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**STATELESSNESS: THE ABSENCE OF NATIONALITY AND THE
CONSTRUCTION OF A BRAZILIAN POLICY OF HOSPITALITY**

Tese de Doutorado

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Tese apresentada à Banca Examinadora do Programa de Pós-Graduação em Direito, da Faculdade de Direito da Universidade de São Paulo, como exigência parcial para obtenção do título de Doutor em Direito, na área de concentração Direito Internacional, sob a orientação do Professor Associado Dr. Alberto do Amaral Júnior.

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Statelessness: the absence of nationality and the construction of a
Brazilian policy of hospitality

Tese apresentada à Faculdade de Direito da Universidade
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To Eva, for all the patience,
love and affection.

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The master of the house having no more urgent concern than that of letting his joy shine out over anyone who, of an evening, will come to eat at his table and rest under his roof from the fatigues of the road, anxiously awaits on the threshold of his house the stranger he will see rising into view on the horizon like a liberator. And from as far away as he sees him coming, the master will hasten to callout to him: “Enter quickly, as I am afraid of my happiness”.

Jacques Derrida

O Senhor do lugar, não tendo preocupação mais urgente que aquela de derramar sua alegria sobre não importa quem que, à noite, vier jantar à sua mesa e sob seu teto repousar das fadigas do caminho, espera com ansiedade sobre a soleira de sua casa o estrangeiro que ele verá despontar no horizonte como um libertador. E do mais longe que ele o vir chegando, o senhor se apressará em gritar-lhe: “Entre rápido, porque tenho medo de minha felicidade”.

Jacques Derrida

RESUMO

ASSUNÇÃO, Thiago. **Apatridia: A ausência de nacionalidade e a construção de uma política brasileira de hospitalidade.** 2018. 324 f. Tese (Doutorado em Direito) - Faculdade de Direito, Universidade de São Paulo, São Paulo, 2018.

A apatridia, ou ausência de nacionalidade, afeta mais de 10 milhões de pessoas no mundo hoje. O principal objetivo desta tese é lançar luzes sobre o fenômeno da apatridia, a partir do estudo do papel da nacionalidade e sua relação com o exercício da cidadania. Inicialmente, busca-se contextualizar historicamente o surgimento do estado-nação, bem como o princípio da nacionalidade, conectado à soberania estatal. Em seguida, são estudados os critérios utilizados para atribuição da nacionalidade pelos estados, bem como os progressivos limites à sua discricionariedade nesta área. O fenômeno da apatridia é então esmiuçado, partindo-se da sua história, conceito, causas e consequências. São elucidadas as respostas construídas no direito internacional para a sua redução e proteção das pessoas apátridas. Por fim, são estudados os desafios existentes para a erradicação da apatridia no mundo. Em um segundo momento, a tese problematiza as próprias noções de nacionalidade e cidadania, para analisar como as transformações em curso no cenário internacional têm afetado esses institutos. A partir do estudo da globalização, integração regional, transnacionalidade dos atores não-estatais, do surgimento dos direitos humanos e ascensão do indivíduo enquanto sujeito de direito internacional, e ainda, da intensificação da mobilidade humana internacional, procura-se avaliar o impacto desses fatores para a nacionalidade e para o exercício da cidadania. Em particular, revela-se o surgimento de novas formas de pertencimento e associação dos indivíduos, a partir do pluralismo que caracteriza as identidades na contemporaneidade. Esta tendência aponta para uma internacionalização da cidadania, especialmente considerando-se a crescente afirmação dos direitos humanos dos não-cidadãos. Ademais, a naturalização e a múltipla nacionalidade, passam a ser cada vez mais reguladas pelo direito internacional, à luz do princípio da não-discriminação e da autonomia individual. Busca-se, assim, compreender a existência de uma cidadania comunitária na Europa, a partir da supranacionalidade da União Europeia, bem como o surgimento do que a doutrina chama de cidadania global, transnacional ou pós-nacional, a partir do descolamento da ideia de nacionalidade e cidadania. Por fim, o trabalho aponta para a construção de um direito (humano) à cidadania. No último capítulo, a tese apresenta o Brasil como estudo de caso, a partir da chave de leitura da hospitalidade em relação ao Outro. São analisadas as recentes iniciativas de recepção de migrantes e refugiados no país, na busca de se construir uma política migratória e de asilo condizente com os compromissos internacionais assumidos, bem como com a tradição brasileira de país de migrações. Finalmente, apresenta-se o enquadramento jurídico da apatridia no Brasil, com uma breve análise da nova lei de migrações, especialmente no que diz respeito à inédita legislação da apatridia no país, o que, conclui-se, vai ao encontro da construção de uma política brasileira de hospitalidade.

Palavras-chave: Apátridas. Apatridia. Nacionalidade. Cidadania global, transnacional, pós-nacional. Direito humano à cidadania. Política de hospitalidade no Brasil.

ABSTRACT

ASSUNÇÃO, Thiago. **Statelessness: the absence of nationality and the construction of a Brazilian policy of hospitality**. 2018. 324 p. Thesis (PhD in Law) – Faculty of Law, University of São Paulo, São Paulo, 2018.

Statelessness, or lack of nationality, affects more than 10 million people in the world today. The main objective of this thesis is to shed light on the phenomenon of statelessness, departing from the study of the role of nationality, and its relationship with the exercise of citizenship. Initially, it is contextualized historically the emergence of the nation-state, as well as the principle of nationality, connected to state sovereignty. Subsequently, it is studied the criteria used for the attribution of nationality by the states, as well as the progressive limits to their discretion in this area. The phenomenon of statelessness is then explored, starting from its history, concept, causes and consequences. It is elucidated the answers built in international law for its reduction and protection of stateless persons. Finally, the challenges for eradicating statelessness in the world are studied. In a second moment, the thesis problematizes the very notions of nationality and citizenship, to analyze how the transformations in progress in the international scenario have affected these institutes. Based on the study of globalization, regional integration, transnationality of non-state actors, the emergence of human rights and the rise of the individual as subject of international law, as well as the intensification of international human mobility, the work seeks to analyze the impact of these factors on nationality and the exercise of citizenship. In particular, it is revealed the emergence of new forms of belonging and association of the individuals, related to the pluralism that characterizes the identities in contemporaneity. This trend points to an internationalization of citizenship, especially considering the growing affirmation of the human rights of non-citizens. In addition, naturalization and multiple nationality are increasingly regulated by international law, in the light of the principle of non-discrimination and individual autonomy. The study seeks to understand the existence of a communitarian citizenship in Europe, from the supranationality of the European Union, as well as the emergence of what the doctrine calls global, transnational or post-national citizenship, from the detachment of the nationality from the citizenship. Finally, the work points to the construction of a (human) right to citizenship. In the last chapter, the thesis presents Brazil as a case study, based on the category of hospitality in relation to the Other. The recent initiatives of reception of migrants and refugees in the country are analyzed, in the search to build a migration and asylum policy compatible with the international commitments assumed, as well as with the Brazilian tradition of country of migrations. Finally, the legal framework of statelessness in Brazil is presented, with a brief analysis of the new migratory law, especially in regard to the unprecedented regulation of statelessness in the country, which, it is concluded, matches with the construction of a Brazilian policy of hospitality.

Keywords: Stateless persons. Statelessness. Nationality. Global, transnational, post-national citizenship. Human right to citizenship. Policy of hospitality in Brazil.

RESUMEN

ASSUNÇÃO, Thiago. **Apatridia: La ausencia de nacionalidad y la construcción de una política brasileña de hospitalidad**. 2018. 324 f. Tesis (Doctorado en Derecho) - Facultad de Derecho, Universidad de São Paulo, São Paulo, 2018.

La apatridia, o ausencia de nacionalidad, afecta a más de 10 millones de personas en el mundo hoy. El principal objetivo de esta tesis es lanzar luces sobre el fenómeno de la apatridia, a partir del estudio del papel de la nacionalidad y su relación con el ejercicio de la ciudadanía. Inicialmente, se busca contextualizar históricamente el surgimiento del estado-nación, así como el principio de la nacionalidad, ligado a la soberanía estatal. A continuación, se estudia los criterios utilizados para la asignación de la nacionalidad por los estados, así como los progresivos límites a su discrecionalidad en esta área. El fenómeno de la apatridia es entonces desmenuzado, partiendo de su historia, concepto, causas y consecuencias. Se elucidan las respuestas construidas en el derecho internacional para su reducción y protección de las personas apátridas. Por último, se estudian los retos existentes para la erradicación de la apatridia en el mundo. En un segundo momento, la tesis problematiza las propias nociones de nacionalidad y ciudadanía, para analizar cómo las transformaciones en curso en el escenario internacional han afectado a esos institutos. A partir del estudio de la globalización, integración regional, transnacionalidad de los actores no estatales, del surgimiento de los derechos humanos y ascenso del individuo como sujeto de derecho internacional, y aún, de la intensificación de la movilidad humana internacional, se busca evaluar el impacto de esos factores para la nacionalidad y para el ejercicio de la ciudadanía. En particular, se revela el surgimiento de nuevas formas de pertenencia y asociación de los individuos, a partir del pluralismo que caracteriza las identidades en la contemporaneidad. Esta tendencia apunta a una internacionalización de la ciudadanía, especialmente considerando la creciente afirmación de los derechos humanos de los no-ciudadanos. Además, la naturalización y la múltiple nacionalidad pasan a ser cada vez más reguladas por el derecho internacional, a la luz del principio de la no discriminación y de la autonomía individual. Se busca, así, comprender la existencia de una ciudadanía comunitaria en Europa, a partir de la supranacionalidad de la Unión Europea, así como el surgimiento de lo que la doctrina llama ciudadanía global, transnacional o posnacional, a partir del despegue de la idea de nacionalidad y ciudadanía. Por último, el trabajo apunta a la construcción de un derecho (humano) a la ciudadanía. En el último capítulo, la tesis presenta a Brasil como estudio de caso, a partir de la clave de lectura de la hospitalidad en relación al Otro. Se analizan las recientes iniciativas de recepción de migrantes y refugiados en el país, en la búsqueda de construir una política migratoria y de asilo que sea compatible con los compromisos internacionales asumidos, así como con la tradición brasileña de país de migraciones. Finalmente, se presenta el marco jurídico de la apatridia en Brasil, con un breve análisis de la nueva ley de migraciones, especialmente en lo que se refiere a la inédita legislación de la apatridia en el país, lo que, se concluye, va al encuentro de la construcción de una política brasileña de hospitalidad.

Palabras clave: Apátridas. Apatridia. Nacionalidad. Ciudadanía global, transnacional, posnacional. Derecho humano a la ciudadanía. Política de hospitalidad en Brasil.

LIST OF ACRONYMS / LISTA DE SIGLAS

ADUS – Instituto de Reintegração do Refugiado

CEPAL – Comissão Econômica para a América Latina e o Caribe

CNIg – Conselho Nacional de Imigração

CONARE – Comitê Nacional para os Refugiados

ECOSOC – Economic and Social Council (United Nations)

EU – European Union

FARC – Fuerzas Armadas Revolucionarias de Colombia

FRONTEX - European Border and Coast Guard Agency

ICCPR - International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

ICJ – International Court of Justice

ILC – International Law Commission

MINUSTAH – United Nations Stabilization Mission in Haiti

NGO – Non-governmental organizations

PBMIH – Português Brasileiro para Migração Humanitária

PCIJ – Permanent Court of International Justice

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

UNRWA – United Nations Relief and Works Agency for Palestine Refugees in the Near East

USA – United States of America

USSR – Union of Soviet Socialist Republics

WTO – World Trade Organization

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INTRODUCTION

According to the United Nations High Commissioner for Refugees, more than 10 million persons do not have nationality nowadays. Under the law, they do not belong anywhere. Without this fundamental tie with a state, those stateless persons have serious trouble for exercising their rights, accessing public services, and pertaining to a political community. The aim of this research is to understand the phenomenon of statelessness, and the current role of nationality for the exercise of citizenship. The research question refers to how the development of international law, especially with the advent of globalization, the rise of human rights and the intensification of the international human mobility, have affected the international regulation of nationality, and the position of the state relating to its discretion on nationality attribution. The thesis will look to Brazil as a case study, and more specifically to the recent attempt of building a policy of hospitality for migrants, refugees and stateless persons in the country.

The legal institute of statelessness is not much studied in Brazil, and even in the world, in comparison with migrations and forced displacements. It is viewed almost as a residual issue, in face of the poverty, natural disasters, armed conflicts and all sorts of persecutions, which cause millions of people to flee from their countries of origin worldwide. However, many stateless persons are also refugees who are arbitrarily deprived of their rights, for reasons of discrimination. Moreover, some refugees become stateless because of the persecution to which they are subject. Others are born stateless, inheriting a condition that they did not choose nor had the chance to overcome. And some people remain stateless by force of revolutions, occupations and state successions, leading large groups to the limbo of pertaining nowhere.

Therefore, statelessness represents a very serious issue for the people concerned, producing in some cases situations of physical or psychological violence, mass migrations and forced displacements, affecting entire regions and producing generations of unrooted children. The relevance of the present study is to place the question of statelessness in the center of the academic debate, taking advantage of international legal sources, to explore its history and definition, causes and human consequences, the answers built in international law, as well as the challenges for its eradication in contemporaneity.

Uniting the analysis of nationality on the one hand, and its complete absence on the other, the research, in its first part, canvasses an analysis of the obstacles for eliminating statelessness. While some hurdles are practical and depend mostly on states' action, based

on the existing international law solutions and UNHCR recommendations, others are related to the exclusive discretion of the states on conferring nationality. Since no overturning in this legal framework is foreseen, its ascertainment allows the search for other changes occurring at international level, which affect nationality attribution as such, as well as the access to citizenship it entails.

For this narrative to have clarity, however, it is necessary to depart from the origins of the nation-state, understanding the appearance of the principle of nationality, connected later to state sovereignty. After exploring the theory of nationality, the way it is attributed, and then its absence, it is examined how there would be an actual detachment of the classic legal notion of nationality, understood as a link between the individual and the state, from the concept of citizenship, entailing access to rights and participation in the fate of a community. The study intends to demonstrate, from this point, how citizenship has been expanding, in face of the transformations of the international scenario, constituting what has been called postnational, transnational or global citizenship.

In this sense, the advent of globalization, not only economic, but human; the transnationalism of non-state actors, acting normatively apart from the states; the consolidation of the international human rights law, with the consequent rise of the individual as subject of international rights; the regional integration of states, from which a communitarian citizenship emerges; and above all, the challenges of migrations and forced displacements at the global level; are all elements pointing to the internationalization of the notion of citizenship.

At the same time, this internationalization of citizenship would be closely related to the assertion of human rights of the migrants, refugees and stateless persons at global level, blurring sometimes, from the practical point of view, the classical distinction between citizens and non-citizens. Although not necessarily a trend, in a context of increasing nationalisms and reinforcing border controls, some national legislations reveal that long-term resident migrants can have access to rights almost in equality with the nationals. One element in this sense is the fact that naturalization norms are being reviewed, to deal appropriately with recognized human rights standards such as non-discrimination. In addition, dual or multiple nationality has been increasingly accepted by the states, in a continuous recognition of the multiple attachments, to which individuals and their families are subject nowadays.

Those changes lead to a deeper transformation in the prospect of citizenship, since they add one or more layers of political membership which, although not substituting the

national belonging, especially in terms of identity and culture, leads to a deterritorialized access to rights, based more on personhood, attached to universal human rights, than on national citizenship. The national state retains its role of being the locus where those rights are implemented and exercised, although gradually losing its preeminence, in face of the rapid complexification of the international scenario.

Another important issue to be explored along this thesis, is the position of the non-nationals, called foreigners or “aliens” (in the American literature), and where the stateless persons are framed, together with immigrants and refugees. This work will seek to demonstrate how this Other, seen and treated as a different, although resulting of the historically recurrent and widespread phenomenon of international human mobility, ought to be received with hospitality, since the Other, in effect, mirrors our own human condition.

It is based on this reflection that the work focus, in the end, on a more factual analysis of the Brazilian experience over the last seven years, since the number of asylum seekers and migrants started to raise in the country. Some of the responses built, as the issuance of the “humanitarian visas”, as well as the efforts constructed jointly by the civil society, academia, UNHCR and the government for the reception and integration of migrants and refugees are examined, revealing a reaction that seeks to deal with the question from a differentiated manner, in face of the so called “refugee crisis”. In this sense, the adoption of a new migratory law, containing an unprecedented regulation of statelessness in Brazil, is examined to assess if stateless persons can receive an hospitable treatment in the country from now on.

What follows is an overview of the contents of the thesis. In the first chapter, the aim is to rescue the origin of the nation-state, considering the emergence of state sovereignty as fundament of the idea of nationality. A first clarification is made between the possible differences between nationality and citizenship, and the legal theory of nationality is described, with the criteria used for its attribution by the states, as well as the cases of loss, deprivation and renunciation. The phenomenon of multiple nationality is introduced, and a first look to the absence of nationality comes into question. Finally, this chapter ends by analyzing the emerging limitations in international law to state discretion on nationality, and the legal developments which turn it into a human right.

The second chapter is dedicated to unveil the phenomenon of statelessness. It is explored its historical origins and the conceptualization of the institute, revealing the complex debate on *de jure* and *de facto* statelessness. The causes of statelessness are thoroughly reviewed, as well as its human consequences. The construction of legal answers

in international law for dealing with the question is subsequently examined, as the role of the UNHCR for preventing and reducing statelessness, and protecting stateless persons. This chapter ends by looking to the remaining challenges for the eradication of statelessness.

On a third moment, the work delves into the emerging transformations on nationality and citizenship on contemporaneity. This part seeks to demonstrate how the nation-state is losing its preeminence, with a growing questioning of the reserved domain in terms of nationality attribution. The chapter will, in the first part, start by studying globalization and its impact on nationality, revealing a denationalization of the state and the decline of national sovereignty, passing through the transnationality of the non-state actors and the emergence of human rights as well as the rise of the individual as subject of the international law. It ends by examining the theory of regional integration, with special reference to the appearance of the supranationality, and by looking to the consequences of the increasing international human mobility on nationality and citizenship. The second part builds on developing the concept of citizenship and exploring its complexity, from the historical origin of modern citizenship to the contemporary multiplicity of memberships, leading to a global, transnational or postnational citizenship, with the claim of an international right to citizenship emerging in the horizon.

In the fourth and last chapter, a more empirical analysis searches to understand the place of Brazil in regard to the legal context above. The idea is to introduce the notion of hospitality in relation to the foreigner, as referred under different lens by Vitoria, Grotius, Kant and Derrida, to subsequently examine some recent initiatives, policies and the transforming legislation on the question in Brazil, identifying how hospitality towards the Other has been built, mainly by the civil society and academia, on the basis of a past as a migratory country, with innovative solutions as the humanitarian visa, and the increasing reception and attempts of integrating refugees, not without difficulties and challenges to overcome. Finally, the brand new migratory law is briefly examined, mainly to focus on the unprecedented regulation of statelessness in Brazil, what is considered the culmination of a deep reformulation of the treatment of the subject in the country, more in line in effect with the quest for a migratory policy based on hospitality.

FINAL CONSIDERATIONS

Nationality is attributed by the states, on discretionary basis, since the emergence of the nation-state, attached to the monopoly of the states on controlling who belongs to the polity. However, this confinement of people to a determined piece of territory, and the difficulties caused when someone do not possess this legal tie with a state, is being challenged by the increasing international human mobility, and intensified by phenomena such as regionalization and globalization.

While in the period between Wars, there was an attempt to identify the states, from an ethnical point of view, with existing nationalities, after the end of the Second War, the world was astonished by the consequences of the radicalization of such impossible endeavor. The human was reduced to mere object, as demonstrated by Hannah Arendt, and the human dignity had to be urgently recovered, leading to the creation of internationally recognized human rights, and a legal framework for the protection of refugees and stateless persons.

In the case Tunis and Morocco Nationality Decrees, from 1923, the Permanent Court of International Justice established the possibility that nationality could be regulated by international law. Nationality by the time was, and it is still today, considered part of the reserved domain of the states, but the decision made clear this is due to the own development of international relations, nothing precluding a change in this state of affairs in the future.

Indeed, after the mass denationalizations of the first part of the twentieth century, the creation of the United Nations, and the adoption of the Universal Declaration of Human Rights, a right to nationality for everyone was clearly established. Although this right has a recipient, it does not entail an obligation, on the part of the states, to confer nationality to anyone. Here begins the whole difficulty for the solution of statelessness, considering the incapacity of the international community to reach a formula which connected those two ends: the right to a nationality from the one side, and a correlated duty from the states to concede it, from the other.

The statelessness phenomenon is entwined with the plight of refugees, with a clear difficulty from the state actors and the United Nations to differ them clearly in the beginning. That was also result of the idea, current at the time, that all refugees were *de facto* stateless. The protection of those *de jure* stateless had to wait, being built three years later than the 1951 Convention on refugees, with the 1954 Convention relating to the Status of Stateless Persons. The debate on the need of some form of protection for *de facto* statelessness continues up to date, with the UNHCR recommending its adoption by the states, but nothing

in international law requiring it. Some states include this protection in their statelessness determination procedures, although remains unclear its effects in relation to third countries, especially for the country of the “ineffective nationality”.

The research identified a series of causes of statelessness, from conflicting nationality legislations, to different kinds of discrimination, especially against the women, arbitrary deprivation of nationality and difficulties resulting from state successions. As seen, a special attention is given by international law for childhood statelessness, since avoiding that a child is born stateless is one of the most effective measures to reduce drastically its incidence. Children can suffer in particular with the effects of their parents’ migratory status, considering they can inherit their stateless condition. Therefore, adequate nationality legislation is necessary to cover any gap that may result in statelessness, including not allowing children to suffer the consequences of restrictive migratory and nationality policies applicable to their parents.

In fact, there is a close relation between migrations and statelessness, as well as the condition of refugee and of stateless, which can sometimes overlap. It is important however, to distinguish and identified separately those two situations, since the mechanisms of protection are different. The refugee protection under international law is more extensive, covering the prohibition of *refoulement*. Thus, every stateless shall have the chance to apply for refugee status if it is the case, independently from its stateless condition.

The study of the consequences of statelessness brought some important reflections. Apart all the hardship brought to stateless individuals, mainly caused by the lack of access to essential rights and public services, they can remain in a permanent limbo, when not even deportation is possible, as a result of the fact that no state would accept to receive them back. This leads to protracted situations of detention, risking to make those persons “disappear” into the cracks of the national legal systems, to which they do not exist.

Regarding the responses built in international law to the question of statelessness, we should acknowledge the role of the 1954 Convention on the Status of Stateless Persons on creating a legal status for those individuals, although in the lack of Stateless Determination Procedures, ought to be adopted individually by each state, the Convention loses much of its efficacy. With the 1961 Convention on the Reduction of Statelessness, the international community lost the opportunity to eliminate the problem of statelessness, since the draft prepared by the ILC on the “elimination” of statelessness was discarded. Since then, the difficulty is to convince the states to adhere to the Convention, which still counts with a reduced number of ratifications.

We conclude that the efforts existent on international law to deal with the question, are having their effectivity tested by an overarching strategy draw by the UNHCR to promote the accession to the two Conventions, as well as to create awareness for the solution of the main causes of statelessness and protect stateless persons. The Global Campaign to End Statelessness, launched in 2014, has been a powerful tool to address the issue, both by presenting statelessness in a clear fashion for a broader public opinion, as by elevating the question to a higher political level, what has been creating positive reactions by many states. The ascension to the conventions has in fact increased, and nationalization campaigns are slowly taking place, all over the world.

Despite the success so far of the campaign, we question if the solutions made available up to date are sufficient, as it seems that the conventions above mentioned were built not only under the Westphalian nation-state paradigm, but to respond to concerns related mainly to the first part of the twentieth century. In fact, many elements which emerged after the Second World War, have been pressing the topicality of the absolute discretion of the states on nationality attribution. Globalization, the human rights protection systems and the rise of the individual personality in international law, the regional integration of states, the work of non-state actors and the intense international human mobility nowadays, seem to be factors which lead the debate on nationality to another level, bringing the thicker notion of citizenship, which by its turn, seems to be transforming, detaching from the state, to be gradually internationalized.

As demonstrated by Saskia Sassen, the state has been denationalized, but not (only) in the typical account which considers the influence of external factors, such as economic financial institutions or speculative foreign investments. It has been denationalized from within, as a result of the engagement of most governments and companies in international negotiations at various levels, which requires highly specialized human resources, as well as intercultural and language abilities. Countries have been denationalized also by the incorporation of transnational struggles, designed collectively by state and non-state actors, in the realms of human rights protection and environmental concerns, which are being increasingly inserted in the global political agenda. For instance, to implement the human rights conventions to which it adhered, the state has to be able not only to internalize those documents, but also to incorporate their requirements into the national legal framework, creating legislation to meet the standards set out internationally, with its own participation.

In fact, the human rights protection at international level is based on personhood, regardless of the nationality of the individual, hence including those who have no nationality

at all. This leads to the need of respecting the human rights of anyone present in the national territory, regardless of migratory status. Although some development has been observed on the domestic concession of many rights to non-citizens, it is important to acknowledge that citizenship of a state is still vital for conferring the individuals full rights, political participation and a sense of belonging to a community. Which does not preclude new forms of attachment and membership, some of which are also able to confer rights.

It is the case of some regional integration processes, such as the supranationality created in the ambit of the European Union. Indeed, the Maastricht Treaty created a regional, European citizenship, which includes additional rights for its holders, who are basically the same citizens of the member-states of the Union. The problem is that, at the same time that it lifts the internal borders, the EU started to erect higher external borders, with the aim to exclude those who are not part of the community, not by case called informally “extra-communitarians”. With the outbreak of the Syrian Civil War, in addition to the already pressing migratory demand, and the asylum seekers coming from Afghanistan, Iraq and Sub-Saharan countries, the Mediterranean region embarked in a major humanitarian crisis, especially caused by the lack of political will of some European states, and a general inability from European leaders and institutions, to address the crisis in a coordinated manner.

In the South American continent, departing from the Mercosur, the states have been attempting to create a South American citizenship. The Mercosur Residence Agreement adopted in 2008 is an important step in this direction, although it relates basically to the right of residence and work. Many other issues, such as the access to welfare services; the right to vote in local elections; the scope of family reunification; and the protection against expulsion, remain to be addressed.

In sum, regional integration brought a new form of membership, creating a communitarian citizenship in the case of Europe, which although not overcoming the state sovereignty, represents a supranational effort to solve collectively common problems. In addition, it is capable to make the national citizen, through educational and cultural exchanges, recognize in the neighboring citizen common goals and aspirations, despite the cultural and linguistic diversities.

In any case, those regional mechanisms ought not be used to discriminate or ignore those from outside. Instead, it should be acknowledged the increasing interdependence and interconnectedness of states and peoples on a global scale. In this sense, the conflict of today in another continent, can be the asylum seekers of tomorrow knocking our doors, and the same happens with the striking global inequality, since poverty and the lack of opportunities

in developing countries compels people to leave their homes, in search of a better life in countries of the North.

As a matter of fact, the border control is relatively recent, with the use of passports and visas dating from the beginning of the last century. Today, any attempts to simply “close the borders” are deemed to fail, considering their intrinsic porosity, and most of all, the determination that makes individuals in need reaching, on way or another, the desired destination to work, study, meet family members or run away from armed conflicts, persecutions and natural disasters. Indeed, international migrations cannot be avoided, and the states do best by jointly learn to look at their roots causes, coordinating their migratory policies on the basis of human rights standards, and gradually setting a global framework to promote regular channels of safe and regular migration, instead of letting the people smugglers do their job. A sound international development cooperation, able to generate inclusive and sustainable development in the least developed countries, is a way of tackling the migratory demand.

This relates to citizenship, in the sense that permanent migrants should be able to acquire the nationality of the country of residence, accessing rights and being allowed to participate in equality of conditions, with the associated benefits related to the rich exchange driven by the human diversity. In fact, multilingual competencies and intercultural sociability are both factors increasing valorized in our globalized world, and the international human mobility is likely to contribute to an increasing exchange of knowledge and world views, fostering creativity and innovation on local communities, as already happens in multicultural, global cities like London, New York, Paris, Melbourne or Singapore.

The national citizenship maintains its importance, since it is usually through the states that citizens have access to rights. Nevertheless, the concept of citizenship has been expanding with the elements studied above. And the main finding relates to the detachment of the concept citizenship, from the notion of national identity. Indeed, when people live for a longtime abroad, or migrate definitively, or yet, have a career in an international organization, which require them to change country all the time, although never losing their original cultural identity (represented for instance by their mother tongue), they might learn how to live and appreciate different identities, being subject to an assemblage of those identities, built in relation with the Others they meet on the way. This cosmopolitan citizen already exists, and is been forged by the migrants, refugees and stateless persons throughout the world. The cosmopolitan citizen, by its exposure to the cultural differences and needs of

adaptation, has no doubt a lot to contribute in terms of tolerance and how to learn from the human diversity.

Since the Northern countries have been receiving for decades immigrants from many different countries, they have been transforming into truly multicultural territories, where any attempt of cultural homogenization turned into an impossible endeavor. In fact, it is increasingly common binational marriages, and many kids in Europe, Australia, Brazil or Canada (to mention a few), are already growing up in intercultural homes, speaking two or three languages since alphabetization. Thus, the paradox is that even considering citizenship remains mostly national, multiple forms of transnational or non-national memberships are taking place. Hence the need to expand non-citizens' rights, as well as facilitating naturalization and recognizing multiple nationality, in order not to bring unnecessary difficulties for the individuals and families fruit of the human globalization.

After the decolonization process, more voices from below started to organize, and new struggles for collective identities were raised. The multiethnic composition of many states became more evident, there was an organized fight against racism, the feminism came to question the patriarchal customs, and other claims took place, pointing to the pluralism of identities and the complexity of the human diversity. Many of those identity groups keep in search of recognition, and as others emerge, they all reveal possibilities of interaction, redefinition, adaptation and transformation. In sum, the nationally based citizenship was weakened by the appearance of additional forms of belonging and new collective commitments, under, above and beyond the nation.

As demonstrated along this thesis, the feeling of belonging to a political community, among citizens and non-citizens, do not pass necessarily through an inherited national culture, but it is forged together through the equal access to rights and participation. In fact, the complexity of the international human mobility has been pushing international law mechanisms to have a stake on guaranteeing the human rights of non-citizens, surpassing the once untouched reserved domain of the states in relation to citizenship. The point is that it is increasingly difficult to sustain the congruence between state and nationality, since in democratic countries, what matters are the possibilities of political participation, and the adequate enjoyment of fundamental rights. Whoever is present in the territory is covert by universal human rights norms, and the sense of identity pertains to the individual private sphere, and thus shall not be regulated by the state, if only to allow its citizens to pertain simultaneously to other nationalities. In sum, the notion of citizenship is expanding, since it has been internationalized, to the extent that rights are provided from other sources besides

the state, and the human mobility subjects people to more fluid identities, including by influence of the boom on the worldwide virtual connectivity.

Hence the idea of an emergent human right to citizenship, which goes beyond the abstract right to nationality already existent, since it would entail a right of access to locally recognized fundamental rights, as well as to political participation in the community of residence. This right would be exercised, in any case, inside a national jurisdiction and through national citizenship, which is still indispensable for the provision of rights, and where the democratic framework works. In any case, as the national state is losing its prominence in international law and politics, the citizenship is assuming denationalized forms, acknowledging new modes of attachment. At the same time, citizenship from a state is maintained and deemed as necessary, but not related to patriotic elements, and not excluding the possibility of multiple belongings.

In this sense, the study identified a growing acceptance of multiple nationality, which while being once rejected, is now increasingly seen as something related to personal identity and individual autonomy. Moreover, non-citizens which are long term residents of a state, are having the recognition of rights transcending their migrant condition, since the human rights case law points to an overall human protection, regardless of migratory status. In other words, rights which were typically granted for citizens are also conceded to non-citizens, on international grounds.

That lead the research to uncover the foreign literature which is talking about a postnational, transnational or global citizenship. As citizenship has no absolute meaning, being instead transforming and subject to constant renegotiations and turnovers along the history, in the current stage, all the global changes mentioned are affecting its content, by connecting the individuals with non-national forms of membership. It is the case indeed, of the migrant stateless, asylum seekers and refugees, who legally do not belong, or had to leave their nation behind in search of new ties of protection. Their quest is not for a new identity, considering they will not abandon their own culture. Rather, they seek a host country which accepts to receive and include them, allowing their presence to turn into more than temporary bodies, but subject of rights treated with equal respect and consideration, and if they choose to, conceding them the possibility of becoming full citizens of the new polity. Hence the importance of the institute of naturalization today, which, similarly to multiple nationalities, is being object of regulation by the international law, in order to create certain standards, which equate the access to citizenship, without arbitrary or discriminatory eligibility criteria.

From another perspective, a true global citizenship is likely to be developed in the future, if and when a more democratic global governance is built. Until then, it has been constructed by the hands of transnational NGOs and intergovernmental organizations, which try to overcome the narrow “national interests” defended by the states, shifting the debate to the need of protecting the common interests of the humankind. In fact, those organizations are set up to fight for causes, such as the refugee protection or the climate change, regardless of nationality. That means that all the personnel directly involved with this kind of work is already putting in practice a form of global citizenship, participating of one or more global networks dedicated to impact and address the most compelling world problems, which clearly transcend national boundaries.

In the same strand, although not a object of research in this work, global governance and the study of democracy under international law are entwined subjects to be further explored, departing from the knowledge produced in this piece, since the study of open forms of transnational citizenship helps to clear the path towards a fairer and more inclusive global governance, committed to the international development cooperation, political coordination in key areas to avoid conflicts and foster joint problem solving, as well as creating sound and effective humanitarian action.

It is important to note that to submit the existence of an emerging global citizenship does not mean to subscribe to a broad cultural homogenization. Citizenship presupposes, in our view, a sense of rights, participation and belonging, which ought to entail a commitment for tackling collective problems, such as human rights violations, extreme poverty, social inequality, armed conflicts and so on. That commitment, elevated to a global level, means to pertain to wider joint efforts, comprehended by transnational networks and international institutional arrangements, whose aim is to progressively handle global challenges, without devaluating in any sense the regional and local cultures, as well as the intrinsic diversity of the human experience.

Which means that postnational forms of citizenship cannot be understood as related to the economic globalism represented by the unfettered reach of multinational companies, nor the individualist consumerism characterized by simply purchasing imported products, doing international tourism or enjoying mainstream pop culture. Instead, an expanded notion of citizenship takes advantage of the interconnectivity to contribute to the free circulation of cultural products around the globe, allowing the dissemination of knowledge and innovation, the intercultural exchange of ideas by cross-national groups, the trading of artwork and

enjoyment of culturally diverse spectacles, and the enhancement of the global movement of peoples carrying their own cultural identity.

The main obstacle identified, which tries to avoid the development of this citizenship at a global level is nationalism. Although we chose not to explore it in a dedicated topic, since it was considered a collateral theme which would extrapolate the object of study, when the analysis entered in the debate over the discrimination against non-citizens, it was inevitable to realize that actual tendencies in the global political landscape walk in direction of the reinforcement of the national borders, the diffidence towards the Other, and the discourse against the immigration. In fact, the return of terrorist attacks in the heart of Western capitals, as well as the election of populist leaders in democratic countries, have brought back the security concern to the top of the political agenda.

Reflecting on the theme, we arrived to the conclusion that some of these setbacks, can be related to a general lack of appropriate knowledge about the historical and legal meaning of human rights, as well as a political apathy, and by consequence, individual lack of empathy, in relation to the difficulties concerning other people. The atomization of the individual and the ephemeral character of human relations in contemporaneity, so well explored by the scholars of postmodernity, in addition to the economic and ethical crisis, seems to affect public life by distancing many people from any political participation, making them give up or outsource the effective exercise of citizenship.

One of the main contributions of this work, after studying nationality under the architecture of the Westphalian world order, is to propose the detachment of the nation from the state. That means recognizing that the citizenship linked to a state, should be independent of ethnicity, traditions, costumes, languages and affiliations. In this sense, the patriotic appeal or exaltation of the national culture does not serve to provide rights, guarantee equal participation, and not even to give a sense of belonging for everyone, since identities today are plural and can be built on the basis of new sources and variable relations. The stateless resident, long-term migrant and recognized refugee, maintain cultural and psychological ties with their homeland, and can be plenty included as citizens of the host state, without any loss to the country. Their social and cultural integration will depend on many factors, including the public policies adopted and their own will, but that should not interfere on their treatment with equal consideration and respect under the law. Their transformation into citizens can occur along the time, but naturalization practices could not, for instance, demand an excessive burden or discriminatory requirements, such as applying civic tests, which can characterize attempts of cultural assimilation.

Moreover, as citizenship comprehends not only a legal meaning, but also political (rights), sociological (participation) and psychological (sense of belonging), the work searched ways of guaranteeing that its content is informed by a pluralist approach, capable of creating inclusion, solidarity and conviviality. The outcome is that a society aiming to avoid discrimination and violence ought to invest in an ethical education, capable of working human values such as tolerance and trust, with a profound respect for diversity. Most of the values useful for this endeavor were exhaustively discussed internationally and encapsulated under the name of human rights (and called internally fundamental rights), clearly able to be contextualized and applied according to the local culture and contingencies. Departing from that minimum ethical, lowest common denominators are possible to be forged collectively, resulting in an open civility which places the individual in a position of understanding that, although differing on political means, the members of society can be bound by common goals to be democratically pursued.

It is such the evidence that nationality alone is not able to confer the individuals what they need in terms of political belonging, that the literature studied points to the gradual emergence of an international right to citizenship. This right would go beyond the abstract right to a nationality, and all the legal attempt to avoid statelessness, to require from the states an effective duty to confer citizenship for the individuals present in their territory, under certain circumstances. That account is demonstrated by a trend on attaching increasingly the notion of citizenship to a civic or territorial conception, in which the right to “any” nationality turns into a right to a “particular” nationality. Which means that the “ties that binds” should not depend only on the absolute discretion of the states to attribute nationality, but instead starting to be recognized, on an individual basis, the “genuine links” eventually existent with the polity, which may legitimate the person inclusion as a full member. This view is more in line with the contemporary international law, not only with reference of the emerging norms which point to a right to hold multiple nationalities, and the limitation of discretion on naturalization requirements, but mainly, with the construction of the human rights in the last seventy years. Nationality leaves gradually the exclusive domain of the states, to give space to the recognition of citizenship, departing from the individuals and their relations.

The research focused in the final chapter, in studying the case of the Brazilian framework on statelessness. The intention was to show that, in all this renewed international discussion about the subject, Brazil has much to contribute, since it has been dealing differently, in the last few years, with the growing migratory demand, the reception of

asylum seekers, and finally, the very recent construction of a completely new regulation of statelessness.

As the Brazilian hospitality is almost considered a cultural heritage, as demonstrated as demonstrated by some historians and in the opinion of many foreigners, we used the lens of this philosophical category to put together the recent events in terms of migratory policies, analyzing the way the Brazilian state, the academy and the civil society dealt with them, in addition to the fundamental role of the UNHCR.

The outcome reveals some successful efforts, in different levels, to respond to the arrival of the newcomers, including innovative policies, such as the creation of an *ad hoc* humanitarian visa for the Haitians and Syrians. Moreover, the activism of social actors was fundamental to push the National Congress to finally approve a new legislation for international migrations in Brazil, superseding the authoritarian and outdated former law.

Based on a human rights approach, the new Law no. 13.445/2017 not only removed unjustifiable internal restrictions for migrants, and improved considerably the position of the country on such a crucial theme today, but created an unprecedented regulation of statelessness in the country. It aims to reduce the incidence of statelessness and protect stateless persons, and with that aim promises to create a stateless determination procedure, which will facilitate the naturalization of stateless persons resident in the country.

The innovation is no doubt a major step forward for the eradication of statelessness in the Americas. With a dedicated regulation for tackling the question, Brazil does justice to its tradition of hospitality, adding to its advanced refugee law and now a decent migratory legislation, the offer of protection also for those who belong nowhere, opening the possibility for them to embark on the national venture, with all its associated benefits and the country's beauties, but also with its huge challenges and contrasts. We only hope that the regulation of the law, as well as the administrative measures necessary to implement it, are appropriately designed and efficiently provided.

Finally, this thesis had the objective to problematize the question of statelessness, beyond the consolidated international law mechanisms for its solution, to arrive to the conclusion that the cracks of the legal systems, which lead to this condition of invisibility, can take us to a new form of seeing the question of nationality, not attached only to the national states, but by acknowledging all the changes to which the world has gone through, search for a view of citizenship that is more in line with each one's personal aspirations and human needs.

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