente Della Repubblica 31 marzo 2025 "Indizione del referendum popolare abrogativo avente la seguente denominazione: «Cittadinanza italiana: Dimezzamento da 10 a 5 anni dei tempi di residenza legale in Italia dello straniero maggiorenne extracomunitario per la richiesta di concessione della cittadinanza italiana»".*
[369] L Bargel and others, 'Are we witnessing a revolution of the Italian citizenship regime? Postscript to the special issue' (2025) 30(3) Journal of Modern Italian Studies 384, 385.
[370] Cost art 75.
[371] S Morlotti, 'Citizenship: laws, reforms and comparative perspective' (2025) RISE Responsible Involvement in Society and Elections 15.
[372] *Convenio de nacionalidad entre el Reino de España y la República Francesa, hecho en Montauban el 15 de marzo de 2021* art 5.
[373] *Convenio de nacionalidad entre el Reino de España y la República Francesa, hecho en Montauban el 15 de marzo de 2021.*
[374] Ibid art 1.
[375] CC art 23.b.

citizenship.[376] Beyond the positive effects for those affected – specifically, individuals who had renounced their nationality under the law in force at the time[377] – the Agreement is particularly noteworthy as it is the first dual nationality agreement concluded with a country that is not a former colony.[378]

Second, in October 2022, the Spanish Parliament passed a law establishing a reacquisition regime similar to that introduced by the 2007 *Ley de la Memoria Histórica*.[379] The 2022 *Ley de la Memoria Democrática*[380] was grounded in the same rationale of the 2007 legislation: to prevent forgetting and repeating the atrocities committed during the 20th century (i.e. the Spanish Civil War and the subsequent Francoist regime), as well as to provide reparative measures for their victims.[381] Furthermore, in response to the demands of the *movimiento memorialista*,[382] the 2022 law sought to overcome the limitations in the implementation of the previous law.[383]

Compared with the 2007 law, the *Ley de Memoria Democrática* extends the possibility of acquiring Spanish citizenship by *carta de naturaleza* to the descendants of members of the Civil War's International Brigades.[384] It also enables the acquisition of Spanish nationality by adult children born abroad to women who had lost their citizenship upon marriage to a foreigner prior to the entry into force of the 1978 Constitution,[385] as well by adult children of individuals who acquired Spanish citizenship under the 2007 law.[386] (See Chapter 4 Paragraph 3.3).

Such a program, which establishes the acquisition of Spanish citizenship under specific circumstances, proves that nationality is no longer strictly confined within the territory of the State, but rather operates within a context characterized by people mobility and long-term residence abroad. The interest shown by political actors in the exercise of citizenship from abroad highlights the growing relevance of legal mechanisms governing nationality beyond borders.

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[376] CC art 24.1; CC art 23.b.
[377] *Convenio* art 3.
[378] -, 'Entra en vigor el convenio de nacionalidad entre España y Francia' (2022) Carta España.
[379] *Ley* 52/2007.
[380] *Ley 20/2022 de 19 de octubre de Memoria Democrática*.
[381] Ibid preamble.
[382] The *Movement for Historical Memory* is a combination of civic and social initiatives emerged in Spain at the beginning of the 21st century aimed at recovering the historical memory of the silenced victims of the Spanish Civil War and Franco's dictatorship. Their work has been primarily focused on uncovering the crimes perpetrated by the Francoist Regime since 1936 by promoting the exhumation of mass graves, denouncing judicial impunity and challenging the lack of institutional efforts to prevent collective forgetting. See M Hristova, 'The struggle for historical memory in Spain: beyond genealogy and generations' (2020) 38 Where are the missing? Truth and justice for the consolidation of peace – International Catalan Institute for Peace 24.
[383] *Ley* 20/2022 preamble.
[384] Ibid art 33.
[385] Ibid *Disposición adicional octava* 1.a.
[386] Ibid *Disposición adicional octava* 1.b.

4.
Citizenship Beyond Borders:
The Regulation of External Citizenship in France, Italy, and Spain

4.1 Citizenship Outside State Borders

As previously discussed (see Chapter 1 and Chapter 2 Paragraph 5), the traditional conception of citizenship – originally developed within the context of territorially bounded and "closed" national societies[1] – is currently challenged by the increasing detachment between territorial and social boundaries of a State, since today citizens reside both within and beyond the State's territory.[2]

This phenomenon has been theorized in scholarship through the framework of *transnational citizenship*,[3] which refers to individuals' political membership in a Nation-State alongside the maintenance of social, cultural, and legal ties across borders. As such, this paradigm is rooted in the possibility for individuals to hold multiple citizenships, thus defying the traditional understanding of citizenship as univocal loyalty to a single State.[4]

Consequently, this development is closely tied to the increasing acceptance of dual citizenship, namely the willingness of origin states to allow emigrant nationals to naturalize in their country of residence without losing their original citizenship.[5] Such shift reflects the general desire of many States to strengthen relations with their communities abroad.[6]

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[1] R Bauböck and V Guiraudon, 'Introduction: realignments of citizenship: reassessing rights in the age of plural membership and multi-level governance' (2009) 13 (5) Citizenship Studies 439.
[2] S Umpierrez de Reguero and M Vink, 'Pathways to external citizenship: the global extension of dual citizenship and voting from abroad' (2025) 51(20) Journal of Ethnic and Migration Studies 5262.
[3] R Bauböck, 'Transnational citizenship: Membership and rights in international migration' (Edward Elgar 1994).
[4] CC Low, 'Defending National Identity and National Interests: The Limits of Citizenship Transnationalism in Germany and China' (2015) 16(3) 717, 720.
[5] MP Vink and others, 'The International Diffusion of Expatriate Dual Citizenship' (2019) Migration Studies 362, 363.
[6] JM Lafleur, 'The Enfranchisement of Citizens Abroad in a Comparative Perspective' (September 2013) Political Rights in the Age of Globalization.

Within this broader theoretical context, the relationship between a State and its citizens residing abroad is conceptualized in terms of *external citizenship*. This notion indicates the legal and political bond maintained between a State and its non-resident nationals, expressed through the outward projection of citizenship status and selected rights beyond the country's borders.[7] It is important to underscore that external citizenship does not constitute a separate category of citizenship; rather, it is a specific mode of regulation through which membership is maintained, acquired, or exercised outside the State.[8] As such, the primary subject of state policies is the *diaspora*,[9] here understood as long-term emigrants and their descendants, as well as other non-resident nationals linked to the State based on ethnic affiliation or more remote ancestry.[10]

From a legal perspective, external citizenship materializes through a limited set of legal mechanisms embedded most notably in nationality law,[11] which will be examined in this chapter in the current configuration of the nationality regimes of France, Italy, and Spain.

First, the transmission of citizenship by descent will be discussed. In fact, this is the main source of external citizenship, since the attribution of citizenship based on parental status inherently delinks citizenship from territory, given that birth within the country borders is not required.[12]

Subsequently, the chapter will consider facilitated acquisition after birth for former citizens and their descendants, as well as for people deemed to share ethnic or national ties with the State. These preferential procedures are included in the analysis since the facilitation usually consists in the absence of a residence requirement, thereby allowing the external acquisition of citizenship.[13]

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[7] R Bauböck, 'The rights and duties of external citizenship' (2009) 13(5) Citizenship Studies 475, 477-478.
[8] C Dumbrava, 'External citizenship in EU countries' (2014) 37(13) Ethnic and Racial Studies 2340.
[9] In this thesis, the term *diaspora* is used to denote a population living outside their State of origin composed primarily of long-term emigrants and their descendants, who while dispersed outside the national territory maintained an enduring legal, political, cultural, and emotional connection with the State. See M Collyer, 'Diasporas and Transnational Citizenship' in A Shachar and others (eds) *The Oxford Handbook of Citizenship* (OUP 2017). While historical conceptions of diaspora derived from the Jewish experience, therefore associating the term with forced displacement and victimhood, the understanding of the term has evolved to encompass a broader range of historical trajectories, such as voluntary migration. See R Cohen, 'Diasporas and the State: From Victims to Challengers' (1996) 72(3) International Affairs 507. Specifically, in contemporary policy and legal scholarship, *diaspora* generally indicates ethno-national groups linked to a specific nation-state. At its narrowest, the term coincides with long-term emigrants and their descendants, while at its broadest it may include individuals with more attenuated ancestral connections, who consciously express a sense of belonging to a transnational national community. These extraterritorial groups are engaged by the State through policies aimed at diaspora-building (practical approaches developed to extend citizenship status and rights outside the State's territory) and at diaspora engagements (the creation of institutions to keep socio-economic ties alive). See Collyer (n 9); A Weinar, 'From Emigrants to Free Movers Whither European Emigration and Diaspora Policy?' (2017) 40(13) Journal of Ethnic and Migration Studies 2228; A Weinar (ed) *Emigration and Diaspora Policies in the Age of Mobility* (Springer 2017).
[10] A Weinar, 'From Emigrants to Free Movers Whither European Emigration and Diaspora Policy?' (2017) 40(13) Journal of Ethnic and Migration Studies 2228, 2232.
[11] Together with dual citizenship acceptance, among the elements of citizenship policy that have the strongest external effects are citizenship transmission at birth and loss of citizenship due to residence abroad. See Vink and others (n 5).
[12] Dumbrava (n 8) 2344.
[13] Dumbrava (n 8) 2346.

Third, the final section of the chapter will examine external voting. The right to vote for non-resident citizens is included in the analysis because it is the most crucial right attached to citizenship: not only is it virtually the sole right that clearly distinguishes citizens from foreigners[14] (see Chapter 2 Paragraph 4), but it also enables individuals to influence governments to recognize and respect further rights.[15]

Finally, it should be clarified that the recognition of dual nationality, although a necessary precondition for the development of external citizenship among long-term emigrants, is treated in this chapter as a given premise[16] and is not further examined as an autonomous issue.[17]

4.2 Transmission and Loss of Nationality Abroad

In most cases, citizenship is acquired while residing abroad through descent, that is based on the nationality of an individual's parents at the time of birth. In fact, some countries apply 'unqualified rules of *ius sanguinis*',[18] under which individuals inherit their parents' citizenship regardless of their place of birth.[19] Sometimes formal registration with the competent national authorities might be required to retain nationality, but no substantive requirement is necessary.[20] Conversely, other countries establish generational limits, therefore precluding the possibility to acquire the country's nationality merely based on their parents' citizenship after a certain number of generations born and residing abroad.[21]

4.2.1 France

Citizenship by descent in France is governed by Article 18 of the Civil Code. The provision states that '*est français l'enfant dont l'un des parents au moins est français*',[22] meaning that French citizenship is automatically attributed at birth, regardless of the individual's place of birth. The subsequent article sets out that French nationals born abroad to one French parent may renounce their

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[14] PJ Spiro, "Perfecting Political Diaspora" (2006) 81 New York University Law Review 207, 209.
[15] S Rhodes and A Harutyunyan, 'Extending Citizenship to Emigrants: Democratic Contestation and a New Global Norm' (2010) 31(4) International Political Science Review 470, 473.
[16] All three countries generally accept dual citizenship: as stated in Article 23 of the French Civil Code, Article 11 of the Italian Nationality Law, and in Article 24.1 of the Spanish Civil Code, which regulates Spain's peculiar regime, which will be properly address when necessary.
[17] For a detailed account on dual and multiple citizenship see Chapter 2 Paragraph 5.1.
[18] Dumbrava (n 8) 2344.
[19] The "pure" application of this principle was first codified in Article 10 of the 1804 *Code civil des Français*: '*Tout enfant né d'un Français en pays étranger, est Français*'. See N Brutti, 'Il "sottile vincolo": dubbi e prospettive sulla cittadinanza *iure sanguinis*' (2025) Federalismi.it.
[20] C Dumbrava *Nationality, Citizenship and Ethno-Cultural Belonging. Preferential Membership Policies in Europe* (Palgrave Macmillan 2014) 28.
[21] R Bauböck and others *Acquisition and Loss of Nationality. Policies and Trends in 15 European States. Volume 1: Comparative* Analyses (Amsterdam University Press 2006)189.
[22] *Code civil* [C civ] art 18. Translation: 'A child born to at least one French parent is French'.

French nationality within a period starting six months before and ending twelve months after reaching the age of majority.[23]

From this configuration, French nationality might appear to be perpetually transmissible via *ius sanguinis* to French families permanently established abroad. This is not the case. In fact, French law does not allow for such unlimited transmission.[24]

Indeed, the French Civil Code contains a framework envisaging the loss of French nationality because of *désuétude* (disuse).[25] The rationale behind this clause draws a parallel with the acquisition of French nationality through naturalization, which requires assimilation in the French society:[26] if an individual has lived for a long time abroad and has not maintained ties with France, they are *désassimilé*.[27] Furthermore, at the time of its adoption[28] such rule was deemed necessary to avoid the indefinite transmission of French nationality, which had broadened following the recognition of women's right to transmit it.[29]

Accordingly, Article 23-6 of the French Civil Code provides that the loss of French citizenship might be established by judgement due to *désuétude* when the following two cumulative criteria are fulfilled.

First, the concerned individual does not habitually reside in France, and neither has the ascendant transmitting the nationality for fifty years.[30] For the purposes of the application of this provision, France is understood to include not only the metropolitan territory, but also the overseas departments and collectivities, as well as New Caledonia and the French Southern and Antarctic lands.[31] Most notably, the fifty-year lack of residence is to be determined with reference to the ascendant, therefore neither referring to the individual concerned nor by adding their period of residence with that of the ascendant.[32] Thus, the court may establish that French nationality was lost before the individual's birth and that they were never French citizens.[33]

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[23] Ibid art 18-1.
[24] Consulat général de France à Annaba et Constantine, 'La perte de la nationalité française par désuétude' (2023).
[25] C civ arts 23-6 and 30-3.
[26] Ibid arts 21-24 and 21-25.
[27] E Pataut and H Fulchiron, 'La singularité de la perte de nationalité pour désuétude et ineffectivité' (2024) Perdre sa nationalité Dalloz 2. Translation: 'become unassimilated'.
[28] The current framework was established in 1973 through the *Loi n° 73-42 du 9 janvier 1973 complétant et modifiant le code de la nationalité française et relative à certaines dispositions concernant la nationalité française,* but it was first introduced in Article 95 of the 1945 *Code de la nationalité*. Similar provisions already existed in the past, most notably during the *Ancien Régime*, where they reflected an underlying logic of loyalty to the king, and during the French Revolution, where the rationale concerned the determination of who was entitled to exercise the rights of citizenship. See Pataut and Fulchiron (n 25) 3.
[29] Pataut and Fulchiron (n 25) 6.
[30] C civ art 23-6 al 1.
[31] Ibid art 17-4.
[32] Pataut and Fulchiron (n 25) 8.
[33] C civ art 23-6 al 2.

Second, the lack of *possession d'état de Français* is examined both for the concerned individual and their ascendant.[34] Such criterion is used to determine the rupture, or rather, the gradual erosion of the ties with the French community.[35] It is worth noting that the article does not specify what constitutes evidence of possession of the status of French national, which is generally described as behaving as a French national in the sense of being considered as such in one's relation with society and public authorities.[36] A more precise definition, however, can be inferred based on Article 21-13 of the Civil Code, which provides for the acquisition of nationality by declaration on the grounds of possession of status.[37] Indeed, the specific documentation that proves such status is listed in a 1993 decree and includes, but is not limited to, identity card, passport, voter card, military documents, and registration in the *Registre des Français établis hors de France*.[38] Traditionally, in the context of recognition of nationality, the judges value as most significant the presence of a formal registration at the relevant French consulate, as well as the recording of civil acts in the French Civil Register.[39]

As introduced before, the loss is determined by judgement, rather than by the administrative authorities. Therefore, the presumption of loss of nationality must be brought before a *tribunal judiciaire*. The procedure can be triggered by either the applicant or by the public prosecutor following a request by the director of the court registry. The two paths bring different results.

On the one hand, when the applicant seizes the court pursuant to a refusal of issuance of a Certificate of French nationality and they do not prove the *possession d'état*,[40] the court may dismiss the claim (rather than being obliged to declare the loss of nationality).

On the other hand, when the public prosecutor brings the case before the court, Article 30-3 of the Civil Code is triggered. According to this article, if the individual (as well as their ascendant) has not proved possession of status and lacks residence in France, they shall not be permitted to prove their French nationality.[41] Consequently, the presumption of loss of nationality through *desuetude* is

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[34] Ibid art 23-6 al 1.
[35] Pataut and Fulchiron (n 25) 8.
[36] Ibid.
[37] C civ art 21-13.
[38] *Décret n°93-1362 du 30 décembre 1993 relatif aux déclarations de nationalité, aux décisions de naturalisation, de réintégration, de perte, de déchéance et de retrait de la nationalité française* art 17.
The *Registre des Français établis hors de France* is the registry of French nationals habitually living abroad. Individuals can register at the competent consulate. See *Décret n° 2003-1377 du 31 décembre 2003 relatif à l'inscription au registre des Français établis hors de France*.
[39] *Rép min JO Sénat 20 juin 1985 Questions remises à la présidence du Sénat 1145; Circulaire N° 94/16 du 27 juin 1994 relative à l'enregistrement des déclarations de nationalité par les juges d'instance*.
[40] Burden of proof is on the applicant pursuant Article 30 of the Civil Code.
[41] C civ art 30-3 al 1.

irrebuttable,[42] thereby impeding the judge to examine any elements proving possession of status after the lapse of fifty years[43] and obliging the court to declare the loss of nationality.[44]

4.2.2 Italy

Italian Citizenship Law is grounded in *ius sanguinis*, as can be inferred from the slim possibilities to obtain Italian nationality via *ius soli* (see Chapter 3 Paragraph 3.2).[45]

Article 1 of Law No. 91 of 1992 establishes that '*è Italiano alla nascita il figlio di padre o madre cittadini*',[46] implying the irrelevance of the place of birth for the attribution of Italian nationality by descent. This clause and the interaction between the possibility of holding dual nationality[47] and the virtual lack of provision for automatic loss of nationality[48] – especially when living abroad and acquiring a new citizenship – have produced a peculiar framework for Italian emigrants and their descendants.[49] Most notably, descendants of emigrated Italians could claim Italian citizenship as long as they were able to prove their Italian descent, since no generational limit to transmittance or residence requirement was established *ex lege*, provided that the Italian ancestor was born in Italy after the unification of Italy[50] and never relinquished their Italian nationality.[51] On the basis of this framework, even 'third, fourth or fifth generation descendants can be recognized by Italian authorities as nationals by *ius sanguinis*'.[52]

This has been possible because, as clarified by the *Sezioni Unite della Corte di cassazione* in a case involving the recognition of Italian citizenship via *ius sanguinis* to a Brazilian national, Italian nationality is acquired '*a titolo originario per nascita*'.[53] Such definition implies that the substantive entitlement to the status of citizen derives merely by virtue of being born to Italian parents, whereas the formal entitlement to the status (i.e. the official recognition under the State's authority) might be

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[42] See the jurisprudence of the *Cour de Cassation*, most recently: *Cass civ 1re* 20 *décembre* 2023 n° 21-25.374; *Cass civ 1re*10 *février* 2021n° 19-50.050; *Cass civ 1re* 12 *juillet* 2023 n° 22-16.946 and n° 22-19.333.
[43] QPC360° Portail de la Question Prioritaire de Constitutionnalité, 'Commentaire de la décision 2025-1130/1131/1132/1133 QPC' (2025).
[44] C civ art 30-3 al 2.
[45] *Legge 5 febbraio 1992 n 91 "Nuove norme sulla cittadinanza"* arts 1 and 4 co 2. Translation: 'an individual is Italian at birth if born to an Italian father or mother'.
[46] Ibid art 1 co 1 lett a.
[47] Ibid art 11.
[48] Ibid art 12.
[49] Zincone and Basili (n 43) 10.
[50] Consolato Generale d'Italia a Londra, 'Cittadinanza iure sanguinis – VECCHIA DISCIPLINA' (2025).
[51] G Tintori, 'The Transnational Political Practices of 'Latin American Italians'' (2011) 49(3) International Migration 168, 172.
[52] Ibid 173.
[53] *Corte di cassazione [Cass] a Sezioni Unite 24 agosto 2022 n 25317*. Translation: 'by birth as an original mode of acquisition'.

established subsequently either through administrative proceedings or by judicial decision of the Ordinary Court of Rome.[54]

The first pathway is the standard procedure for the recognition of nationality, and it may be carried out either in Italy, at a municipal Civil Registry Office of the last place of residence of the *dante causa* (that is, the Italian ancestor through whom nationality is transmitted), or abroad, at an Italian consulate.[55] The procedure requires the applicant to demonstrate that there has been no interruption in the chain of transmission of citizenship.[56] Therefore, they need to present official records of birth, marriage and death of all degrees of kinship between the applicant and the *dante causa* in order to establish descent. Most importantly, the individual has to provide the birth certificate of the emigrated Italian ancestor issued by the Italian municipality where they were born, as well as a certificate issued by the authorities of the country of immigration attesting that the *dante causa* never withdrew their Italian nationality by naturalizing in their new country of residence before the applicant was born.[57]

Alternatively, the individual can bring proceedings before the Ordinary Court of Rome, but only in two specific situations.[58]

First, if the line of descent includes a woman married to a foreign man, who gave birth to a child before 1 January 1948. As previously discussed (Chapter 3 Paragraph 2.2), the previous Italian Nationality Law of 1912 provided that women would automatically lose their Italian nationality upon marrying a foreign national[59] and that Italian nationality could be transmitted only by fathers.[60] Although these provisions were declared unconstitutional by two judgments of the *Corte costituzionale*,[61] their effects were retroactive only as of the date on which the democratic Constitution enshrining gender equality entered into force.[62] Accordingly, the consequences of the rulings are not applicable in administrative proceedings brought by descendants of Italian women who lost their nationality by marriage and gave birth to children before 1948.[63] However, the Court

[54] G Bonato, 'Il decreto-legge n. 36 del 28 marzo 2025: la "Grande Perdita" della cittadinanza italiana' (2025) Judicium. Il processo civile in Italia e in Europa.
[55] D Trucco, '"Making Italians" without Italy: Sociology of Non-State Intermediaries of an External Citizenship' (2023) 39(2 & 3) Revue européenne des migrations internationals 1.
[56] G Pallaver and G Denicolò, 'Dual Citizenship in Italy: An Ambivalent and Contradictory Issue' in R Bauböck and M Haller (eds) *Dual Citizenship and Naturalisation: Global, Comparative and Austrian Perspectives* (Verlag der österreichischen Akademie der Wissenschaften, 2021) 192.
[57] *Circolare n K 28.1 8 aprile 1991 "Riconoscimento del possesso dello status civitatis italiano ai cittadini stranieri di ceppo italiano".*
[58] Trucco (n 53).
[59] *Legge 13 giugno 1912 n 555 "Sulla cittadinanza italiana"* art 10.
[60] Ibid arts 1 and 2.
[61] *Corte cost 16 aprile 1975 n 87* and Corte cost 28 gennaio 1983 n 30.
[62] *Consiglio di Stato Parere n 105 15 aprile 1983*.
[63] Consolato Generale d'Italia a Londra (n 48).

of Cassation has consistently held that cases involving descent through the maternal line require judicial determination.[64]

Second, recognition of nationality through the paternal line is admissible before the Court of Rome, but only when consular administrative channels are, *de facto*, unavailable due to disproportionate waiting times.[65]

This framework for the recognition of Italian nationality through descent came abruptly to an end on 28 March 2025 following the promulgation of Decree-Law No. 36[66] and its subsequent conversion into Law No. 74/2025,[67] which amended the original measure and introduced further restrictions. The amendments to the 1992 law stemmed from the need to protect Italian citizenship from instrumentalization, which was perceived not only by politicians but also by the frontline actors implementing the nationality law[68] (e.g. consular authorities, municipal registrar officers, as well as local appeal courts).[69] Indeed, the preamble of the decree-law – which underscores the negative effects of unlimited transmission of Italian citizenship combined with the absence of any requirement to demonstrate genuine ties with the country[70] – must be read in light of recent events characterizing this field of law. Namely, the sharp increase in applications for the recognition of Italian citizenship[71] and the proliferation of non-state actors operating as legal intermediaries in the acquisition of Italian citizenship by descent, who have effectively commodified Italian citizenship.[72]

The new legislation created a new Article 3-bis establishing that '*è considerato non avere mai acquistato la cittadinanza italiana chi è nato all'estero anche prima della data di entrata in vigore del presente articolo ed è in possesso di altra cittadinanza*'.[73]

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[64] *Cass SS UU 25 febbraio 2009 n 4466*, concerning the case of the granddaughter of an Italian woman married to an Egyptian man pursuant the 1912 Nationality Law, and the jurisprudence cited therein.

[65] *Tribunale di Roma 29 gennaio 2019 n 2055*.

[66] *Decreto-legge 28 marzo 2025 n 36 "Disposizioni urgenti in materia di cittadinanza"*.

[67] *Legge 23 maggio 2025 n 74 "Conversione in legge, con modificazioni, del decreto-legge 28 marzo 2025, n. 36, recante disposizioni urgenti in materia di cittadinanza"*.

[68] L Bargel and others, 'Are we witnessing a revolution of the Italian citizenship regime? Postscript to the special issue' (2025) 30(3) Journal of Modern Italian Studies 384, 387.

[69] Most notably, between the end of 2024 and the first trimester of 2025, the Courts of Bologna (order of 26 November 2024), Rome (order of 21 March 2025), Milan (order of 3 March 2025), and Florence (order of 7 March 2025) raised questions of constitutional legitimacy concerning key provisions of the Italian Nationality Law, and more specifically the absence of limits in the granting of nationality via *ius sanguinis*. However, in Judgement No. 142 of 2025 (24 June 2025) the Constitutional Court ultimately held the challenged provisions to be consistent with the Constitution (specifically, Articles 1(2), 3, and 117(1)). For a more detailed account: Brutti (n 19); F Corvaja, 'Quando i nodi vengono al pettine. Il riconoscimento della cittadinanza italiana iure sanguinis senza limiti, tra vincoli di diritto internazionale, condizionamenti europei e ordinamento costituzionale italiano' (2025) 1/2025 Eurojus 389.

[70] DL 36/2025 preamble.

[71] Ministero degli Affari Esteri de della Cooperazione Internazionale, 'Il Consiglio dei Ministri approva modifiche alla legge sulla cittadinanza "ius sanguinis"' (2025).

[72] For a detailed account on the role of non-state intermediaries in the acquisition of Italian citizenship by descent: Trucco (n 53).

[73] L 91/1992 art 3-bis, as amended by *DL 36/2025 convertito con modificazioni dalla L 74/2025*. Translation: 'Any individual born abroad, including before this provision entered into force, who holds another citizenship shall be deemed never to have acquired Italian citizenship'.

However, this provision is subject to exceptions. First of all, applicants and claimants who have submitted their application[74] or filed their court action[75] by 23:59 of 27 March 2025, that is before the decree-law entered into force. The Italian Parliament added a new clause to this original framework, specifying that also applicants who had received an official appointment date by the same deadline would nonetheless be entitled to submit the required documentation and to have their case examined on the merits,[76] thereby preventing the administrative backlogs to negatively effect this category of people.[77] Second, individuals whose parents or grandparents held exclusively Italian citizenship at the time of their death.[78] Finally, individuals born to an Italian parent who, after acquiring Italian nationality, resided in Italy for at least two years prior to the child's birth.[79]

Further provisions address the acquisition of nationality by foreign minors whose either parent is Italian by birth. Such minors can acquire Italian citizenship if their Italian parent submits a declaration before the competent authorities within three years from the child's birth.[80] Alternatively, if the declaration is submitted later, the child must reside in Italy for at least two consecutive years following the submission.[81] A specific rule applies to minor children of individuals exempted by Article 3-bis, who have to submit the declaration before 23:59 of 31 May 2026 to secure their children's Italian nationality.[82]

The 2025 amendment represents a rupture with the original 1992 framework. After thirty-three years during which Italian citizenship could be lost only voluntarily by declaration by nationals holding a second citizenship and residing abroad,[83] nationality may now be lost involuntarily due to the absence of an 'effective link'[84] with Italy.

4.2.3 Spain

Similarly to Italy, Spanish citizenship is predominantly governed by *ius sanguinis* and is perceived as a diaspora-related matter, as evidenced by the adoption of specific legislation such as

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[74] Ibid art 3-bis co 1 lett a.
[75] Ibid art 3-bis co 1 lett b.
[76] Ibid art 3-bis co 1 lett a-bis.
[77] F Salimbeni, 'La nuova legge sulla cittadinanza *iure sanguinis*: analisi e prospettive di riforma' (2026) Federalismi.it
[78] L 91/1992 art 3-bis co 1 lett c, as amended by *DL 36/2025 convertito con modificazioni dalla L 74/2025*.
[79] Ibid art 3-bis co 1 lett d.
[80] Ibid art 4 co 1-bis lett b.
[81] Ibid art 4 co 1-bis lett a.
[82] L 74/2025 art 1 co 1-ter.
[83] L 91/1992 art 11.
[84] DL 36/2025 preamble.

the *Estatuto de la ciudadanía Española en el exterior*,[85] whereby a preferential treatment towards emigrants is established and overall issues concerning immigrants are set aside.[86]

Spanish citizenship is granted by descent according to Article 17 of the Civil Code, which provides that individuals born to a Spanish parent are '*españoles de origen*'.[87] As such, Spaniards can transmit their nationality to their children born abroad.

While the nationality provisions contained in the Civil Code do not expressly limit the number of generations born abroad to whom Spanish nationality can be granted, they establish certain administrative steps to be taken to prevent its involuntary loss.

In fact, Spanish citizenship is lost by emigrants who acquire a new nationality, as well as by individuals who have held a second nationality since birth, if they habitually reside abroad and exclusively use the other citizenship for a period of three years. Notably, such loss does not occur if the other nationality is that of an Ibero-American State, Andorra, the Philippines, Equatorial Guinea or Portugal. Nevertheless, Spanish nationals who do not fall within these exceptions are able to maintain their Spanish citizenship by declaring their intention to do so before the civil registry within three years of acquiring the foreign nationality or, for dual nationals since birth, of reaching the age of majority.[88]

Furthermore, Spanish citizenship is lost by individuals born and residing abroad who were born to a Spanish parent who was also born abroad, unless they declare their will to retain their Spanish nationality before the civil registry prior to their twenty-first birthday.[89]

Aside from these cases of involuntary loss, Spaniards can voluntarily renounce their Spanish citizenship, provided that they hold another nationality and are based abroad.[90]

4.3 Privileged (Re)Acquisition of Nationality

When nationality is lost – either voluntarily or involuntarily due to previous legislation prohibiting dual citizenship and permanent residence abroad[91] or due to territorial changes affecting borders after conflicts[92] – States might adopt specific naturalization procedures that allow for the facilitated reacquisition or acquisition of citizenship.[93] The establishment of such modes for

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[85] *Ley 40/2006 de 14 de diciembre del Estatuto de la ciudadanía española en el exterior*.
[86] F Pasetti and R Schweitzer, 'Looking back and abroad while (not) moving forward. Migration, ideas and the stability of citizenship in Spain' (2025) Front Social 7.
[87] *Código Civil* [CC] art 17.1.a.
[88] Ibid art 24.1.
[89] Ibid art 24.3.
[90] Ibid art 24.2.
[91] Bauböck and others (n 18) 187-190.
[92] M Collyer, 'Diasporas and Transnational Citizenship' in A Shachar and others (eds) *The Oxford Handbook of Citizenship* (OUP 2017) 181.
[93] Dumbrava (n 8) 2346.

nationality acquisition is usually driven by pressure from emigrant communities abroad, by government efforts to maintain ties with or repatriate part of its diaspora, and by an 'ethnic conception of nationality'.[94]

The beneficiaries of these procedures are generally former citizens (alongside their descendants) and ethnic kins.[95] For the former group, generational limits might be imposed, while for the latter temporal limits are not necessarily adopted because their origin is considered more relevant.[96]

In recent years, a new phenomenon has emerged, whereby citizenship is granted to a specific category of former citizens, namely individuals who were excluded or expelled in the past.[97] Such practice is defined with the term *reparative citizenship* and is based on the idea that citizenship is owed by the State to certain individuals as compensation and apology for past misconducts. This form of reparation not only benefits the former victims, but it also contributes to the redefinition of the collective identity of the country that perpetrated that injustice.[98]

4.3.1 France

The provisions governing the reacquisition of French nationality, as well as the facilitated acquisition for certain individuals, reflect the underlying logic of the French Citizenship Law, according to which French nationality is grounded on the existence of effective ties with the French community.[99]

Specifically, there are two mechanisms for the reacquisition of French nationality for individuals who lost it[100] plus a specific mode of acquisition primarily applicable to descendants of French nationals who lost their nationality through *desuetude* (also known as '*quasi-réintégration*'[101]).[102]

According to Article 24 of the Civil Code, a former French national can reacquire French citizenship either by decree or by declaration, depending on the way they lost their nationality.[103] In

[94] Bauböck and others (n 18) 170.
[95] Dumbrava (n 8) 2344.
[96] Dumbrava (n 17) 58.
[97] A Frost, 'The Rise of Reparative Citizenship' (2022) 26 Citizenship Studies 454.
[98] Ibid 457.
[99] Pataut and Fulchiron (n 25) 11.
[100] C civ art 24.
[101] Pataut and Fulchiron (n 25) 11. Translation: 'quasi-reinstatement'.
[102] C civ art 21-14.
[103] Ibid art 24.

fact, if loss occurred upon marriage to a foreigner[104] or upon naturalization abroad,[105] citizenship is reacquired through a declaration submitted to the director of the court registry or to the relevant consulate abroad.[106] Otherwise, *réintégration* (reinstatement) might be obtained by decree at any age and without residence requirements.[107] Regardless of the different administrative procedures, both modalities of reacquisition are conditional to the fulfilment of similar additional requirements. First, applicants must not have been criminally convicted for offences against the fundamental interests of the Nation or for acts of terrorism, nor be subject to unrepealed expulsion orders or territorial bans.[108] Second, they must prove ties with France: individuals proceeding by declaration are required to demonstrate that they have retained cultural, professional or family ties;[109] whereas applicants by decree must fulfill the same conditions applicable to naturalization[110] (i.e. the language and civic tests).[111]

The modalities discussed above are enjoyed by people who '*établissent avoir possédé la qualité de Français*',[112] meanwhile, people who lost their nationality due to *désuétude*, pursuant to Articles 23-6 and 30-3 of the Civil Code, benefit from a specific provision for reacquiring French citizenship. Indeed, article 21-14 of the Civil Code establishes a *quasi-réintégration* framework underscoring the socialization of the person as a French national and thus their *possession d'état*. Eligible individuals can claim French nationality by declaration if they can prove they have '*conservé ou acquis avec la France des liens manifestes d'ordre culturel, professionnel, économique ou familial, soit effectivement accompli des services militaires dans une unité de l'armée française ou combattu dans les armées françaises ou alliées en temps de guerre*'.[113]

4.3.2 Italy

The reacquisition of Italian citizenship is generally subject to a period of residence in Italy.

Indeed, Article 13 of the 1992 Law on Nationality establishes that Italian nationality can be reacquired in four ways: by prior declaration of intent paired with (1) performing military service for

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[104] Nationality would be lost according to this modality until 1945 pursuant Article 8 of the *Loi du 10 aout 1927 sur la nationalité*.
[105] Nationality would be lost according to this modality until 1973 pursuant Article 87 of the 1945 *Code de la nationalité française.*
[106] C civ art 24-2.
[107] Ibid art 24-1.
[108] Ibid art 21-27.
[109] Ibid art 24-2 al 2.
[110] Ibid art 24-1.
[111] Ibid art 21-24 and *Décret n°93-1362* art 37.
[112] Ibid art 24. Translation: 'prove that they were French nationals'.
[113] Ibid art 21-14. Translation: 'maintained or acquired clear cultural, professional, economic or family ties with France, or actually performed military service in a unit of the French army or fought in the French or allied armies in time of war'.

the Italian armed forces;[114] (2) taking public employment with the Italian State;[115] or (3) residing in Italy for two years following the cessation of the public office or military service performed for a foreign country due to which nationality was lost;[116] or (4) automatically, after one year of residence in Italy, unless the individual expressly declares otherwise.[117] Among these, the only instance allowing for external reacquisition is by taking up public office for Italy, which can be also performed abroad, for example at an embassy or consulate.[118]

Similarly, children or grandchildren of Italians by birth may acquire Italian citizenship by declaration if they have resided in Italy for at least two years before reaching the age of majority.[119] If they are already adults, they may acquire nationality either by performing military service or taking public employment with the Italian State, or by fulfilling the two-year residence requirement to obtain it through presidential decree.[120]

Also individuals who lost Italian citizenship following naturalization abroad pursuant to Article 8 of the 1912 Law on Nationality, as well as their children who were minors at the time, may reacquire Italian citizenship by declaration, but only if they were born or had resided in Italy for at least two years, and provided that the declaration is submitted between 1 July 2025 and 31 December 2027.[121]

Such framework appears rather peculiar, since the acquisition of Italian nationality for co-ethnics is not conditional upon residence.[122] In fact, a 2000 act provides for the possibility to acquire Italian citizenship by declaration for people born in former territories of the Austro-Hungarian Monarchy that are currently part of Italy or that were ceded by Italy to Yugoslavia after the end of the Second World War.[123] While this law established a five-year timeframe for the submission of declarations,[124] subsequent legislation in 2006 amended the Nationality Law, thereby creating Articles 17-bis and 17-ter and making this framework permanent.[125]

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[114] L 91/1992 art 13 co 1 lett a.
[115] Ibid art 13 co 1 lett b.
[116] Ibid art 13 co 1 lett d.
[117] Ibid art 13 co 1 lett c.
[118] Letter b of Article 13 of the 1992 Law on Nationality states: ‘*se, assumendo o avendo assunto un pubblico impiego alle dipendenze dello Stato, anche all'estero, dichiara di volerla riacquistare*’. Translation: ‘if, upon or after taking up public employment with the State, including abroad, they declare their intention to reacquire citizenship’.
[119] L 91/1992 art 4 co 1 lett c.
[120] Ibid art 9 co 1 lett a.
[121] Ibid art 17 co 1.
[122] For the purpose of citizenship law, academic literature defines as ‘Italian co-ethnics’ all people of Italian culture who live in the territories that were ceded to Yugoslavia at the end of the Second World War. See M Arena, B Nascimbene and G Zincone, ‘Italy’ in R Bauböck and others *Acquisition and Loss of Nationality | Volume 2: Country Analysis. Policies and Trends in 15 European Countries* (Routledge 2006) 342; G Zincone and M Basili, ‘Country Report: Italy’ (EUDO Citizenship Observatory 2013) 11; Pallaver and Denicolò (n 56) 193.
[123] *Legge 14 dicembre 2000 n 379 “Disposizioni per il riconoscimento della cittadinanza italiana alle persone nate e già residenti nei territori appartenuti all'Impero austro-ungarico e ai loro discendenti”.*
[124] Ibid art 1 co 2.
[125] *Legge 8 marzo 2006 n 124 “Modifiche alla legge 5 febbraio 1992, n. 91, concernenti il riconoscimento della cittadinanza italiana ai connazionali dell'Istria, di Fiume e della Dalmazia e ai loro discendenti”.*

The target population established in Article 17-bis are individuals who were Italian citizens by virtue of residing in the territories relinquished to Yugoslavia pursuant to the 1947 Peace Treaty[126] and the 1975 Osimo Treaty,[127] as well as their descendants who are '*di lingua e cultura italiane*'.[128] These individuals shall exercise their right to the recognition of Italian nationality by submitting an application to their local Italian authorities, including Italian consulates.[129] The application must be supplemented by several documents, including those attesting the applicant's status of former Italian citizen living in those territories: namely, certificates demonstrating residence in the relevant territories and their Italian nationality at the very moment of the entry into force of the relevant treaty,[130] as well as their Italian language proficiency. Meanwhile, descendants must submit the above documentation relating to their ancestor and civil registry records proving the direct familial relationship, together with an '*attestazione rilasciata da eventuali Associazioni o Comunità di italiani, presenti sul territorio estero di residenza, dalla quale risulti la conoscenza, da parte del richiedente, della lingua e cultura italiane*' or any other certificate attesting to the knowledge of Italian language and culture.[131]

4.3.3 Spain

The standard mechanism to reacquire Spanish nationality is prescribed in Article 26 of the Civil Code. The procedure entails a declaration of intention to reacquire Spanish citizenship before the civil registry[132] and the proper registration of the recovery in the civil registry.[133] The main requirement to complete the procedure is having legal residence in Spain, which is waived for emigrants and their Spanish-born children.[134]

Alongside this ordinary recovery mechanism, Spain has adopted a series of exceptional nationality regimes with the aim of addressing the historical consequences of exile, discrimination, and political persecution. These regimes operate outside the framework established by Article 26 and provide specific timeframes for the submission of applications for the grant of nationality, targeting

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[126] Treaty of Peace with Italy signed at Paris on 10 February 1947 and entered into force on 15 September 1947.
[127] Treaty on the delimitation of the boundary line for the part not indicated as such in the Peace Treaty of 10 February 1947 signed at Osimo on 10 November 1975 and entered into force on 3 April 1977.
[128] L 91/1992 art 17-bis co 1 lett b.
[129] Ibid art 17-ter co 1.
[130] The documentation provides for different dates depending on the territories at stake: people concerned by Article 19 of the 1947 Peace Treaty have to present their residence certificate at the time Italy entered the Second World War (10 June 1940) and prove their Italian citizenship at the moment the Treaty entered into force (15 September 1947); whereas people concerned by Article 3 of the 1975 Osimo Treaty shall prove their residency and Italian citizenship at the time the Osimo Treaty entered into force (3 April 1977). See *Circolare K.60.1 del 22 maggio 2006.*
[131] *Circolare K.60.1 del 22 maggio 2006*. Translation: 'certificate issued by any Italian Associations or Communities present in the foreign country of residence, attesting to the applicant's knowledge of the Italian language and culture'.
[132] CC art 26.1.b.
[133] CC art 26.1.c.
[134] CC art 26.1.a.

groups of people towards whom Spain is considered to bear a historical responsibility. Specifically, Spain has established two regimes addressing the victims of the Civil War and of the Francoist dictatorship, as well as their descendants,[135] and a framework for descendants of Sephardic Jews.[136] Most notably, these reacquisition programs allow individuals who never got Spanish nationality by descent to acquire Spanish citizenship without being required either to renounce their previous nationality or to fulfill a residence requirement.

The first example of such exceptional regime was introduced in 2007 through the *Ley de Memoria Histórica* (Law of Historical Memory),[137] which established the first comprehensive institutional framework aimed at recognizing and repairing the suffering of the victims of both the Civil War and the dictatorship. The promulgation of this law was deemed necessary not only to honor the individuals involved, but also Spanish democracy as a whole.[138]

Within this context, the *Disposición adicional séptima* (Seventh Additional Provision) provided reparations to the descendants of those who lost their Spanish nationality because of exile following the aforementioned historical events.[139] In fact, the clause established the possibility to opt for Spanish citizenship by declaration for individuals whose parents were Spanish by origin,[140] as well as for grandchildren of former citizens who had been deprived of or had renounced their nationality due to exile.[141] The status of exile was to be proven through certificates attesting that the person was a beneficiary of state benefits for exiles or through official records issued by Spain or by the receiving State. [142] The declaration of option was to be submitted within a timeframe of two years[143] (from 27 December 2008),[144] which was prorogated for a further year due to the substantial number of applications,[145] as set out by the law itself.[146]

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[135] *Ley 52/2007 de 26 de diciembre por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura*; *Ley 20/2022 de 19 de octubre de Memoria Democrática*.
[136] *Ley 12/2015 de 24 de junio en materia de concesión de la nacionalidad española a los sefardíes originarios de España.*
[137] *Ley* 52/2007.
[138] Ibid preamble.
[139] Ibid *Disposición adicional séptima*.
[140] Ibid *Disposición adicional séptima* 1.
[141] Ibid *Disposición adicional séptima* 2.
[142] *Instrucción de 4 de noviembre de 2008 de la Dirección General de los Registros y del Notariado, sobre el derecho de opción a la nacionalidad española establecido en la disposición adicional séptima de la Ley 52/2007 de 26 de diciembre* V.3.a; *Instrucción de 25 de octubre de 2022 de la Dirección General de Seguridad Jurídica y Fe Pública sobre el derecho de opción a la nacionalidad española establecido en la disposición adicional octava de la Ley 20/2022 de 19 de octubre de Memoria Democrática* IV 3.
[143] *Ley* 52/2007 *Disposición adicional séptima* 1.
[144] Ibid *Disposición final segunda.*
[145] *Resolución de 17 de marzo de 2010, de la Subsecretaría, por la que se dispone la publicación del Acuerdo del Consejo de Ministros de 22 de enero de 2010 por el que se amplía un año el plazo para ejercer el derecho de optar a la nacionalidad española recogido en la disposición adicional séptima de la Ley 52/2007 de 26 de diciembre por la que se reconocen y amplían derechos y se establecen medidas a favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura*.
[146] *Ley* 52/2007 *Disposición adicional séptima* 1.

To fully understand the significance of this regime, the provision of the Seventh Additional Provision must be read against the standard legal framework governing the acquisition of Spanish citizenship by option established in Article 20 of the Civil Code. First, opting is typically reserved to children born to a parent who was Spanish by origin and born in Spain,[147] whereas the *Ley de Memoria Histórica* included also children of foreign-born *españoles de origen*[148] – thereby expanding the pool of eligible applicants. Most importantly, citizenship by option is generally considered a derivative form of nationality by Spanish law, but individuals acquiring Spanish citizenship through the Law of Historical Memory will be granted *nacionalidad originaria*,[149] which enabled them to enjoy all the relevant privileges.[150] Finally, applicants are not required to renounce their original nationality to acquire Spanish citizenship.[151]

The categories of beneficiaries of this peculiar mode of acquisition were further expanded and systematized in the subsequent 2022 *Ley de la Memoria Democrática* (Law of Democratic Memory),[152] which was adopted to abrogate the *Ley de la Memoria Histórica* and adapt the legislation to current domestic developments and to the evolving global human rights framework.[153]

The *Disposición adicional octava* (Eighth Additional Provision) provided for a two-year timeframe (from 25 October 2022) for the acquisition of Spanish nationality[154] by option under the same privileged conditions of no residence and no renunciation of previous nationality, which was extended to an additional year.[155] This provision further expanded the pool of eligible applicants. Indeed, according to the Law of Democratic Memory, Spanish citizenship was granted not only to children and grandchildren of exiles,[156] but also to children born abroad to a Spanish mother that had lost her nationality by marrying a foreigner[157] (that had to be proven by presenting such marriage certificate),[158] and adult children of individuals that had acquired Spanish citizenship through the *Ley de Memoria Histórica*.[159]

[147] CC art 20.1.b.
[148] *Instrucción de 4 de noviembre de 2008* s I a and s II.
[149] Ibid s I a.
[150] See Chapter 3 Paragraph 3.3 for the difference between Spanish nationality by origin and derivative Spanish nationality.
[151] *Instrucción de 4 de noviembre de 2008* s I d.
[152] *Ley* 20/2022.
[153] Ibid preamble.
[154] Ibid *Disposición adicional octava* 2.
[155] Consejo de Ministros,'El Gobierno amplía un año el plazo para optar a la nacionalidad española recogido en la Ley de Memoria Democrática' (9 July 2024).
[156] *Ley* 20/2022 *Disposición adicional octava* 1.
[157] Ibid 1.a.
[158] Instrucción de 25 de octubre de 2022, de la Dirección General de Seguridad Jurídica y Fe Pública, sobre el derecho de opción a la nacionalidad española establecido en la disposición adicional octava de la Ley 20/2022, de 19 de octubre, de Memoria Democrática IV 2.3.b and 2.3.c.
[159] *Ley 20/2022 Disposición adicional octava* 1.b.

Overall, more than 2.5 million individuals applied to acquire Spanish citizenship through the framework prescribed by these laws. Official statistics report that almost 215,000 individuals were granted Spanish nationality by origin between 2008 and 2011,[160] and it is expected that approximately other two million people will acquire Spanish citizenship after submittal of their application between 2022 and 2025.[161]

A further expression of this reparation-based approach towards the external granting of nationality can be found in the acquisition regime adopted in 2015[162] and targeting the descendants of Sephardic Jews, that is the Jewish population inhabiting the Iberian Peninsula who was expelled from Spain following the Alhambra Decree[163] issued by the Catholic Monarchs.[164]

The 2015 law established a three-year timeframe[165] during which Sephardic Jews, who were able to prove their status as originating from Spain and a special connection with the country, could apply to acquire Spanish nationality by *carta de naturaleza*, even without legally residing in Spain.[166] Most importantly, this specific regime allowed for the maintenance of their previous nationality,[167] whose renounce is mandatory upon naturalizing as a Spaniard through the process of *carta de naturaleza*.[168] The process was carried out online and the applicants had to prove their eligibility by submitting a substantial number of documents certifying their belonging to a Jewish community originating from Spain and their effective tie to the country,[169] including official records attesting that their surname traces back to the original Spanish Sephardim,[170] as well as Spanish language and culture test certifications.[171]

Overall, more than 72.000 descendants of Sephardic Jews expelled from Spain in the 15th century were granted Spanish citizenship.[172]

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160 L García Casas, 'Los descendientes del exilio podrán volver a ser españoles' (2022) Deutsche Welle.
161 -, 'Alrededor de 2,3 millones de personas han solicitado la nacionalidad española a través de la Ley de Memoria Democrática' (2025) España Exterior.
162 *Ley 12/2015 de 24 de junio en materia de concesión de la nacionalidad española a los sefardíes originarios de España.*
163 Edict of the Expulsion of the Jews of Spain [Alhambra Decree] (31 March 1492).
164 *Ley* 12/2015 preamble.
165 Ibid *Disposición adicional primera* 1.
166 Ibid art 1.1.
167 Ibid *Disposición final primera*.
168 CC art 23.
169 Ibid arts 1.2, 1.3, 1.4, 1.5.
170 Ibid art 1.2.f.
171 Ibid art 1.5.
172 Ministerio de la presidencia, justicia y relaciones de las cortes, 'Datos estadísticos básicos de nacionalidad a 30/06/2025'.

4.4 Political Representation for Non-Resident Citizens

Membership is the most essential dimension of citizenship; however, it would be an 'empty concept' if it did not include the idea of rights.[173] The basic rights recognized to non-resident citizens are the right to enter the territory of the country, consular support, and the right to hold multiple nationalities.[174] Historically, all the rights attached to citizenship were recognized only to military and diplomatic personnel stationed abroad.[175] It is only in recent years that the rights for citizens who left the country have expanded.[176]

Among these rights, the most relevant is the right to vote, because of its symbolic significance in the democratic exercise of sovereignty by the people[177] and because it determines in practice who is part of the political community of the country, thus differentiating between citizens and foreigners.[178] In this sense, external voting further evidences the willingness of a country to recognize that its emigrants are effective members of two political communities without having to choose between them.[179]

As previously mentioned (see Chapter 2 Paragraph 5.1), there are three main approaches for the participation and the creation of the constituency of non-resident citizens in national elections.[180] A first group of countries do not prevent external citizens from partaking in elections, however they do not prescribe a way for them to vote from abroad, thus forcing them to return to the country to vote. A second category of countries facilitates voting procedures from abroad and the ballots are counted in the constituency where the citizens last lived in the country or where their ancestors were from. A final group of countries not only permits voting from abroad, but also counts emigrants' votes in extra-territorial constituencies. [181]

To effectively assess the degree of participation of external citizens, four elements will be considered in the analysis of national legislature elections: the constitutional entrenchment of the right to vote for non-resident nationals, the registration procedures required to cast a ballot, the existence of special representative constituencies reserved to these citizens, and the possibility of exercising passive electoral rights.

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[173] Rhodes and Harutyunyan (n 15) 473.
[174] Ibid; Collyer (n 92).
[175] Lafleur (n 6).
[176] Collyer (n 92) 586.
[177] Ibid 588.
[178] PJ Spiro, "Perfecting Political Diaspora" (2006) 81 New York University Law Review 207, 209.
[179] Lafleur (n 6).
[180] PJ Spiro *At Home in Two* Countries – *The Past and the Future of Citizenship* (NYU Press 2016) 95.
[181] M Collyer, 'Inside Out? Directly Elected 'Special Representation' of Emigrants in National Legislatures and the Role of Popular Sovereignty' (2014) 41 Political Geography 64, 68.

4.4.1 France

Since the 2008 constitutional reform, Article 24 of the French Constitution enshrines that '*les Français établis hors de France sont représentés à l'Assemblée nationale et au Sénat*'.[182]

However, similarly to their French-resident counterparts, non-resident French citizens had been able to vote indirectly for their twelve senators[183] already since 1983.[184] Indeed, the French Constitution provides that the Senate, half of whose members are renewed every three years,[185] is elected through a territorial-based indirect procedure by an electoral college in each *département*.[186] Such electoral college is established also for the non-resident citizens and it is composed of '*des députés élus par les Français établis hors de France, des conseillers consulaires, des délégués consulaires'*,[187] which are directly elected by French people residing abroad.[188]

Conversely, the right for external citizens to vote for their own deputies of the *Assemblée nationale* was established more recently, namely it was embedded in the 2008 constitutional reform; the system set out by a 2009 act[189] was implemented for the first time during the 2012 legislative elections.[190]

France has five hundred and seventy-seven deputies,[191] who are elected every five years[192] by direct universal suffrage in single-member constituencies under a two-round majority voting system.[193] The constituencies are determined by law, specifically in the annex of the *Code electoral*.

Within this framework, French non-resident citizens elect eleven deputies. This implies that France has divided the world in eleven constituencies: in terms of number of states, the smallest comprises two states (*sixième circonscription*: Liechtenstein and Switzerland), whereas the largest includes forty-nine states (*onzième circonscription*: Belarus, Moldova, Russia, Ukraine, Oceania, and

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[182] *Constitution du 4 octobre 1958* art 24 al 5. Translation: 'French citizens residing outside France are represented in the National Assembly and the Senate'.
[183] *Loi organique n° 83-499 du 17 juin 1983 relative à la représentation au Sénat des Français établis hors de France* art 1.
[184] *Loi n° 83-390 du 18 mai 1983 relative à l'élection des sénateurs représentants les Français établis hors de France*.
[185] *Code électoral* art LO276.
[186] *Const du 4 oct 1958* art 24 al 4; *Code électoral* art LO280.
[187] *Loi n° 2013-659 du 22 juillet 2013 relative à la représentation des Français établis hors de France* art 44. Translation: 'the deputies elected by French citizens residing outside of France, the consular councilors, and the consular delegates'.
[188] The *Loi n° 2013-659* establishes that French citizens residing abroad are represented through *conseils consulaires* and the *Assemblée des Français de l'étranger (AFE)* (Article 1). The *conseillers consulaires* are elected by direct universal suffrage for six-year terms (Article 14) and, together with the *délégués consulaires*, form part of the electoral college responsible for electing senators representing French citizens abroad (Article 44). The number of *conseillers consulaires* is fixed by law for each constituency (Articles 25 to 27), while the number of *délégués consulaires* is determined by the number of citizens registered in that constituency. In fact, *délégués* are elected specifically to supplement the electoral college and, generally, one additional delegate is added for every 10,000 registered citizens (Article 40).
[189] *Ordonnance n° 2009-936 du 29 juillet 2009 relative à l'élection de députés par les Français établis hors de France*.
[190] Collyer (n 177) 70.
[191] *Code electoral* art LO119.
[192] Ibid art LO121.
[193] Ibid arts LO123 and LO124.

most of Asia).[194] This apportionment is based on the principle of equal representation enshrined in Article 3 of the Constitution[195] and on the rule applied in the most recent redistricting of 2009 setting representation at one deputy per 125,000 inhabitants.[196] The vote is carried out at diplomatic missions[197] one week before elections in France.[198] Similarly to citizens residing in France, non-residents are allowed to vote by proxy, provided that the vote is cast in the voter's constituency.[199]

All adult French nationals residing abroad who are properly registered in a consular circumscription are automatically considered eligible voters.[200] They can also run for office: other than the standard requirements for candidacy for the *Assemblée nationale* or *Sénat*,[201] no further criteria have been established.

4.4.2 Italy

The Italian Constitution does not enshrine a specific right to vote for non-resident nationals. However, since the 2000 constitutional reform it establishes a *circoscrizione Estero* (Overseas Constituency) where all the votes of external citizens are counted.[202]

The reform laid the foundations for the 2001 law regulating external voting,[203] also known as *Legge Tremaglia* after the minister that sponsored the original bill, which was implemented for the first time in the 2006 general elections.[204]

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[194] *Tableau des circonscriptions électorales des français établis hors de France (Article Annexe tableau n° 1 ter)*.
[195] *Const du 4 oct 1958* art 3, as interpreted by the *Conseil Constitutionnel* in *Décision n° 2010-602*.
[196] *Décision n° 2010-602*.
[197] *Code électoral* art LO330-12.
[198] Ibid art LO330-11.
[199] Ibid LO330-13. Under Articles L71 to L78 of the *Code electoral*, French voters are allowed to vote by proxy upon request. Everyone is entitled to delegate two people, who must enjoy political rights. Certain individuals, including legal guardians to adults, are prohibited to act as proxies for those voters. The delegate votes in the name of the principal at the principal's polling station.
[200] Ibid LO330-2; *Loi organique n° 76-97 du 31 janvier 1976 relative aux listes électorales consulaires et au vote des Français établis hors de France pour l'élection du Président de la république* art 4 I.
[201] According to Article LO127 of the *Code électoral*, to be eligible for election to the *Assemblée nationale*, the candidate must satisfy the requirements to be an elector (namely, be at least eighteen and enjoy civil and political rights, as provided for in Article L2 of the *Code électoral*) and must not fall within any statutory grounds of ineligibility enshrined in Articles LO128 to LO135. Furthermore, candidacy is limited to a single constituency. The same criteria apply for election to the *Sénat*, as established in Article LO296 of the *Code électoral*, the only difference being the age requirement, which is set at twenty-four.
[202] *Costituzione della Repubblica Italiana* [*Cost*] (promulgated on 27 December 1947 and entered into force on 1 January 1948) art 48.
[203] *Legge 27 dicembre 2001 n 459 "Norme per l'esercizio del diritto di voto dei cittadini italiani residenti all'estero"*.
[204] Tintori (n 51) 176.

The law establishes that Italians living abroad '*votano per corrispondenza*'.[205] Alternatively, they can opt, within the statutory time limits,[206] to travel to Italy and exercise their right in the electoral district of their last residence in the country.[207]

When the vote is exercised from abroad, all ballots are counted in a specific overseas constituency, which is divided into four areas: Europe; South America; North and Central America; and Africa, Asia, Oceania and Antarctica.[208] This configuration enables Italians living abroad to elect eight deputies[209] and four senators[210] every five years: [211] each constituency elects a deputy and a senator, and the rest is allocated in proportion to the number of citizens residing there.[212]

As previously introduced, the vote is carried out by mail: ballots are sent to the voter's residence by consular missions within eighteen days prior to the scheduled date of the vote in Italy,[213] and citizens must return them to the competent consulate within ten days before the vote.[214] All adult non-resident nationals who are properly registered in a consular circumscription are considered eligible voters, and thus automatically receive the ballots.[215]

The legal framework established by the *Legge Tremaglia* also regulates the conditions under which Italians residing abroad may stand for election. Indeed, although the general eligibility requirements apply to all candidates,[216] citizens residing in Italy may stand for election in any constituency, subject to legal limits on multiple candidacies,[217] whereas non-residents are prohibited from running in constituencies located within the national territory and may stand for election only in the constituency corresponding to their place of residence.[218]

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[205] L 459/2001 art 1 co 2. Translation: 'they vote by mail'.
[206] According to Article 4 of Law 459/2001, the option must be declared by 31 December of the year preceding the end of the legislative term, or, in the event of early dissolution, within ten days of the calling of elections.
[207] L 459/2001 art 1 co 3.
[208] Ibid art 6 co 1.
[209] *Cost* art 56.
[210] Ibid art 57
[211] Ibid art 60.
[212] L 459/2001 art 6 co 2.
[213] Ibid art 6 co 3.
[214] Ibid art 12 co 6
[215] Ibid art 5 co 1.
[216] According to the Italian electoral law (*Testo Unico delle leggi recanti norme per la elezione della Camera dei deputati*), candidates to the *Camera dei Deputati* must be electors and be at least twenty-five years old (Article 6). By contrast, eligibility for election to the Senate requires to be at least forty years of age (*Testo unico delle leggi recanti norme per l'elezione del Senato della Repubblica* Article 5). Statutory grounds for ineligibility to both chambers are established in Articles 7 to 10 of the *T. U. delle leggi recanti norme per la elezione della Camera dei deputati*.
[217] *Testo Unico delle leggi recanti norme per la elezione della Camera dei deputati* art 19.
[218] L 459/2001 art 8.

4.4.3 Spain

Since its entry into force in 1978, the Spanish Constitution has enshrined that '*la ley reconocerá y el Estado facilitará el ejercicio del derecho de sufragio a los españoles que se encuentren fuera del territorio de España*'.[219]

Indeed, non-resident Spaniards are registered through the competent consulate in the *Censo de los Electores Residences-Ausentes (CERA)*, thereby being included among eligible voters.[220] However, the 1985 *Ley Orgánica del Régimen Electoral General* does not provide for special representation, that is deputies or senators elected in overseas constituencies. In fact, external votes are counted in the provincial constituencies established by law within the national territory.[221] Thus, non-resident citizens participate, once every four years,[222] in the election of the 350 deputies[223] and the 266 directly elected senators[224] as if they were residing in Spain.

The vote is carried out by mail.[225] Between the eighteenth and the twenty-fifth days after the elections are called, the *Delegaciones Provinciales de la Oficina del Censo Electoral*[226] will send a first envelope containing all the information on the voting procedure, as well as the envelopes to return the ballots. Subsequently, voters can either wait for the official ballot to be sent at their home between the twenty-nineth and the thirty-third day after the elections are called, or download the *Junta Electoral*-approved set of ballots online.[227] Finally, voters shall return to the competent consulate the envelopes containing their completed ballots, together with a certificate attesting their registration in the *CERA*, within two days prior to the date scheduled for voting in Spain.[228]

Alternatively, foreign-based citizens can opt to vote at the competent diplomatic mission by personally depositing the ballots they received by mail, within the eighth and the third days prior to the vote in Spain.[229]

Within this framework, it is important to mention that until 2022 non-resident voters did not receive the ballots automatically. The so-called *voto rogado* (requested vote) envisaged that external

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[219] *Constitución Española* [CE] art 68.5. Translation: 'the law shall recognize and the State shall facilitate the exercise of the right to vote for Spanish citizens who are outside the territory of Spain'.
[220] *Ley Orgánica 5/1985 de 19 de junio del Régimen Electoral General [LOREG]* art 31.
[221] Ibid art 161.1.
[222] CE arts 68.4 and 69.6.
[223] *LOREG* art 162.1.
[224] Ibid art165.1. In Spain, senators are elected by the people and nominated by the legislative assemblies of the *Comunidades Autónomas*. Specifically, each provincial constituency elects four senators and the *Comunidades Autónomas* appoint one senator. One additional senator is appointed for each million inhabitants of the region.
[225] Ibid art 75.
[226] The Provincial Delegations of the Electoral Census Office are the local branches of the *Oficina del Censo Electoral* (Electoral Census Office). They are responsible for managing the electoral register at the provincial level and for carrying out key electoral administrative tasks with the support of municipalities and consulates. See the official website of the *Junta Electoral Central*.
[227] *LOREG* art 75.3.
[228] Ibid art 75.5.
[229] Ibid art 75.4

voters had to send an official request to the competent *Delegación Provincial de la Oficina del Censo Electoral* within twenty-five days of the calling of elections.[230]

Alongside the regulation of external voting, the 1985 law establishes the general rules for election, including eligibility to stand for election. No specific provisions appear to apply to non-resident citizens, who are therefore required to comply with the same rules applicable to all candidates.[231]

[230] *LOREG* art 75.1 as in force prior to *Ley Orgánica 12/2022 de 30 de septiembre de reforma de la Ley Orgánica 5/1985 de 19 de junio del Régimen Electoral General, para la regulación del ejercicio del voto por los españoles que viven en el extranjero.*

[231] Under the *LOREG*, candidates must be electors of legal age (Article 6) and not fall within the statutory grounds of ineligibility established in Article 6. In addition, no candidate may stand in more than one constituency or be included in more than one candidate list (Article 46.6).

5.
Conclusion

5.1 Decoupling Citizenship from Territory: Theoretical Premises and Analytical Framework

This dissertation set out to examine how France, Italy, and Spain regulate the legal status of their non-resident nationals and what these regulatory approaches reveal about each country's understanding of who belongs to the national community.

The research is framed by two basic premises. First, citizenship is neither univocal nor static.[1] In this sense, Chapter 2 outlines that citizenship has been historically conceptualized as dualistic in nature. On the one hand, it is a legal status, i.e. a vertical dimension exemplifying the relationship between the State and the political community it governs, which is rooted in the Westphalian order and in the idea that the People is one of the constitutive elements of the State. On the other hand, it means active membership within the political community, namely a horizontal framework underscoring the relation between nationals bearing equal rights and the role of citizenship as a source of identity and social belonging.[2] The two dimensions, responding to an exclusive (national versus alien) and inclusive (equality among peers) idea of citizenship, respectively, have consistently coexisted; and the relative emphasis placed on each has varied over time, reflecting different understandings of nationhood.[3]

Second, this traditional State-centered conception of citizenship – which relied on the overlapping relationship between State institutions, territory, and individuals – has been increasingly challenged. Notably, the development of current phenomena such as dual nationality, the extension

[1] E Grosso, 'Il ruolo del confine nelle trasformazioni della nozione giuridica di cittadinanza' (2020) 10 Teoria Politica 207, 210.
[2] S Staiano 'Migrazioni e paradigmi della cittadinanza: alcune questioni di metodo' (2008) 21/2008 Federalismi.it.
[3] R Brubaker, *Citizenship and nationhood in France and Germany* (Harvard University Press 1998).

of citizenship rights to immigrants residing in the country, and supranational forms of belonging (i.e. European Union citizenship) have disrupted the above overlap and progressively detached citizenship from its territorial dimension,[4] leading scholars to posit the decline of the concept of citizenship.[5]

Within this context, external citizenship – which is understood as the relationship between a State and its nationals temporarily or permanently residing abroad – destabilizes the idea of territorially bounded membership in a self-contained polity. In fact, the emergence and expansion of legal mechanisms enabling individuals to maintain, acquire and exercise their citizenship outside the State *de facto* separate legal membership from territorial residence,[6] thus forcing States to answer a fundamental question: can one fully belong without residing? Such question appears extremely relevant, considering that the extension of citizenship to diaspora is the flip side of naturalization regimes for resident non-nationals, which has traditionally been the focus of scholarship in European countries dealing with heightened immigration inflows, thus leaving reduced attention to the study of external citizenship.[7]

Taking dual nationality as a precondition for the development of external citizenship, since it is premised on enabling emigrants to be full members of two communities (i.e. the country they reside in and their country of origin),[8] external citizenship was operationalized in the analysis of nationality laws of France, Italy and Spain. Four elements were considered: the transmission of citizenship via *ius sanguinis* (which represents the cornerstone of nationality law, since it guarantees the intergenerational continuity of the Nation),[9] the establishment of generational or temporal limits to transmission due to residence abroad, the possibility of reacquiring lost nationality when residing abroad or of acquiring it on ethnic or other bases, and the exercise of citizenship through external voting.

5.2 External Citizenship as a Mirror of National Belonging: The Divergent Approaches of France, Italy, and Spain

The findings of the analysis demonstrate that France, Italy, and Spain recognize and regulate external citizenship through comparable legal mechanisms. Yet, the structure, limits and rationale of these frameworks differ significantly, thus reflecting the foundational criteria for inclusion in the

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[4] R Bauböck and V Guiraudon, 'Introduction: realignments of citizenship: reassessing rights in the age of plural membership and multi-level governance' (2009) 13 (5) Citizenship Studies 439.
[5] R Bauböck *Transnational Citizenship: Membership and Rights in International Migration* (Edward Elgar 1994); L Bosniak, 'Citizenship denationalized' (2000) 7(2) Indiana Journal of Global Legal Studies 447.
[6] R Bauböck, 'The rights and duties of external citizenship' (2009) 13(5) Citizenship Studies 475.
[7] K Barry, 'Home and Away: The Construction of Citizenship in an Emigration Context' (2006) 81 NYU Law Review 11, 19.
[8] PJ Spiro *At Home in Two* Countries – *The Past and the Future of Citizenship* (NYU Press 2016).
[9] MP Vink and R Bauböck, 'Citizenship configurations: Analysing the multiple purposes of citizenship regimes in Europe' (2013) 11 Comparative European Politics 621.

national community.[10] A closer examination of how these mechanisms interact within each nationality regime reveals three distinct models of external citizenship, each grounded in a different conception of the relationship between territory, membership, and national identity.

In France, external citizenship is structurally restrained. In fact, while French nationals residing abroad retain political rights[11] and are allowed to transmit nationality to their descendants,[12] membership in the political community is conditional upon the maintenance of effective ties with the country. In this regard, the logic of assimilation that governs the acquisition of French nationality for foreign residents also informs the regulation of citizenship beyond France's borders. Indeed, non-resident nationals, as well as former nationals reacquiring French citizenship,[13] are expected to prove an ongoing connection with the French community. This is reflected in the constraining mechanisms contained in the French nationality law that preclude long-term emigrants from perpetually transmitting citizenship. Most notably, the doctrine of *désuétude* – namely the possibility to lose French citizenship by judicial decision because of disuse – underscores the idea that nationality is not conceived as an inherited status, but rather as a legal relationship grounded in active engagement with French society.[14] Especially when considered alongside the central role of territorial-based modes of attribution of French nationality, i.e. double *ius soli*,[15] and the strict civic and language requirements for naturalization,[16] this framework suggests that the French State adopts a civic conception of nationality, according to which citizens are bound by shared republican values and primarily reside within the country's borders.[17] Within this model, external citizenship appears as a tightly circumscribed form of membership: the national community might extend beyond the national territory, only insofar as individuals continue to participate (culturally, familiarly, or economically) in the life of the country.

Italy stands at the opposite side of the spectrum, developing a significantly expansive regime of external citizenship. The framework was rooted in the history of the Italian Nation-State, which was characterized by late unification, soon after followed by mass emigration, which resulted in the formation of a large long-term overseas diaspora.[18] Thus, Italian nationality law was designed to preserve a legal bond with emigrants and their descendants. As such, external citizenship was the State's tool to guarantee the maintenance of remittance flows, to encourage repatriation, and to ensure

[10] A Gatti 'Forme e contenuti delle nuove cittadinanza: una prospettiva di diritto comparato' in A Di Stasi, MC Baruffi and L Panella (eds) *Cittadinanza europea e cittadinanza nazionale* (Editoriale Scientifica 2023) 99.
[11] *Constitution du 4 octobre 1958* art 24 al 5.
[12] *Code civil* art 18.
[13] Ibid arts 24-1 and 24-2.
[14] Ibid arts 23-6 and 30-3.
[15] Ibid art 19-3.
[16] Ibid art 21-24.
[17] R Brubaker, *Citizenship and nationhood in France and Germany* (Harvard University Press 1998).
[18] M Arena, B Nascimbene and G Zincone, 'Italy' in R Bauböck and others *Acquisition and Loss of Nationality | Volume 2: Country Analysis. Policies and Trends in 15 European Countries* (Routledge 2006) 337.

cultural continuity across generations.[19] Accordingly, Italian nationality law allowed for unlimited transmission of citizenship by descent.[20] Most notably, even in the absence of direct parental transmission, individuals could claim Italian nationality on the basis of an expansive reading of *ius sanguinis*, according to which citizenship is inherent through descent, provided that no ascendant had voluntarily renounced it.[21] Within this framework, external citizenship may be deemed to be not only a central element of nationality law guaranteeing intergenerational continuity, but also an expression of diaspora policy formally implementing transnational forms of belonging. This approach is further reflected in the preferential acquisition regime addressing co-ethnics in successor States of former Yugoslavia, specifically the descendants of former Italians,[22] as well as in the institutionalization of political representation through a dedicated overseas constituency.[23] Overall, Italian nationality appears to be grounded in family relationships: membership in the national community is defined by descent rather than by residence in the country.[24] Such characterization seems plausible, especially considering the restrictive path to citizenship of children born and raised in Italy to foreign parents.[25] In the analysis of external citizenship, the 2025 reform marks a notable adjustment of the expansive Italian regime. For the first time, transmission by descent is restricted by generational limits, which are set to guarantee that nationals have effective ties with Italy.[26] However, this reconfiguration does not amount to a break with the familistic principle underlying Italian nationality. In fact, descent remains the main criterion for citizenship acquisition. Furthermore, the absence of further reforms expanding *ius soli* or recalibrating naturalization criteria suggests that the 2025 reform was narrowly tailored to protect Italian citizenship from perceived instrumentalization, rather than to redefine the boundaries of the political community.[27]

Positioned between the two models above, Spain represents a middle ground, while also articulating a distinctive approach to external citizenship. Similarly to Italy, Spanish nationality law places particular emphasis on emigrants and on the transmission of citizenship by descent.[28] Indeed, non-resident Spaniards can transmit nationality virtually without limits, however, closer to the French model, the preservation of nationality is subject to constraints, most notably the registration with

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[19] G Zincone and M Basili, 'Country Report: Italy' (EUDO Citizenship Observatory 2013) 7.
[20] *Legge 5 febbraio 1992 n 91 "Nuove norme sulla cittadinanza"* art 1 lett a.
[21] *Circolare n K 28.1 8 aprile 1991 "Riconoscimento del possesso dello status civitatis italiano ai cittadini stranieri di ceppo italiano".*
[22] L 91/1992 arts 17-bis and 17-ter.
[23] *Costituzione della Repubblica Italiana* (promulgated on 27 December 1947 and entered into force on 1 January 1948) art 48; *Legge 27 dicembre 2001 n 459 "Norme per l'esercizio del diritto di voto dei cittadini italiani residenti all'estero".*
[24] Arena, Nascimbene and Zincone (n 17) 329.
[25] L 91/1992 art 4 co 2.
[26] Preamble of *Decreto-legge 28 marzo 2025 n 36 "Disposizioni urgenti in materia di cittadinanza".*
[27] E Codini, 'Towards overcoming familism in the Italian citizenship framework?' (2025) Fondazione ISMU ETS.
[28] *Código Civil [CC]* art 17.1.a.

consular authorities within a specific time frame,[29] thereby balancing intergenerational continuity with the intention of maintaining an effective connection with the State. The distinctive feature of the Spanish citizenship regime lies in the central role of historical ties as a criterion of belonging.[30] Within the national territory, this is embodied by the preferential treatment enjoyed by the nationals of Ibero-American countries and other former colonies in matters of naturalization, including reduced residence requirements[31] and special dual nationality arrangements.[32] These privileges derive from the perceived cultural proximity rooted in the common religion and language that these nations share with Spain, rather than residence in the country.[33] With regard to external citizenship, this historically oriented conception is reflected in the time-bound nationality acquisition programs grounded in reparative justice. These mechanisms symbolically and legally restored membership for descendants of exiles from both the Civil War and the Francoist authoritarian regime,[34] as well as for victims of more distant historical events, namely Sephardic Jews.[35] The peculiarity of these programs is that – similarly to the Italian framework for ethnic kins in former Yugoslavia – they allow for the external acquisition of nationality without needing to reside in Spain or to be physically present in the country to complete procedures. Taken together, these elements suggest that the Spanish idea of People is grounded neither on territory nor exclusively on bloodline. Instead, Spanish external citizenship may be categorized as a historical model, where belonging is articulated around cultural and historical affinity transcending the State's borders.

The above analysis suggests that external citizenship is not merely an incidental extension of nationality beyond borders, but rather it is an integral part of the nationality law through which States determine their understanding of political membership. The legal mechanisms used by France, Italy, and Spain are thus embedded in contrasting conceptions of the People (citizenry), which determines the scope of external inclusion in the national community. As a result, external citizenship is a domain where national identity is reaffirmed and not weakened by transnational mobility.

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[29] Ibid art 24.1.
[30] F Pasetti and R Schweitzer, 'Looking back and abroad while (not) moving forward. Migration, ideas and the stability of citizenship in Spain' (2025) Front Social 9.
[31] CC art 22.1.
[32] Ibid art 23 and *Constitución Española [CE]* 1978 art 11.3.
[33] Pasetti and Schweitzer (n 29).
[34] *Ley 52/2007 de 26 de diciembre por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura*; *Ley 20/2022 de 19 de octubre de Memoria Democrática*; *Ley 12/2015 de 24 de junio en materia de concesión de la nacionalidad española a los sefardíes originarios de España.*
[35] *Ley 12/2015 de 24 de junio en materia de concesión de la nacionalidad española a los sefardíes originarios de España.*

5.3 External Citizenship in the European Union: Tensions and Convergence

Although external citizenship reflects the idea of nationhood of the analyzed countries, it does not operate within a purely national legal environment. Indeed, the regulation of citizenship in EU Member States is influenced by the supranational European Union framework, which plays a role in determining how States decide to engage their diasporas.

As analyzed in Chapter 2, the EU's multilevel configuration of citizenship introduces constraints in a domain traditionally deemed to be a core expression of state sovereignty.[36] Such approach appears necessary, considering that the status of EU citizen is only derived from holding a Member State's nationality.[37] Over time, the jurisprudence of the Court of Justice of the European Union has underscored how Member States's nationality laws must be consistent with EU principles, developing a consolidated doctrine on loss of nationality based on the respect of the principle of proportionality and on the protection of fundamental rights.[38]

In this regard, the 2025 judgement concerning Malta's citizenship by investment scheme is emblematic.[39] The framework allowed third-country nationals to acquire Maltese citizenship without residence requirements and solely based on investments established by law. For the purposes of this dissertation, the implications of the ruling go beyond the incompatibility of investment schemes with EU citizenship due to their transactional nature, and the Court's willingness to review attribution of citizenship.[40] In fact, given the automatic attribution of EU citizenship and its attached rights (including the right to move and reside freely within the Union)[41]on the basis of Member States' nationality, the broader implication of the Court's reasoning might be that national citizenship regimes should not jeopardize the Union and the trust-based relationship among Member States.

This principle may be transposed to the context of external citizenship, especially to expansive regimes that do not assess the existence of effective ties between the individual and the State. Specifically, the unlimited attribution of nationality through *ius sanguinis* may raise issues of compatibility with EU law in two respects. First, the conception of instrumentalization of EU citizenship may plausibly extend beyond the commodification of such status to include the granting

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[36] O Dörr, 'Nationality', *Max Planck Encyclopedias of International Law* (2019) ch B para 5.

[37] Treaty on European Union (TEU) (Maastricht Treaty) art 9; *Consolidated Version of the Treaty on the Functioning of the European Union* (TFEU) (2012) OJ C326/47 art 20(1).

[38] Most notably: Micheletti Case (*Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria*) C-369/90 (1992); Grzelczyk Case (*Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*) C-184/99 (2001); Rottman Case (*Janko Rottman v Freistaat Bayern*) C-135/08 (2010); Ruiz Zambrano Case (*Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)*) C-34/09 (2011); Dereci Case (*Dereci and others v. Bundesministerium für Inneres*) C-256/11 (2011); McCarthy Case (*Shirley McCarthy v Secretary of State for the Home Department*) C-434/09 (2011); Alokpa Case (*Adzo Domenyo Alokpa and Others v Ministre du Travail, de l'Emploi et de l'Immigration*) C-86/12 (2013); Melloni Case (*Stefano Melloni v Ministerio Fiscal*) C-399/11 (2013); Tjebbes Case (*M.G. Tjebbes and Others v Minister van Buitenlandse Zaken*) C-221/17 (2019).

[39] Malta Case (*European Commission v Republic of Malta*) Case C-181/23 (2025).

[40] A Boubel, 'Union Citizenship shall not be commercialised: Commission v. Malta (C-181/23)' (2025) EU Law Live.

[41] TFEU art 21.

of contingent forms of citizenship based on remote ancestral ties. Such mode of attribution effectively lacks any meaningful connection to the national and European communities, thereby creating a risk of compromising and undermining the essence and integrity of Union citizenship. Second, it could be deemed incompatible with the principle of sincere cooperation, given the potentially arbitrary effects arising from this mode of nationality attribution, which other Member States are obliged to recognize for the purposes of the exercise of EU rights and freedoms.[42]

Such issues of conformity are not merely theoretical. In fact, they are explicitly acknowledged in the 2025 Italian reform, which was preceded in the months leading up to its adoption by four referral orders for constitutional review of the nationality law, also raising questions related to the compliance of the expansive *ius sanguinis* regime with EU law.[43]

In light of these developments, the Malta judgement has underscored the limits of the current EU framework in the field of citizenship, which relies on the domestic laws of the twenty-seven Member States and on their respective conceptions of membership. However, this first engagement of the Court with the matter of nationality attribution does not imply a transfer of competence to the Union on the matter. Rather, it suggests the need for a reform of EU citizenship law, in particular for greater harmonization among Member States' nationality regimes.[44]

Against this background, the comparative analysis of the external citizenship regimes of France, Italy, and Spain demonstrates that there is no univocal European model of citizenship. As such, convergence in the European context appears to be shaped not by formal harmonization but by mutual influence and similar constitutional traditions.[45] A functional alignment emerges around the implementation of specific legal arrangements: the acceptance of dual nationality,[46] the institutionalization of external voting for the election of the national Parliament (which in France and

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[42] F Corvaja, 'Quando i nodi vengono al pettine. Il riconoscimento della cittadinanza italiana iure sanguinis senza limiti, tra vincoli di diritto internazionale, condizionamenti europei e ordinamento costituzionale italiano' (2025) 1/2025 Eurojus 389, 407.

[43] *Ordinanza del Tribunale ordinario di Bologna sezione specializzata in materia di immigrazione, protezione internazionale e libera circolazione cittadini UE del 26 novembre 2024 iscritta al n 247/2024 del Registro delle Ordinanze (RO) della Corte costituzionale; Ordinanza del Tribunale ordinario di Roma sezione diritti della persona e immigrazione del 21 marzo 2025 iscritta al n 65/2025 RO; Ordinanza del Tribunale ordinario di Milano sezione dodicesima specializzata in materia di immigrazione, protezione internazionale e libera circolazione dei cittadini dell'Unione europea del 3 marzo 2025 iscritta al n 66/2025 RO; Ordinanza del Tribunale ordinario di Firenze sezione specializzata in materia di immigrazione, protezione internazionale e libera circolazione dei cittadini UE del 7 marzo 2025 iscritta al n 86/2025 RO.*

[44] S Marino, 'Limiti alla discrezionalità degli Stati membri nella disciplina della cittadinanza: tanto rumore per una giurisprudenza costante?' (2025) 1/2025 Il Diritto dell'Unione Europea 13.

[45] R Bauböck and others *Acquisition and Loss of Nationality | Volume 1: Comparative Analysis. Policies and Trends in 15 European Countries* (Routledge 2006).

[46] As stated in Article 23 of the French Civil Code, Article 11 of the Italian Nationality Law, and in Article 24.1 of the Spanish Civil Code.

Italy is applied through a similar mechanism of special representation),[47] the central role of descent in nationality transmission,[48] and the necessity to prove effective ties with the national community.[49]

In the absence of harmonization at the supranational level, Member States of the European Union continue to rely on their domestic citizenship law as the primary instrument to regulate the boundaries of their political community.

Such boundaries are not represented by the geographical borders of the States and are not weakened by transnational mobility, conversely, they rely on other criteria determined by a country's historical path and self-understanding; namely, republican values in France, familial ties in Italy, and a shared past in Spain. Therefore, the regulation of non-resident nationals indicates the adaptability of the concept of citizenship to current transnational phenomena and its capacity to coherently define political membership even when it is exercised from beyond borders.

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[47] As per: Article 24 of the French Constitution and Title 3 of the Electoral Code; Article 48 of the Italian Constitution and Law 459/2001; Article 68 of the Spanish Constitution and Article 75 of the Organic Law of the General Electoral Regime.
[48] As stated in Article 18 of the French Civil Code, in Article 1 of the Italian Nationality Law, and in Article 17 of the Spanish Civil Code.
[49] As can be inferred from Article 23-6 of the French Civil Code, from Article 3-bis of the Italian Nationality Law, and in Article 24 of the Spanish Civil Code.

6.
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Loi n°66-945 du 20 décembre 1966 modifiant l'ordonnance 62825 du 21-07-1962 relative a certaines dispositions concernant la nationalité française

Loi n° 73-42 du 9 janvier 1973 complétant et modifiant le code de la nationalité française et relative à certaines dispositions concernant la nationalité française

Loi n° 83-390 du 18 mai 1983 relative à l'élection des sénateurs représentants les Français établis hors de France

Loi n° 93-992 du 10 août 1993 relative aux contrôles et vérifications d'identité

Loi n° 93-933 du 22 juillet 1993 réformant le droit de la nationalité

Loi n° 93-1027 du 24 août 1993 relative à la maîtrise de l'immigration et aux conditions d'entrée, d'accueil et de séjour des étrangers en France

Loi n° 98-170 du 16 mars 1998 relative à la nationalité

Loi n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité

Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration

Loi n° 2011-672 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité

Loi n° 2013-659 du 22 juillet 2013 relative à la représentation des Français établis hors de France

Loi n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie

Loi n° 2024-42 du 26 janvier 2024 pour contrôler l'immigration, améliorer l'intégration

Loi n° 2025-412 du 12 mai 2025 visant à renforcer les conditions d'accès à la nationalité française à Mayotte

Loi organique n° 83-499 du 17 juin 1983 relative à la représentation au Sénat des Français établis hors de France art 1

Loi organique n° 76-97 du 31 janvier 1976 relative aux listes électorales consulaires et au vote des Français établis hors de France pour l'élection du Président de la République art 4 I

Long M, Être français aujourd'hui et demain: rapport de la Commission de la nationalité (1988) Tome 2 168

Mission d'étude des législations de la nationalité et de l'immigration: rapports au Premier ministre

Ordonnance n° 45-2441 du 19 octobre 1945 portant Code de la nationalité française

Ordonnance n° 62-825 du 21 juillet 1962 relative à certaines dispositions concernant la nationalité française, prises en application de la loi n° 62-421 du 13 avril 1962

Ordonnance n° 2009-936 du 29 juillet 2009 relative à l'élection de députés par les Français établis hors de France

Réponse ministérielle JO Sénat 20 juin 1985 Questions remises à la présidence du Sénat 1145

Tableau des circonscriptions électorales des français établis hors de France (Article Annexe tableau n° 1 ter)

6.2.3 International Treaties

Convention on Rights and Duties of States (Montevideo Convention) (adopted 26 December 1933, entered into force 26 December 1934) OAS Treaty Series No 37 art 1.

International Law Commission (ILC) Draft Articles on Diplomatic Protection 2006 Art 19 (1) art 1.

International Law Commission (ILC) Draft Articles on Diplomatic Protection (2006) art 7.

League of Nations Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930) 179 LNTS 89 arts 4 and 5.

League of Nations Protocol Relating to Military Obligations in Certain Cases of Double Nationality (1935) 178 LNTS 227 art 1.

Treaty of Peace with Italy signed at Paris on 10 February 1947 and entered into force on 15 September 1947.

Treaty on the delimitation of the boundary line for the part not indicated as such in the Peace Treaty of 10 February 1947 signed at Osimo on 10 November 1975 and entered into force on 3 April 1977.

UNGA International Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979) 1249 UNTS (CEDAW) art 9 (1).

UNGA Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965) 660 UNTS (CERD) art 5 (d) (iii).

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) arts 2, 15.

UNGA Convention on the Rights of Persons with Disabilities (adopted 24 January 2007) A/RES/61/106 (CRPD) art 18 (1).

UNGA Convention Relating to the Status of Stateless Persons (adopted 28 September 1954) 360 UNTS art 1.

UNGA International Covenant on Civil and Political Right (adopted 16 December 1966) 999 UNTS 171 art 14.

Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95 art 3 (b).

6.2.4 Italian Legislation

AC 105 e abb (presentato il 29 giugno 2022) XVIII Legislatura art 1 amending L 91/1992

Accordo di cittadinanza tra la Repubblica italiana e la Repubblica Argentina (signed 29 October 1971 and entered into force 19 May 1973)

AS n 2092 XVII Legislatura.

Costituzione della Repubblica Italiana (promulgated on 27 December 1947 and entered into force on 1 January 1948) art 48

Circolare n K 28.1 8 aprile 1991 “Riconoscimento del possesso dello status civitatis italiano ai cittadini stranieri di ceppo italiano”

Circolare K.60.1 del 22 maggio 2006

Codice civile per gli Stati di S.M. il Re di Sardegna (1837) arts 19, 20, 24, 26, 34, 38, 42

Codice civile del Regno d'Italia 1865 arts 4, 8, 9, 10, 11, 14

Codice civile art 2

Consiglio di Stato Parere n 105 15 aprile 1983

Decreto del Presidente della Repubblica 14 settembre 2011 n 179 "Regolamento concernente la disciplina dell'accordo di integrazione tra lo straniero e lo Stato, a norma dell'articolo 4-bis, comma 2, del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286" art 2 co 4 lett a

Decreto del Presidente Della Repubblica 31 marzo 2025 "Indizione del referendum popolare abrogativo avente la seguente denominazione: «Cittadinanza italiana: Dimezzamento da 10 a 5 anni dei tempi di residenza legale in Italia dello straniero maggiorenne extracomunitario per la richiesta di concessione della cittadinanza italiana»"

Decreto-legge 21 giugno 2013 n 69 "Disposizioni urgenti per il rilancio dell'economia" convertito con modificazioni dalla L 9 agosto 2013 n 98 art 33 co 1

Decreto-legge 4 ottobre 2018 n 113 "Disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata" convertito con modificazioni dalla L 1 dicembre 2018 n 132

Decreto-legge 28 marzo 2025 n 36 "Disposizioni urgenti in materia di cittadinanza"

Decreto legislativo 25 luglio 1998 n 286 "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero"

Decreto legislativo luogotenenziale 23 aprile 1946 n 219 "Norme per lo svolgimento del "referendum" istituzionale e per la proclamazione dei risultati di esso"

Lavori preparatori Atto Camera n 1607 (presentato il 30 agosto 2006) XV Legislatura

Legge 17 marzo 1861 n 4671

Legge 13 giugno 1912 n 555 "Sulla cittadinanza italiana"

Legge 31 gennaio 1926 n 108 "Modificazioni ed aggiunte alla legge 13 giugno 1912, n. 555, sulla cittadinanza"

Legge 26 giugno 1927 n 1013 "Legge organica per l'amministrazione della Tripolitania e della Cirenaica" art 33

Legge 13 maggio 1940 n 822 "Norme relative ai meticci" arts 3, 4

Legge 19 maggio 1975 n 151 "Riforma del diritto di famiglia" art 219

Legge 5 febbraio 1992 n 91 "Nuove norme sulla cittadinanza"

Legge 22 dicembre 1994 n 736 "Modifica dell'articolo 17 della legge 5 febbraio 1992, n. 91, concernente la proroga del termine per il riacquisto della cittadinanza italiana" art 1

Legge 23 dicembre 1996 n 662 "Misure di razionalizzazione della finanza pubblica" art 2 co 195

Legge 14 dicembre 2000 n 379 “Disposizioni per il riconoscimento della cittadinanza italiana alle persone nate e già residenti nei territori appartenuti all'Impero austro-ungarico e ai loro discendenti”

Legge 27 dicembre 2001 n 459 “Norme per l'esercizio del diritto di voto dei cittadini italiani residenti all'estero”

Legge 8 marzo 2006 n 124 “Modifiche alla legge 5 febbraio 1992, n. 91, concernenti il riconoscimento della cittadinanza italiana ai connazionali dell'Istria, di Fiume e della Dalmazia e ai loro discendenti”

Legge15 luglio 2009 n 94 “Disposizioni in materia di sicurezza pubblica”

Legge 23 maggio 2025 n 74 “Conversione in legge, con modificazioni, del decreto-legge 28 marzo 2025, n. 36, recante disposizioni urgenti in materia di cittadinanza”

Regio decreto-legge 7 settembre 1938 n 1381 “Provvedimenti nei confronti degli ebrei stranieri”

Regio decreto-legge 31 ottobre 1919 n 2401 “Che approva le norme fondamentali per l'assetto della Cirenaica” art 1

Regio decreto-legge 1 giugno 1936 n 1019 “Ordinamento e amministrazione dell'Africa Orientale Italiana”

Regio decreto-legge 19 aprile 1937 n 880 “Sanzioni per i rapporti d'indole coniugale fra cittadini e sudditi” art 28

Regio decreto-legge 17 novembre 1938 n 1728 “Provvedimenti per la difesa della razza italiana” art 4

Testo Unico delle leggi recanti norme per la elezione della Camera dei deputati arts 6, 19

Testo unico delle leggi recanti norme per l'elezione del Senato della Repubblica art 5

Statuto Fondamentale del Regno 1848 (Statuto Albertino)

6.2.5 Spanish Legislation

Código Civil (CC) Libro Primero “De las personas” Título I “De los españoles y extranjeros”

Congreso de los Diputados, Informe de la Subcomisión para estudiar la situación de los españoles que viven afuera, así como la de los inmigrantes y refugiados que han llegado a nuestro país; conocer a fondo sus necesidades y reivindicaciones prioritarias; proponer las medidas – legales y sociales – que sea conveniente adoptar para conseguir solucionar los problemas existentes (154/8) (1998)

Constitución política de la monarquía española Cadiz promulgated on 19 March 1812 art 5.1

Constitución española (CE) (1978) arts 11, 60.1, 68.4, 68.5, 69.6

Convenio de nacionalidad entre el Reino de España y la República Francesa, hecho en Montauban el 15 de marzo de 2021

Edict of the Expulsion of the Jews of Spain [Alhambra Decree] (31 March 1492)

Instrucción de 16 de mayo de 1983 de la Dirección General de los Registros y del Notariado sobre nacionalidad española

Instrucción de 4 de noviembre de 2008, de la Dirección General de los Registros y del Notariado, sobre el derecho de opción a la nacionalidad española establecido en la disposición adicional séptima de la Ley 52/2007, de 26 de diciembre s V 3 a

Instrucción de 25 de octubre de 2022, de la Dirección General de Seguridad Jurídica y Fe Pública, sobre el derecho de opción a la nacionalidad española establecido en la disposición adicional octava de la Ley 20/2022, de 19 de octubre, de Memoria Democrática s IV 3

Ley de 15 de julio de 1954 por la que se reforma el Titulo Primero del Libro Primero del Código Civil, denominado "De los españoles y extranjeros"

Ley 14/1975, de 2 de mayo, sobre reforma de determinados artículos del Código Civil y del Código de Comercio sobre la situación jurídica de la mujer casada y los derechos y deberes de los cónyuges

Ley 51/1982, de 13 de julio, de modificación de los artículos 17 al 26 del Código Civil

Ley 18/1990, de 17 de diciembre, sobre reforma del Código Civil en materia de nacionalidad

Ley 36/2002, de 8 de octubre, de modificación del Código Civil en materia de nacionalidad

Ley 40/2006, de 14 de diciembre, del Estatuto de la ciudadanía española en el exterior

Ley 52/2007, de 26 de diciembre, por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura art disposición adicional séptima

Ley 12/2015, de 24 de junio 2015, en materia de concesión de la nacionalidad española a los sefardíes originarios de España

Ley 20/2022, de 19 de octubre, de Memoria Democrática art disposición adicional octava

Ley Orgánica 5/1985 de 19 de junio del Régimen Electoral General [LOREG] arts 6, 31, 46, 75, 161, 162, 165

Ley Orgánica 12/2022, de 30 de septiembre, de reforma de la Ley Orgánica 5/1985, de 19 de junio, del Régimen Electoral General, para la regulación del ejercicio del voto por los españoles que viven en el extranjero

Real Decreto, de 6 noviembre de 1916, dictando disposiciones relativas al modo de ganar los extranjeros vecindad en España

Real Decreto 39/1996, de 19 de enero 1996, sobre concesión de la nacionalidad española a los combatientes de las Brigadas Internacionales en la guerra civil española

Real Decreto 1004/2015 de 6 de noviembre por el que se aprueba el Reglamento por el que se regula el procedimiento para la adquisición de la nacionalidad española por residencia

Resolución de 17 de marzo de 2010, de la Subsecretaría, por la que se dispone la publicación del Acuerdo del Consejo de Ministros de 22 de enero de 2010, por el que se amplía un año el plazo para ejercer el derecho de optar a la nacionalidad española recogido en la disposición adicional séptima de la Ley 52/2007, de 26 de diciembre, por la que se reconocen y amplían

derechos y se establecen medidas a favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura

Tratado Definitivo de Paz y Amistad entre la Republica Mexicana y S.M.C. la Reina Gobernadora de España (signed in Madrid in 1836)

6.2.6 Other Jurisdictions

British Nationality Act 1981 (entered into force 1983) art 1(b), art 41(a)

Citizenship and Immigration Control Act (as amended to 2015) cap 66 (1999) art 12 (a) (UGA)

Code de la Nationalité Tunisienne (1956) art 7

Constituição da República Federativa do Brasil de 1988 (compilado até a Emenda Constitucional 132/2023) art 12 (I) (a) (BRA)

Constitución Política del Estado Plurinacional de Bolivia (2009) art 3 (BOL)

Danish Nationality Act, cf. Consolidated Act No. 113 of 20 February 2003, with the amendments following from Act No. 311 of 5 May 2004. Art 1 (1)

Finnish Nationality Act (Law 359/2003) art 28(2)

Granting of citizenship for Exceptional Services Regulations (Subsidiary Legislation 188.06 of the Laws of Malta) enacted under Legal Notice 437 of 2020

Immigration and Nationality Act, 8 USC § 1427 d (USA)

Individual Investor Programme of the Republic of Malta Regulations (Subsidiary Legislation 188.03 of the Laws of Malta) enacted under Legal Notice 47 of 2014

Irish Nationality and Citizenship Act (1956) sec 7 (2)

Maltese Citizenship Act (Chap. 188), ACT XXX of 1965, as amended by Acts: II of 1970, XXXI of 1972, LVIII of 1974, XXXI of 1975, IX of 1977, XIII of 1983, XXIV of 1989, IV of 2000 and X of 2007; and Legal Notice 410 of 2007 and Act XV of 2013, Acts XXIV and XXVI of 2017 and Acts XV and XXXVIII of 2020

MERCOSUR CMC Decision n° 64/10 on the Statute of MERCOSUR Citizenship (entered into force 16 December 2010)

Nationality Act (Staatsangehörigkeitsgesetz) [StAG] of 22 July 1913 (Reich Law Gazette I 583 – Federal Law Gazette III 102-1), as last amended by Article 1 of the Act of 22 March 2024 (Federal Law Gazette I no. 104) art 4 (1) and repealed art 10 s 1 no 4 (before the amending Act of 22 March 2024) (DEU)

Naturalization Act 1870 (33 & 34 Vict c 14) (UK)

Portuguese Nationality Law (Law No. 37/81 – Official Gazette No. 228/1981, Series I of 3 October 1981as amended to 2022) art 1(1)(d)

Protocol A/P3/5/82 Relating to the Definition of Community Citizen (signed 29 May 1982) Official Journal of ECOWAS 4,11

Saint Christopher and Nevis Citizenship Act 1984 Part II Sec 3(5)

Senate Executive Document No 38 36th Congress 1st session 160 (1850) (Bancroft to Lord Palmerston 26 January 1849)

US Constitution art 2 s 1 and amend 14th s 1

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