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COUNTRY REPORT: ITALY

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Italy

Giovanna Zincone and Marzia Basili¹

1 Introduction

Italian citizenship legislation so far may be classified as a ‘familistic’ model (Zincone 2006). According to Michael Walzer’s (1983) well-known typology, in the familistic model, nationality and citizenship rights are reserved for members belonging to the national community by descent. Whereas descendants of expatriates can keep Italian citizenship through generations, it is very difficult for immigrants and their children to acquire it.

In Italy, the most common term adopted to define the legal status dealt with in this research is ‘*cittadinanza*’ (citizenship) but we can also alternatively use ‘*nazionalità*’ (nationality). One can also refer to ‘*nazione*’ as an ethno-cultural community and to citizenship as membership in a political community. Here we will use both terms to refer to the membership of a state, unless we want to literally translate specific pieces of legislation; in that case we will use the same term used in law. In the political and academic debate, according to Thomas Marshall’s (1950) interpretation, we use the term civil, social and political citizenship when referring to sets of rights, even if they are granted to foreigners.

Italy originally adopted a *ius sanguinis*, familistic model because of two historical reasons.

Firstly, due to its late achievement of national unity, Italy was long a nation and ethnic community in search of a state. Secondly, starting in the last decades of the nineteenth century, Italy became a mass emigration country. Consequently, Italy chose to introduce legislation that made the public community of citizens coincide with an alleged ethnic community of nationals. This legislation aimed to keep bonds between Italian expatriates and the country of origin.

In comparison with previous legislation, the present Italian legislation, mainly regulated by the 1992 Citizenship Act (Statute 91/92), reinforces the familistic character.

While according to the previous 1912 Nationality Act all foreign residents had to wait five years to apply for naturalisation, the current law requires the following: ten years for foreigners from non-EU countries; five years for exiles and stateless people; but just three years for foreigners of Italian origin (two if they are minors); and four years for foreigners from EU countries. The discount applied to EU nationals is due to the fact that they were considered, at least until the recent enlargement, as members of sort of an extended family.

Another ‘privilege’ of the 1992 Citizenship Act granted to the descendants of expatriates was the special temporary mass programme of reacquisition and its renewal in the following years. Large-scale reacquisition campaigns were also associated with the definitive and official establishment of the right to dual nationality included in the 1992 Act. State endorsement of that right made it easier for emigrants and their descendants to keep Italian citizenship while being citizens of the country where they live.

Marriage was, until July 2009, the other possible easy route to citizenship. The 1992 Citizenship Act required only six months of marriage to an Italian citizen in order to acquire Italian citizenship. This fast track given to non-Italian spouses can be explained by the general concern about family unity characterizing Italian policy, heavily influenced by catholic culture and authorities. Public opinion concerns and fears regarding immigrant behaviour led to legislated restrictions, curbing this easy route to citizenship. The Security Act, passed in July 2009, included a provision which discourages marriages of convenience: the minimum duration of marriage for couples resident in Italy was raised from six months to two years, requiring also that the marriage

¹ This report partly includes political and historical analyses by Giovanna Zincone published previously in Arena, Nascimbene and Zincone (2006) and Zincone (2006).

bond persists at the time when the decision of granting citizenship is taken.² For spouses residing abroad, the time required was and still is three years. This amendment to the 1992 Citizenship Act represents the only relevant measure passed so far by the Italian parliament to amend the familistic model. The *ius sanguinis* model for citizens abroad was in no way affected.

The easiest access to Italian citizenship is by descent, and it contrasts strongly with the restrictive approach characterising acquisition not only by residence (*ius domicilii*) but also by birth in the country (*ius soli*). As already mentioned, foreigners from non-EU countries have to wait ten years to apply for naturalisation. Children born in Italy to foreign parents are given the right to acquire Italian citizenship at the age of eighteen, if they can prove their uninterrupted legal residence in the country. The requirements of continuity and legality of residence were not present in the 1912 Citizenship Act. These supplementary requirements were relaxed by two circulars (2007 Ministry of Interior) under the last centre-left government, but, as this improvement is based on secondary law, they can easily be reversed in future. Acquisition of citizenship by *ius soli*, at least, is obtained through a simplified procedure by declaration. Foreigners born in the country when reaching majority, even if they have not continuously been resident in Italy, can count on a regular discount as far as the residence requirement is concerned (three years are sufficient) but in this case they are required to follow the normal laborious procedure. Even though the maximum time established by law (DPR 362/1994) is 730 days, decisions on applications can take up to six years. As we will demonstrate below, the issue of the recognition of Italian citizenship for minors born and/or grown up in the country is at the moment the main object of intense political debate on the matter, both at the national and at the local level.

Compared with the previous legislation, the 1992 Citizenship Act appears to be a step backwards to the condition of an emigration country mainly interested in keeping (and reacquiring) expatriates as members of its political community. The act is inconsistent with both the social and the legislative context in which it was conceived: in 1992, Italy was already a country of immigration³ and it was also politically aware of this condition. In fact, just two years before, in 1990, the Italian parliament had passed a fairly progressive law concerning the rights of non-EU immigrants.⁴ The 1992 Act was the product of a jammed decision system; it was passed only after a long series of bills that started in 1960.⁵ Italian parliamentary majorities were plagued by endemic instability and affected by the need to cope with dramatic priorities such as economic crises, Red Brigades attacks and neo-Fascist terrorism.

The 1992 Act was thus passed by a very large majority and during the parliamentary debate preceding the approval of the law only some centre-left MPs showed concern about the need to consider the new condition of Italy as an immigration country and the consequent urgent need to adapt the law to this reality. Since then, centre-left MPs have presented many reform bills aimed at favouring long-term residents and children born or educated in Italy. This policy line came close to succeeding during the last centre-left government (the 2006-2008 Prodi government). However, the premature fall of the Prodi government in April 2008 put an end to the nationality reform project. The fourth centre-right Berlusconi government (2008-2011) did not seem interested in reforming the citizenship law, but a component of the majority led by the President of the Chamber of Deputies, Gianfranco Fini, not only reopened the debate but presented a project together with the opposition which reproduced the centre-left bill presented in the previous parliament. It reduced the years of residence required and eased the acquisition by minors born or just educated in Italy, at the same time it introduced new requirements such as knowledge of the vernacular language and the acceptance of shared values.

² Act no. 94 of 15 July 2009.

³ The positive balance had started in 1973.

⁴ Act no. 39 of 28 February 1990, the so-called Martelli Act.

⁵ The first reform project was presented in 1960 (Senate Bill no. 991 of 24 February).

The bipartisan project was decidedly unwelcome to the majority of the governing coalition and it was one of the causes of the de facto expulsion of Fini and his group from the People of Freedom Party. The same Berlusconi Government introduced, through the already mentioned Security Act of July 2009⁶, a number of amendments to the immigration law which constitute preliminary indirect requirements to naturalisation: an integration agreement and a language test required for the long stay permit. The integration agreement, which is to be signed by the immigrant in order to receive the first stay permit, includes the commitment to acquire a basic knowledge⁷ of the Italian language within two years as a requirement for the renewal of the permit. According to the same act immigrants have to pass a more demanding language test to receive a long-term permit.

To date the status of Italian nationality is not a fundamental asset for legal immigrants. They already enjoy all civil rights and almost all social rights. Incidentally, access to a large range of public health and to education benefits for minors is also granted to undocumented immigrants. These rights, though strongly contested, survived under the fourth Berlusconi government due to parliamentary bargaining⁸ and to the impact of judicial action.⁹ As far as political rights are concerned, long-term non-EU legal residents do not have access to the vote in local elections. But at least Romanians, the largest immigrant community, being EU citizens, can vote. Many attempts to extend the local suffrage to non-EU citizens have been made, often in conjunction with the reform of citizenship laws. Even part of the centre-right seemed inclined to back the extension of the local vote, but the strong hostility of the Northern League Party, the most anti-immigrant component of the past centre-right government, prevailed.

Taking into account these circumstances, and specifically concerning the legal treatment of long-term immigrants, the recent twists and turns in the Italian political party system are likely to be favourable for the long-awaited reform of the Italian nationality law. The Northern League has suffered dramatic reputation damage due to the financial scandals involving its founder and former leader Umberto Bossi and his entourage. Further, financial relations and vote-buying with the 'Ndrangheta' organised crime families involved both the Northern League and the People of Liberty (PdL, the party of Berlusconi). The latter is now in worse condition due not only to the continuing revelations of embezzlement of public monies by important representatives of the party but also because of the diminished image of Berlusconi himself after a series of sexual scandals. The consequent proliferation of factions and possible defections of PdL political figures to the new centrist political formation and the instability of the alliance between the two parties is likely to create majorities promoting pro-immigrant measures in the next Parliament. The Secretary of the Democratic Party (PD), hoping to be the next prime minister, promised that, in such case, his first act of Government will be to reform the Nationality Law and presumably to grant immigrants the local vote as well. In October 2012 the reform of the Nationality Law, insofar as minors are concerned was listed in the "*Carta di Intenti per l'Italia Bene Comune*", i.e. an Agreement signed by the member of the centre-left coalition which will run in the next elections. However, once again we cannot be sure that this promise may be kept in these present turbulent times.

⁶ Act no. 94 of 15 July 2009.

⁷ Level A2 of the European indicators of languages knowledge (issued by the Council of Europe).

⁸ The Government bill at the basis of the 94/2009 Security Act contained in its initial version two heavy restrictions of the rights of undocumented immigrants: the removal of the prohibition for the doctors of denouncing their patients' illegal status and for the headmasters of denouncing the illegal status of the parents of the students (dispositions contained in the 40/1998 Immigration Act). During the parliamentary discussion, due to the contestation from the opposition and even from parts of the majority, the government decided to write off these proposals in exchange of an agreement for an extension of the maximum time of detention in the temporary reception centers (from two to six months).

⁹ The 94/2009 Security Act provided for the duty of demonstrating the regular status of the migrants in order to get married. But the Constitutional Court in July 2011 proclaimed the illegitimacy of such a provision.

2. Historical background and changes

2.1 From the Unity of Italy to the 1865 Civil Code

A set of factors has to be taken into account to explain the shaping of the citizenship legislation that was in force immediately after the Italian Unification of 1861, some of them rooted in a quite removed past. 1) It was the Kingdom of Piedmont and Sardinia that promoted the unification and transferred its legislation to the new State, albeit with some adaptations; 2) at the time of the unification Piedmont was already a liberal state; 3) the reigning house of Savoy, along with Piedmont and its capital Turin, had had especially strong ties with France and it was influenced by the French legal system; 4) Italy became a nation state relatively late; it had long been a nation, a pretended ethnic community, in search of a state; 5) in 1861, when the national state was founded, unification was still incomplete, and there were territories that had yet to be freed (*terre irredente*) with people of Italian culture living outside the borders of the new state; 6) the country had not yet experienced mass emigrations, although some emigration had already started; 7) before unification, Piedmont had already welcomed nationalist and liberal exiles, some of whom were outstanding lawyers that took part in the drafting of the Civil Code, which included the citizenship regulations.

Piedmont was the driving force behind the Italian Unification. The ruling Savoy family used to have important dynastic ties with France, consolidated over the years by frequent marriages. In the past, their dominions were mainly situated beyond the Alps, and they only moved the capital from Chambery to Turin in 1563. Turin was part of the French territory from 1536 to the Cateau-Cambrésis Treaty (1559) and, from 1802 to 1814, during the last years of the Republic and the Empire when, unlike the other Italian regions which became formally autonomous, Piedmont was incorporated into the French metropolitan territory.

The consequence of this direct and longer administration was ‘a more radical transformation of the Piedmont departments’, compared with other parts of Italy (Wolf 1973). Unlike the restoration in the Austrian dominions or in the Kingdom of Naples, the legal restoration performed in Piedmont was very strict. However, after experiencing a direct French administration, the political culture had definitively changed. Piedmont’s policy legacy, its liberal regime, and its historical links with France are some of the factors that affected the pattern of citizenship legislation immediately after Unification. These factors explain how citizenship was first treated in the newly unified state or, more precisely, how it was not specifically dealt with. We observe no direct regulation of citizenship as nationality, but regulation of citizenship as civil and political emancipation. In some historical periods, some legal systems (such as the republican regimes at the end of the eighteenth century) only dealt with citizenship in terms of civil and political emancipation, disregarding nationality, which was considered a natural bond with the territory and allegiance to the sovereign. The status of subject was assigned conventionally on the basis of permanent settlement, place of birth and descent. The same happened in the newborn Italy, which was influenced in this, as in many other respects, by the French legal culture.

In 1848, the Kingdom of Piedmont and Sardinia adopted a moderately liberal constitution, known as the Statuto Albertino after the sovereign Carlo Alberto. Art. 24 of the Statuto Albertino stated that ‘all *regnicoli* [people of the Kingdom], whatever their title or status, are equal before the law. Everyone has the same civil and political rights, and has access to civil and military office, apart from exceptions determined by law’. The term *regnicoli* implied that the population naturally belonged to the crown territories. Art. 24 was entitled ‘On the rights and duties of citizens’, a collocation that was typical of seventeenth century constitutions, including the one in force in Piedmont during its republican French period. Art. 24 was not intended to introduce a democratic principle of political rights, nor to establish universal (male) political emancipation, as was the case with the laws introduced in France and Switzerland in the same year. The Statuto was only intended to leave a moderate opening for future enlargement of the suffrage.

Like other liberal regimes of the time, Italy imposed on its suffrage property and education restrictions that were gradually relaxed until universal male suffrage was introduced in 1912. Like the Statuto Albertino, the Civil Code (the Codice Civile Albertino, promulgated on 20 June 1837 and brought into force in Piedmont and Liguria in 1838 and Sardinia in 1848) did not expressly deal with nationality, but with civil and political citizenship.

The code only dealt with citizenship in cases of doubt or conflicts of sovereignty. It did this partly in order to account for expatriate foreign residents and foreign spouses. It envisaged the possibility of children born abroad to emigrant fathers to become subjects and acquire the rights related to this status by *ius sanguinis* (art. 19). A wife and children who were born subjects and emigrated with their husband/father benefited from all rights, even when the husband/father died; however, the male children had to return to Italy to complete the compulsory military service within three years of coming of age if they wanted to retain their nationality (art. 38). A foreign woman who married a subject acquired his nationality by *ius connubii*, or spousal transfer (art. 21). Naturalisation was allowed by *ius domicilii*, or residence, on application to the sovereign, to whom allegiance had to be sworn (art. 26). *Ius soli* was valid for children of long-term resident aliens. 'A child born in the sovereign state to a foreigner who has permanent domicile there is considered a subject.' The desire to stay permanently was interpreted as 'residence for an uninterrupted period of 10 years' (art. 24). Unlike the Napoleonic code, which made *ius sanguinis* the preferred mode of citizenship acquisition and complemented it with a *ius soli* deferred until the age of majority, Piedmont, with its intellectuals and lawyers - among which were Mancini and Pisanelli, who knew what it was like to be a refugee or *émigré* - gave priority to the stable residence of the father as the condition to enjoy acquisition by *ius soli*.

The new state, founded in 1861, inherited the Statuto Albertino as its constitution. The 'second-hand' constitution of unified Italy - as we have already underlined - reproduced a model of liberal and republican constitutions, and thus dealt with citizenship, as a political and civil emancipation, while disregarding nationality, the status *civitatis*, i.e. the status of 'non-alien'. To sum up, in the newly unified Italy, the first legislation governing citizenship as nationality was already out of date as soon as it came into force, as there was no formal definition of who was entitled to nationality, apart from uncertain cases. It was simply assumed, here as it used to be in other European countries, that a national was a person who had always been such, together with his descendants and wife.

This legal situation conflicted with the fact that Italy had finally become a nation-state, and might therefore have been expected to introduce a strong relationship between membership of the State and membership of the Nation. The Italian legislature tackled this incongruence in the Royal Decree of 15 November 1865, which introduced the new Civil Code. The model of citizenship adopted was in accordance with the legal culture of the nation as the foundation of the state, which was spreading throughout Europe. The *ius sanguinis* criterion started its successful diffusion in Europe after the 1804 Napoleon French Civil Code based citizenship mainly on descent. In Italy too, the acquisition of nationality was regulated by the *ius sanguinis* criterion, considered a sufficient indicator of a shared belonging to the nation (Grosso 1997): article 4 states that '[a] child of a national is a national'. The Code integrated the *ius sanguinis*, with an obvious *ius connubii*, by nationality transfer from the husband to the wife. A partial *ius soli* was also confirmed. Following the provisions already present in the Codice Albertino made this opportunity dependent on the duration of the parents' residence (ten years) (art. 8). This mix of parents' residence and children's birth in the territory reappeared later in the 1912 Nationality Act (art. 3), as well as in other European legal systems, though now abandoned in the current Italian law.

For the first time, the 1865 Code specified and regulated the so-called 'piccola cittadinanza' ('lesser citizenship'), defined in contrast with real 'citizenship', which included civil and political rights. The creation of a 'lesser citizenship' was meant to pave the way for civil rights. These provisions were included in Section I, 'On nationality and the enjoyment of civil rights', which, in

turn, was included in Book One, 'On persons'. The emancipation of nationality from civil and political citizenship was still to come.

Until 1861 Italy was a nation that, through the driving force of the Kingdom of Piedmont, was trying to turn itself into a state. In this context the adoption of preferential criteria for those who belonged to the nation without being part of the state is fully understandable. The Electoral Acts (1859, 1860), adopted as extraordinary measures (the procedure used at that time for many other acts) a few years before Unification, placed great emphasis on belonging. This law laid down as a condition for voting 'the possession of civil and political rights owing to birth or family relationships in the Royal States. However, those who do not belong to the Royal States by either of the criteria mentioned may, if Italian, partake of the right to vote, provided that they are naturalised by royal decree and have sworn an oath of loyalty to the King. Alien people may acquire the right to vote through naturalisation by Statute Law.' Thus the procedure for ethnic Italians was far simpler than for other aliens. The same very simple co-ethnic preferential procedure was included in the Electoral Act of 1895 and the Nationality Act reform of 1906.

As mentioned, the unification of the Italian State was still an incomplete process in 1861. Veneto and Venice were assigned to Italy in 1866 after Austria was defeated by the Prussians at Sadowa. Rome was only conquered in 1870. Towns and territories considered culturally Italian but still under Austrian rule, such as Trento, Trieste, Istria and Dalmatia, were acquired after the First World War, when the frontier was moved even beyond the 'linguistic border'. The process of unification was finally completed in 1924 with the acquisition of Fiume.

In view of the existence of 'Italians' outside the new kingdom of Italy, we might have expected to find strong provisions for co-ethnics in the 1865 Code in and other legislation of the Italian legal system of the time. Actually, there is very little, apart from what was mentioned above. Some attempts were made to prevent the definitive loss of citizens through emigration, such as allowing dual citizenship, albeit informally. The 1865 Italian Code (art. 5) only stated that a child born on Italian soil to a father who had not lost his nationality by emigrating was Italian. The same principle also applied to children of emigrants born abroad to a father who had become a foreigner in the meantime, so long as the child came back to Italy and settled there. On the other side of the border, the problem of regulating (Italian and other) immigrants' citizenship was also taken into account by the French legislation, which, starting in 1851, made the acquisition of nationality by *ius soli* automatic and later increasingly binding.

2.2. From 1865 to the Fascist period

The 1865 legal framework was soon put under pressure by two factors: 1) mass emigration combined with the citizenship laws of the receiving country; 2) the colonial expansion.

The decades following unification saw 'the Great Emigration'. Italian emigration intensified in the 1890s and really exploded in the first decade of the twentieth century. The initial emigration flows were often temporary and seasonal, like those going to neighbouring areas of the mountain economy in France and Switzerland. There was also a fairly substantial flow of seasonal emigrants (known as 'birds of passage') leaving the port of Genoa for Latin America. Nonetheless, it was only with the advent of steam navigation (which replaced sailing ships during the last decade of the nineteenth century) and with the gradual economic modernisation of Italy and the consequent displacement of people previously involved in agricultural activities, that mass permanent emigration took place.

The main countries to which Italians emigrated applied *ius soli*, and even automatic naturalisation of residents. Brazil, in particular, included in its 1891 Constitution (art. 69) automatic naturalisation of all people resident on 15 November 1889, the day on which the Republic was proclaimed. Renunciation within six months was legally allowed, but strongly discouraged by the

public authorities (Rosoli 1986, Lahalle 1990, Pastore 2004). According to the 1865 Civil Code (art. 11), Italy did not formally permit dual nationality. Children of emigrants born abroad and forcibly naturalised should have automatically lost their Italian nationality (Pastore 1999, 2001). Yet, in practice, Italian governments used to give priority to art. 4 (*ius sanguinis* for children born abroad) and nationality could be lost only by an official act of renunciation (Vianello-Chiodo 1910). In the case of loss, Italian nationality could be regained only through difficult procedures: a special government authorisation was needed. The lack of formal belonging result in cultural alienation, a reason for estrangement from the country of origin, and a deterrent to repatriation. Millions of people left, and although a large percentage of them came back, the loss of population was nonetheless considerable.¹⁰ There was also a fear that cutting the ‘legal umbilical cord’ with their native land could make emigrants less willing to send back precious remittances (Prato 1910). A serious deterrent that discouraged emigrants from returning was the existence of sanctions for those who had not performed their military service in the army. To remove this disincentive, a 1901 Act (no. 23 of 31 January) established that expatriates who had not complied with the duty of military service were no longer punishable after the age of 32.

In this context it is not surprising that the first major Act aimed at reforming the institution of citizenship (no. 555 of 13 June 1912) was designed to encourage the repatriation of emigrants. It eliminated the requirement for special government authorisation for reacquisition of citizenship, and replaced it with an automatic procedure. Two years residence in Italy was sufficient to regain one’s former citizenship (art. 9) while, as already mentioned in the introduction, all other foreign residents had to wait five years to apply for naturalisation. The five year requirement was, however, a reduction if compared to the six years¹¹ of residence required to apply for naturalisation pursuant to the 1906 Act (no. 217 of 17 May 1906). In general, the 1912 law reasserted the principle of *ius sanguinis* as a basic element of nationality, complementing it with the principle of *ius soli* in partial imitation of the French model: dual nationality was allowed to minors, but they could choose and were not obliged to opt on coming of age as in the French case. The Italian parliament accepted a trade-off between tolerating dual nationality in exchange for keeping strong ties with its offspring abroad (art.7). Dual nationality was tolerated for expatriates when the acquisition of the second nationality was automatic and inevitable, as in countries of immigration characterised by *ius soli* at birth. The treatment of dual nationality was thus not clearly decided, and for many emigrants, Italian nationality became a sort of ‘spare nationality’ (Quadri 1959: 323). In Italy, as in many other countries, dual nationality was a problem that proved difficult to solve in a definite, clear way and, as elsewhere, it later became the object of contradictory reforms. But before this could happen, Italy changed its nationality laws as a consequence of a series of crucial events, notably the rise and fall of Fascism.

As mentioned at the beginning of the section, the other phenomenon that affected citizenship is colonial expansion. It started before the advent of Fascism in 1911, was strengthened by Fascism, and continued until 1943. This topic will be mainly dealt with in the next subsection, nevertheless it is now just to be pointed out that from the beginning of the colonial experience to the Twenties, the children born of Italian fathers and African mothers were provided with Italian citizenship when acknowledged by their Italian father.

¹⁰ Since the unification of Italy, from 1861 to 1940, some 24 million Italians have emigrated; 26 million if the century between 1876 and 1976 is considered. Although there are no fully reliable official statistics, estimates of the numbers who came back to Italy between 1876 and 1976 range from 33 per cent (Favero & Tassello 1978) to 50 per cent (Cerase 2001).

¹¹ Reduced to four years for people who had served the State and three for those who had married an Italian woman or had rendered special services to the country.

2.3. From Fascism to the Constitution

Three factors influenced the changes that took place during this period: 1) the establishment of a regime repressive of political opponents; 2) the racist and anti-Semitic attitude that became predominant within the Fascist movement, especially after the alliance with Nazi Germany; 3) the continuation of colonial expansion.

The March on Rome, as a result of which the Fascists challenged the government and persuaded the King to entrust Mussolini with the mandate of forming a new government, dates to 28 October 1922. The regime was initially authoritarian, but not racist. The alliance with Nazi Germany led Fascism to acquire a strong racist connotation and to pick on a group which was not originally its main target: the Jewish minority. The alliance began after Italy's annexation of Ethiopia in 1936, continued with the two countries' joint intervention in the Spanish Civil War, and was formalised with the Anti-Comintern Treaty (joined by Italy on 6 November 1937). Previously, even if Mussolini, as an individual, may have indulged in some stereotypical judgements about Jewish people (Fabre 2005), this was not the official position of the regime. And persons belonging to the Jewish minority held important public positions both in the Fascist party and in the Italian army. In 1932, in an interview with Emil Ludwig (Barberis 2004), Mussolini contrasted Fascism with Nazism, which was gaining ground at the time in Germany, stating that: 'anti-Semitism does not exist in Italy'; 'of course, a pure-blooded race does not exist, not even the Jewish one' and that 'fortunate mixes' are a source of 'the strength and power of a nation'; 'national pride does not need any race delirium'. Six years later, in 1938 (RDL, Regulation with the force of Royal Decree no. 1381, 7 September 1938), Special Regulations towards Foreign Jews were introduced as follows:

Art.1 'From the date of publication of this decree, foreign Jews may not take up permanent residence in the Kingdom, in Libya or in the Aegean Territories. Art. 2 For all the purposes of this decree anyone who was born of parents both belonging to the Jewish race is Jewish, even if he or she follows a religion other than the Jewish religion. Art. 3 Acquisition of Italian citizenship by Jewish aliens after 1 January 1919 is revoked. Art. 4 Jewish aliens in the Kingdom of Italy, Libya or the Aegean Territories under Italian rule on the date of publication of the present decree, whose residence began after 1 January, 1919 shall leave the territory of the Kingdom of Italy, Libya and the Aegean Territories under Italian rule within six months of the publication of this Decree.'

A later Decree (no. 1728 of 17 November 1938) introduced new Regulations in Defence of the Italian Race. This Decree prohibited Jews from owning property, barred them from many jobs and from public education. Its article 4 for the first time clearly stated a co-ethnic principle: the idea, that foreigners of Italian descent are not 'real' foreigners. The previous legislation, including the 1912 Act, had granted special opportunities to keep and reacquire Italian nationality to Italian expatriates and people who had themselves been citizens or had Italian citizens as ancestors, but not to persons who were Italian only by custom and culture. Beside anti-Semitism, racism in general had entered Italian legislation.

Even before it took on a clearly racist character, the Fascist regime had acquired authoritarian characteristics. During the Fascist period, political rights were obviously neutralised by the complete lack of electoral competition. Fascism did not limit itself to the suppression of competition; it also repressed opponents, imprisoning them, sending them into exile, beating them up, and even killing them. Many chose exile, but even then they were not safe from the punitive actions of hired Fascist killers. The status *civitatis*, citizenship as simple nationality, was denied to exiles who did no more than publicly criticise the regime. The Exiles Act of 31 January 1926 (no. 108) was one of the repressive public measures used by Mussolini to establish the Fascist regime. By this Act, those doing anything liable to 'cause a disturbance of the Kingdom, even if this does not amount to a crime', and those furthering 'the circulation of false information on the state abroad' were deprived of their nationality.

Concerning the continuation of colonial expansion in Italian East Africa, and legislation mentioned at the end of the preceding section, the 1936 law (RDL, Royal Decree, no. 1019 of 1 June 1936) assigned the status of subjects to all inhabitants who were not Italian citizens or citizens of other states. According to the same law (art. 39): ‘A person who is born in Italian East Africa of unknown parents is declared to be an Italian citizen if it can be reasonably inferred from his or her features and other traits that both parents are of white race’. Afterwards, in 1937, with RDL, Royal Decree, no. 880 of 19 April 1937, marriage between an Italian citizen and an Italian East Africa subject was forbidden. The peak of these racist norms is the Act about mestizos (*‘meticci’*) (Act no. 822 of 13 May 1940) - passed two years after the Regulations in Defence of the Italian Race - that explicitly forbade the Italian father to recognise a mestizo child. The aim of the norms included in the Mestizo Act was to assimilate the children born in mixed unions to the subject status of the local population.

2.4 From the Constitution to the 1992 Act

The changes that took place during this period can be attributed to the following factors: 1) the liberal principles established as an antidote to Fascism and a protection from possible new authoritarian waves; 2) gender equality as a legal criterion (resulting both from the role played by the Italian women during the *Resistenza*, and from the grounded hope that the moderate attitudes of women would reinforce the young democratic regime); 3) the need to regulate dual citizenship in order to comply with the more general aim to reward emigrant communities and their descendants, and to accommodate the gender equality principle.

The Italian Constitution, which came into force on 1 January 1948, moves against the loss of citizenship for political reasons (art. 22) and prohibits discrimination on racial, religious, political, social or gender grounds (art. 3). Moreover, in 1947 (with Legislative Decree 1096 of the Provisional Head of State) the Mestizo Act was abrogated, and a privileged means of acquiring Italian citizenship for those born through mixed unions was arranged. However, as already mentioned in the introduction, the same ‘non-discriminating’ Constitution included a co-ethnic preferential principle: ‘as far as admission to public offices and elected positions is concerned, the law can equate Italians not belonging to the Republic with citizens’ (art. 51 par.2).

Gender equality included in the Italian Constitution immediately impacted citizenship. In Italy, as all over the Western world, cultural changes in family relationships and active feminist movements fostered reform of citizenship law. The fact that gender equality was embedded in international treaties¹² was influential but not determinant. Gender equality in political citizenship was achieved before the adoption of the new Constitution. Italian women were given the right to vote in local elections in 1945, and a few months later, in 1946, for the Constituent Assembly. Women were, however, still obliged to follow the legal status of their husbands as far as other aspects related to citizenship were concerned, in contrast to the previously quoted article 3 of the Constitution. This contradiction was resolved quite late. On the waves of feminist claims, in 1975, a general Family Reform Act was adopted (No. 151 of 19 May). This act included the right to retain Italian citizenship for women married to a foreigner. This change was due also to the need to follow a Constitutional Court ruling¹³ that stated that the loss of citizenship for married woman contravened article 3 of the Constitution. In 1983, following another Constitutional Court ruling,¹⁴ a

¹² The 1957 UN Convention (which came into force in 1958) specified that women should not lose their citizenship as a result of marriage to a foreigner. In 1977, a resolution of the Council of Ministers of the Council of Europe (which came into force in 1983) recommended that people should be entitled to keep their nationality of origin and that both spouses should be entitled to transfer their citizenship to each other and to their children.

¹³ Judgement no. 87 of 9 April 1975.

¹⁴ Judgement no. 30 of 28 January 1983

new act¹⁵ established the right of married women to transfer their nationality both to their children and to their foreign husband.

Recognition of the principle of gender equality in matters of citizenship made unavoidable the need to solve the problem of dual nationality. In 1983, while extending to both spouses the possibility of acquiring Italian citizenship by spousal transfer, Italian lawmakers confirmed the general principle prohibiting dual nationality. Children of parents of different nationalities were required to opt for one nationality within a year after coming of age. The subsequent 1986 Act postponed the deadline for this decision until the approval of the forthcoming Citizenship Act (which was to include dual nationality). Therefore, dual nationality has been allowed in practice without restrictions since 1986, but the principle was not clearly established until the 1992 Act (art. 11).

However, even before the 1992 Citizenship Act, the Italian government had already accepted full dual nationality with some states (for instance, with the State of San Marino). It had also signed bilateral agreements with some countries hosting Italian emigrants to deal with problems connected with military service and voting (Giuliano 1965, Clerici 1977). This is the case, for example, with the Treaty between Italy and Argentina, concluded in Buenos Aires on 29 October 1971, which exactly reproduced the agreement of 17 April 1969 between Spain and Argentina - a typical example of legal dissemination by imitation. The text of the agreement made it possible to hold two different kinds of citizenship, although it attenuated the consequences by making dormant the status of citizenship of the country where the citizen did not reside, together with all the rights and duties connected with it, including the right to vote and the duty to perform military service (Bariatti 1996, Pastore 1999, 2001). That meant that Italian citizenship, which was suspended because of the acquisition of Argentine citizenship, would take effect again as soon as the emigrants took up residence in Italy.

3 The current citizenship regime

As in all modern legal systems, the main mode of citizenship acquisition in Italy is by maternal or paternal *ius sanguinis*. *Ius sanguinis* is, indeed, the cornerstone of the 1992 Citizenship Act¹⁶, which is still the main piece of legislation on the subject. Italian citizens at birth are those born to an Italian citizen or those born in Italy to unknown or stateless parents.

A more specific feature is the fact that Italian legislation puts no limits on the transfer of citizenship by descent, even in the case of people who migrated in the distant past. In order to maintain Italian citizenship, the 1992 Act does not require residence in the country for the descendants of Italians, unless for any reasons they have lost and not reacquired Italian citizenship. Indeed, the number of ‘latent Italians’ who have asked for recognition of their citizenship by applying for Italian passports abroad is enormous: according to Ministry of Foreign Affairs data, from 1998 to 2011 almost 1 million passports were issued to Italians residing abroad (Tintori 2012). This is the case for people who, having retained their status as Italian citizens, applied for its recognition and obtained it. This situation came about also because of the 1992 Act and its official acceptance of dual nationality. In fact, the acquisition of another nationality does not entail the loss of the Italian one.

Dual nationality, the proliferation of which had become inevitable following the application of gender equality principles, in time intensified the ‘catch’ of the ‘latent Italians’ abroad. As

¹⁵ Act no. 123 of 21 April 1983.

¹⁶ Act no. 91 of 5 February 1992.

analysed in the historical section, after the 1983 Act both spouses have been given the opportunity to transfer their citizenship to each other and to their children. However, since the gender equality principle on which those measures were based became part of Italian law only under the 1948 Constitution, the courts initially ruled in favour of the possibility that Italian citizenship could be inherited by maternal descent even before 1983, but only for those born after 1948. More recent judgments have extended the possibility of *ius sanguinis* by maternal descent to those born before 1948.¹⁷ The most recent decision is Judgment no. 4466 by the Court of Cassation issued on 25 February 2009. This verdict recognises the right to Italian citizenship of an Egyptian woman whose grandmother was Italian but, as provided by the 1912 Act, lost her citizenship because she married an Egyptian citizen. According to the judgment, because the woman had lost her citizenship due to a discriminatory provision, the act must be considered null and void and, consequently, her son and her granddaughter must be considered Italian by descent.

To the large numbers of ‘latent Italians’ who activated their nationality must be added the 163,756 people of Italian descent living abroad who have reacquired Italian nationality by the reacquisition programme included in the 1992 Act and other later measures.¹⁸ As mentioned in the introduction, this special provision is aimed at allowing people to reacquire Italian citizenship in cases where they had lost their Italian citizenship during the period when the right to hold dual nationality was still uncertain. According to the 1992 Act, this option was due to stay open until 1994 but the deadline was extended first to 1995¹⁹ and then to 1997.²⁰ In 2000, the same measure was extended for a five-year period to aliens of Italian descent living in the territories that, having belonged to the Austro-Hungarian Empire before the end of the First World War, were incorporated into the former Yugoslavia after the Second World War. The reacquisition provisions included in the 1992 Act and its renewals, as well as that provided in the 379/2000 Act, were characterised by a ‘time window’, i.e. a deadline. To the contrary, no time limit is provided in Act 124 of 2006, which is the most recent reacquisition programme granting citizenship to ethnic Italians resident in the territories assigned to the former Yugoslavia after the 1947 treaty (and to their descendants). This means that reacquisition by this act is still possible today. It is worth noting that Act 124 of 2006 introduced a requirement for the first time meant to verify the existence of co-ethnic ties by examining an applicant’s knowledge of the Italian language and culture. After the 2000 and 2001 constitutional reforms Italian citizens continuously residing abroad were granted the right to vote in Italian parliamentary elections and even to elect their own representatives.²¹ It is important to underline the adverb ‘continuously,’ i.e. permanently, since Italians residing abroad only temporarily (students, visiting professors, managers, seasonal or temporal migrant workers) are quite unlikely to enjoy this right. Potential voters are required to register before the end of the year preceding the elections but it is quite difficult to predict in advance any short residence abroad; neither is possible to predict early elections. Furthermore, very few Italians are informed about this discouraging procedure. The number of Italians presently registered at the Aire (the register of Italians abroad) is 4.208.977, but we should not overlook the figure of ‘latent Italians,’ the *oriundi* (people of Italian origins), who are estimated to be more than 60 million. These can be, and often are, people who never visited their supposed motherland, do not speak or even understand Italian, know very little about Italian history, culture, and basic constitutional principles, and presumably far less about Italian politics. A single grandparent is not a good indicator of persistent cultural bonds. It is not the persistence of a national identity that motivates the claim for recognition of Italian citizenship. The results of the 2006 elections illustrated that these can be the determining

¹⁷ Court of Cassation judgment no. 15065, sect. I, 22 November 2000. In favor of retroactivity before 1948, see the judgment of the Turin High Court (Lucero case), 12 April 1999.

¹⁸ Italian Foreign Office data by the end of the year 1997.

¹⁹ By the Decree of the President of the Republic no. 572/1993.

²⁰ By the Decree of the President of the Republic no. 362/1994.

²¹ Act no. 1 of 17 January 2000 and Act no. 1 of 23 January 2001. To the Italians abroad divided in four continental constituencies were assigned six representatives in the Senate and twelve in the Chamber of Deputies.

votes in assigning the victory to one coalition rather than another. In contrast, the past Berlusconi government, elected with a large majority in April 2008, did not depend on the votes of the MPs elected by Italians abroad. For this reason, it could have afforded to modify the current legislation on citizenship, adding new requirements to check the persistence of real bonds. But nothing was done in this direction. The scandals concerning a Senator elected in the Europe constituency under a false title of residence in Brussels and with ‘Ndrangheta’ organised crime votes, and two MPs elected in foreign constituencies suspected of being bribed to change party or to leave the floor by request are likely to produce some change in the entitlements and the procedures for voting abroad and possibly to encourage some general reflection on the *ius sanguinis* abroad issue.

In accordance with the ever persistent co-ethnic imprint, the current legislation grants to foreigners of Italian origin easier access to citizenship. Article 9 of the 1992 Citizenship Act requires three years (or two years in case of minors) of legal residence in Italy instead of the ten years required for non-EU aliens, five years for refugees and stateless people and four years for EU citizens.

EU citizens used to be conceived by the legislator as a sort of extended public family that includes not only people of national origin (relatives), but also foreigners related by special cultural and political elective affinities and international legal bonds (legally considered akin to in-laws). EU nationals are, hence, another (though slightly less) privileged category. This affinity perception has changed after the more recent enlargement, which includes Romania, and the fact that the recent security debate in Italy is concerned mainly with the high criminality rates in some Eastern European communities. The changed climate has not affected this part of the law so far.

There were 1,334,820 EU nationals residing in Italy on 1 January 2011, corresponding to 29 per cent of the total foreign resident population (4.570.317). People from Romania represent 73 per cent of the total population of EU nationals in Italy and, with incidence share of 21 per cent of the total foreign population, they are by far the largest foreign resident community in Italy. While for the period 2007-2009 ISTAT (National Statistical Institute) annual reports showed a decrease in the relative growth of inflows from EU countries, the 2010 figures reveal a renewed increase. A more recent (July 2012) ISTAT research specifically addressing non-EU foreign residents registers a 40 per cent decrease in the number of new stay permits delivered between 2011 and 2010. We can assume that a similar decrease may have happened, at least to some extent, for entries from EU member states. The tough economic crisis affecting the Italian economy and the increased opportunities for EU migrants to return to the country of origin can explain the decrease. Relations between Italians and EU foreigners are no longer family-like, the popularity of the Union, once extremely high among the Italian public, has experienced a setback that is relatively less dramatic than in other European countries but still significant. This changed attitude did not affect the easier access to Italian citizenship granted to EU foreigners, but in time a revision could happen. However, nationality is not perceived in Italy as the most contentious issue on the European chess-board.

Another familistic feature of the 1992 law has already been deleted. Marriage used to be an extremely easy means of acquiring nationality. Very few requirements had to be satisfied: citizenship could be acquired after six months of marriage if the couple resided in Italy or after three years if the couple lived abroad. The requirement of persistence of marriage in the 1992 Act was vague enough to leave room for generous interpretation. It required only the absence of legal separation without mentioning the point up to which the persistence of the bond had to be demonstrated (i.e. at the moment of application or of decision). Furthermore, in 1992 and 1993 the Council of State made recommendations according to which the dissolution of the marriage prior to acceptance of the application was not a sufficient reason for rejection, as long as the required period of spousal union had been fulfilled. Today, marriage is no longer a viable mode of easy access to Italian citizenship. The Security Act, which was passed by Parliament in July 2009 with the main purpose of counteracting criminality of immigrant origin and undocumented residence, includes an

important amendment to the 1992 Act: the spouse of an Italian citizen must have been married for two years (instead of six months) if residing in Italy (or three years, as it had been already stipulated before, if the couple resides abroad).²² In both cases the time of residence is halved if the couple has children. The new law specifies that there must be no separation of the spouses, even *de facto* separation, when the public authorities take the decision. It is not clear whether the new provisions may still be interpreted as reducing the applicants' dependence on the discretion of the public authorities.²³ The procedure for acquiring citizenship by spousal transfer remains easier than via simple residence, because the residence time required is in any event shorter and screening less severe. The public authorities can refuse the application only if there are serious impediments such as a criminal record or evidence of a marriage of convenience.

The ease of acquiring citizenship by spousal transfer, which was possible until June 2009, explains why this was by far the most common mode for foreigners of non-Italian descent to become Italian citizens. In 2007 there were four and a half times more acquisitions by marriage than by residence (almost 32,000 versus almost 7,000). Acquiring citizenship by spousal transfer started becoming less popular on the eve of the approval of the present more restrictive regulation. In 2008 there were almost 25,000 cases of acquisition by spousal transfer, which represents a decrease of about 20% compared to the year 2007. In 2009 the acquisition by residence overtook the number of acquisitions by marriage (almost 23,000 versus about 17,000) and in 2010 the gap persisted even if it narrowed somewhat (almost 22,000 versus 18,500).

For non-EU foreign citizens marriage to an Italian citizen represented an easy means to acquire Italian citizenship and all the benefits connected with European citizenship. The utility of acquiring Italian nationality decreased as the country of origin became a new EU member. The number of marriages involving Romanian citizens has started to decrease since 2007 before the restrictive Act of 2009, the year in which Romania became a member of the EU. It is difficult to evaluate the effect, in quantitative terms, of the increase from six months to two years of marriage and of the requirement of a persisting bond at the moment of the decision, as we have tried to demonstrate, other factors are at work.

In contrast to the still relatively easier route to citizenship by marriage and the persistent opportunity to maintain and to acquire citizenship by descent, acquisition of Italian citizenship is quite a difficult task for those aliens who cannot rely on family ties with present or former Italian nationals.²⁴ As we have mentioned, the 1992 Citizenship Act requires ten years of legal residence for non-EU aliens before being eligible to apply for naturalisation (art. 9). Plus, its delivery is at the discretion of the public administration. The low number of Italian citizenship acquisitions by residence, 21.630 in the year 2010, confirms the difficulty of this mode of access though, as we have mentioned before, in time the number of acquisitions by residence has increased and overtaken acquisitions by marriage.

It is impossible to calculate the naturalisation rate for the year 2010 since the last data available on potential beneficiaries, i.e. immigrants with ten years of residence (630,000) are from

²² Act no. 94 of 15 July 2009.

²³ According to the 91/92 Act the acquisition of citizenship by spousal transfer was by entitlement (*beneficio di legge*): article 5 stated that 'the spouse of an Italian citizen acquires Italian citizenship when residing for at least six months in the country, or after three years of marriage, unless there has been a dissolution or annulment of the marriage or the legal separation of the spouses'. The amendment of this article by the 94/2009 Security Law included the following wording: 'the spouse of an Italian citizen can acquire Italian citizenship if residing in the country for at least two years after the marriage, or after three years of marriage if residing abroad and if there is no dissolution, annulment of the marriage or personal separation of the spouses'. This new formula could create a wider margin of discretion.

²⁴ According to Pastore (2008) the 1992 Act was based on two pillars: the 'internal' one aimed at facilitating the acquisition or reacquisition of Italian citizenship by aliens of Italian origins even if residing abroad and the 'external' one that made naturalisation more difficult for non-EU immigrants.

2007 and at the time the naturalisation rate was just 1%, as acquisitions of citizenship by residence during that year were 6,900.

In future we should try to survey the impact of the introduction of what we can define as new ‘indirect requirements’ as they concern the stages prior to acquisition of citizenship, such as knowledge of the Italian language for acquisition of long-term residence permits and for the achievement of ‘integration’ needed to have the permit renewed.

The increase in the number of acquisitions of nationality by residence can be explained by the stabilisation of the number of immigrants in the receiving country and the consequent higher number of long-term residents, as well as by the introduction of several new procedures to speed up the bureaucratic process. As we have anticipated, though the deadline to respond to an application for naturalisation is fixed at a generous 730 days, the average has continued to be far longer. In order to confront this problem many minor decrees have been adopted by the Ministry of the Interior, and one of importance by the Presidency of the Republic. President Carlo Azeglio Ciampi discontinued the practice of personally signing each decree in November 2004. Since then the President of the Republic signs a decree containing a list of naturalisations while the signature of each single decree is delegated to the Legal Advisor of the President.

No relevant improving measure was adopted for minors born in Italy to foreign parents. According to the law, they are entitled to acquire Italian nationality only at the age of eighteen and only if they can prove their uninterrupted legal residence in Italy (art. 4). The requirement of uninterrupted residence means that, until recently, those applying for naturalisation at the age of eighteen had to demonstrate that they were registered at birth and have held a regular residence permit during all eighteen years. This is what the law says, and it has not been modified so far. The non-availability of such documentation made the acquisition of Italian nationality quite a difficult goal, especially when the foreign parents were undocumented residents at the moment of birth of the child – a likely scenario in Italy – and therefore could not immediately register the birth of the child.²⁵ Furthermore, children of immigrants may spend long periods of time with their grandparents in their families’ country of origin. The following circulars have softened the interpretation of the law. In order to reduce the above-mentioned difficulties, the Ministry of the Interior issued two circulars in 2007 that provided for a more flexible interpretation of the ‘uninterrupted legal residence’ requirement in the 1992 Act.²⁶ However, circulars do not have the legal status of law; they can merely soften the interpretation of the law and can be easily eliminated. As previously illustrated, minors who were born in Italy to foreign parents and who have resided without interruption in the country until the age of majority become Italian citizens by declaration. On the other hand, the 1992 Law provides for a second track for minors born in the country who have not always been legally resident. According to the 1992 Law they can ask for naturalisation with a residence requirement of only three years instead of the ten required for other foreign residents, though they cannot make use of the special simplified procedure.

The simplified procedure adopted for *ius soli* at birth has always occurred by registration at the local registry; for this reason, we are not provided with systematic information about the number of acquisitions by this mode; data are collected only by the respective municipalities and there is no statistical count at the national level.

The only source of information on such acquisitions is the census, as it records the number of children born in Italy of foreign resident parents and registered as Italian. The last census data

²⁵ It is estimated that about 70 per cent of immigrants currently residing in Italy have been living in the country as undocumented residents (Blangiardo 2005).

²⁶ 5 January 2007 and 7 November 2007 circulars. In particular, according to the circulars, late registration of birth does not foreclose the acquisition of Italian nationality as long as it is possible to refer to documents (e.g. school or medical certificates) that demonstrate the applicant’s presence in Italy in the period preceding regularisation. A circular (*circolare*) is an administrative provision aiming at clarifying the correct management of a procedure.

available are from the 2001 census (at the time there were 3.400 children born in Italy by foreign parents and registered as Italian citizens). The new 2011 census data are not yet available but will be released shortly.

According to ISTAT's most recent data, in 2010 there were 78,000 children registered as born to foreign parents (corresponding to 14 per cent of total registered births) and 993,238 underage resident foreigners (corresponding to 22 per cent of the total foreign population and 10% of the total minor population resident in Italy). More than 700,000 of these minors were born in Italy and 9.061 of them are 17 years old. In order to inform them of the possibility to apply for naturalisation when they reach the age of majority, the Association of Italian Municipalities (ANCI), G2 (Generation Two), an association of young people of foreign origin, and Save the Children launched a campaign signed by 355 municipalities that commits the municipalities to send the minor a letter with all the information needed to apply.²⁷ The commitment of the municipalities to inform foreigners coming of age about their legal rights will prove to be a good practice. At present, many of them do not apply for Italian citizenship because they do not know they can do so, or sometimes they discover it too late (the 1992 Act provides that the application has to be made within one year after coming of age).

Acquiring Italian citizenship is difficult, but losing it is even more difficult. The loss of Italian citizenship normally occurs through formal renunciation. Besides renunciation, the Italian legislation indicates just two other cases of automatic loss. The first is the case in which an Italian citizen does not comply with the request of the Italian government to renounce a public office in the administration of a foreign state or for an international institution of which Italy is not a member. The second concerns those Italian citizens who, in the case of war between Italy and a foreign country, are employed by that foreign state or perform military service or acquire citizenship of the enemy state. In accordance with the familistic co-ethnic model, Italian citizenship acquired by descent cannot be lost by residing abroad.

The 1992 Act is now decidedly obsolete; however, it was already born obsolete. It was conceived under the impact of three ideas: first that Italy was still a country of emigration²⁸ (Zincone & Caponio 2002), second, that it was a country of immigration that was beginning to experience an anti-immigrant backlash and, third, Italy was seen as if it had a considerable number of its nationals living immediately outside its borders against their will. This did happen in other European countries that have adopted co-ethnic criteria. But none of these possible conditions existed in Italy in 1992. Clearly, by 1992 Italy had already become a country of immigration. Immigrants had outnumbered emigrants since 1973 (Pugliese 2002). The 1992 Act was passed only two years after another important Act (No. 39 of 28 February 1990) on the status of immigrants, which was patently pro-immigrant. The 1990 Immigration Act was passed immediately after the 'First National Conference on Immigration' (1990) during which the political classes were aware of the fact that Italy had become a country of immigration and where a favourable attitude had clearly emerged. For this reason, the 1992 Act can be considered a delayed-action provision (Zincone 2006). The 1992 Act was not in tune with public opinion, which was starting to resist immigration, but this act was prepared to extend rights of citizenship to documented resident immigrants (IRES 1992).²⁹ Clearly the decision makers were not yet under any political pressure, since the public concerns about immigration had not yet found an effective xenophobic political voice. We can explain the passing of the 1992 Act only if we understand that it was conceived in a very different context; it suffered from a temporal lag.

The 1992 Act was a measure that came into being through a delayed-action mechanism, as it was the consequence of a promise made by the political class when Italy was (and still perceived

²⁷ At September 2012.

²⁸ See the typology by Weil (2001).

²⁹ See also Bonifazi (1998 and 2005).

itself as) a country of emigration (Zincone 2006). The first reform project had been presented in 1960 (Senate Bill no. 991 of 24 February), but it was especially during the First National Conference on Emigration (1975) that the promise of reforming the Nationality Act was strongly asserted. The Act was not preceded by a serious and lengthy political discussion. ‘The parliamentary debate and the legislative procedure that led to the passing of Statute 91/1992 are the result of systematic, long-term cooperation of all parliamentary forces’ (Basili 2005a). Research on the content of newspapers of the time (Ciccarelli 2005) shows a complete lack of public debate on the issue.

During the debate in the Senate, a left-wing senator pointed out that the new regulations ‘are part of the so-called emigration package that the government has presented since the first conference on Italian emigration no less than fourteen years ago’³⁰. Both he and other left-wing MPs, though all in favour of the Act, realised that the Statute did not take into account the fact that Italy had to face new problems connected with immigration. The bill was still unanimously passed. It was a delayed-action measure based on the myth of *L'altra Italia*, of ‘another Italy’ made up of expatriates and their descendants still linked to the original motherland.

4 Current political debates and reforms

The 1992 Citizenship Act was passed by the tenth parliament. Since then, in every legislative period there have been at least ten parliamentary bills on citizenship. The only exception was the eleventh parliament, the one which immediately followed the approval of the 1992 Act, and which provided quite obviously just one single bill.

The parliaments that produced the highest number of bills on the issue were the fourteenth (2001-2006, second and third Berlusconi governments) and the fifteenth (2006-2008, second Prodi government), with 34 and 22 bills respectively. These are also the only two parliaments before the current one in which the parliamentary committee³¹ in charge of the matter was able to deliver a unified text.³² In the present parliament the committee managed to approve a unified text but when it arrived in the plenary, the text was sent back to the committee with a request to further research certain aspects, in particular those concerning minors.

Our analysis is focussed on the bills of the fifteenth parliament (which was about to approve the reform), and on those bills presented and discussed in the current parliament.

An overview of the 22 bills of the fifteenth parliament (centre-left government) shows three main political aims.³³ The first consists in favouring long-term non-EU resident aliens and their children born or educated in Italy. The proposals aimed at reducing the years of residence required and consequently eliminating or narrowing the gap between foreigners of Italian descent (and EU nationals) and non-EU immigrants. The proposed reduction of the residence requirements varied from a minimum of three to a maximum of seven years. Like most of the previous bills, this government bill (the Amato Bill, named after the Minister of the Interior³⁴) required a period of residence of five years. Almost all the bills characterised by this aim were presented by centre-left MPs. Several proposals also included *ius soli* at birth for children of long-term resident parents, double *ius soli* (children born in Italy by aliens also born in the country) and favourable conditions for the generation one and a half, i.e. children educated in Italy or having resided in the country

³⁰ Intervention of Communist Refoundation Party Senator Stojan Spetic, November 14, 1991 .

³¹ The First Committee for Constitutional Affairs, Chamber of Deputies.

³² A unified text is the text resulting from the political agreement on the different bills examined by the parliamentary Committee.

³³ Twelve by centre-right coalition MPs, nine by centre-left coalition MPs and one governmental bill.

³⁴ The features of the Amato bill, in the facilitating part, essentially reproduced those of a proposal elaborated in 1999 by the then centre-left Minister of Social Affairs Livia Turco.

from a very young age. The second political aim, pursued by both centre-right and centre-left MPs, was to insert criteria of integration and loyalty that were not included in the 1992 law. The majority of the reform bills (the contemporaneous government bill included) asked for requirements such as a certain level of income, knowledge of the Italian language, the acceptance of shared civic values, a public oath of loyalty – though the duty to swear loyalty to the Italian Republic and to respect the Constitution and Italian laws is already present in the 91/92 Act (article 10). The third political intention was mainly supported by centre-right MPs and aimed again at allowing foreigners of Italian descent to reacquire Italian nationality even if they still resided abroad. The political demands articulated by descendants of Italians abroad enjoy much support because the recognition of the right of Italians residing abroad to vote has provided Italian communities abroad not only with a lobby but also with representatives in Parliament.

The political debate concerning the 22 bills ended in April 2008 with the approval by the First Committee of the Chamber of Deputies of the Bressa Unified Text (named for the then *rapporteur*). The bill was doomed due to the fall of the Prodi government. Its main points were: 1) the possibility by non-EU foreign residents to acquire Italian citizenship after five years of legal residence, conditional on successful completion of a linguistic and cultural test. This mode was not a substitute for the acquisition of Italian citizenship after ten years of legal residence, but a second faster track; 2) the introduction of *ius soli* at the moment of birth for children of long-term (five years) residents; 3) easy access to citizenship (from the age of five) for children educated though not born in Italy; 4) the increase from six months to two years of marriage for the acquisition of citizenship by spousal transfer for couples residing in Italy. The Bressa Unified Text, as well as the Amato Bill on which it was based, incorporated measures aimed at eliminating marriages of convenience and other stricter requirements, such as language competence and adhesion to common public values. These measures could have attracted the support of some members of the centre-right opposition. Nevertheless, much of the opposition did not seem prepared to accept the reform and was more interested in using refusal of the citizenship bill as a way of increasing popular consensus and to reinforce the strategic alliance between Berlusconi's Forza Italia party and Bossi's Northern League.

Summing up, the analysis of the bills presented during the fifteenth parliament shows that the centre-left governing coalition tried to pursue a 'balanced policy' intended, on one hand, to favour long-term non-EU resident aliens and minors and, on the other hand, to test economic, cultural and civic integration and to discourage marriages of convenience.

During the current parliament, among the more liberal bills the most relevant was the bipartisan one presented in July 2009 by two MPs Fabio Granata (at the time of the PdL, now FLI) and Andrea Sarubbi (PD). In September the bill was subscribed by fifty MPs: they belonged to all the major parties in parliament, PdL included, with the exception of the anti-immigrant Northern League. It is worth noting that the Sarubbi-Granata Bill was promoted by Gianfranco Fini, President of the Chamber of Deputies and eminent centre-right leader. In a press release of 12 May 2009 Fini announced the intention of some centre-right and centre-left MPs to present a bipartisan bill in contrast to the opinions of many centre-right MPs. The Sarubbi-Granata Bill became one of the issues that brought Fini and his backers into open conflict with Berlusconi and his party, which led to Fini's expulsion from that party. Fini has since founded a new political party, the FLI (Futuro e Libertà).

The Granata-Sarubbi Bill is very similar to the Bressa one. There are only three marginal differences: 1) in cases of acquisition of citizenship by residence and by *ius soli* at the moment of birth, the Bressa bill referred to years of residence while the Granata-Sarubbi Bill considers years of regular stay; 2) according to the Granata-Sarubbi Bill, in the case of acquisition by *ius soli* at coming of age, acquisition is automatic, while according to the Bressa Bill, declaration was necessary; 3) the Bressa Bill envisaged two means of acquisition by residence, one, as in the 91/92 Act, after ten years of legal residence, the other (conceived as a faster track) after five years of

regular residence conditional on successful completion of a linguistic and cultural test. In contrast, the Granata-Sarubbi Bill no longer includes the possibility of acquisition after ten years. Due to its bipartisan character, the Granata-Sarubbi Bill could have become the base text for the debate at Committee level. But in fact, in December 2009, the Constitutional Committee (of the Chamber of Deputies) approved as a base text for the debate on citizenship a text proposed by Isabella Bertolini, an MP of Berlusconi's PdL party and *referee* for the issue of citizenship at the Commission.

The text presented by Bertolini rejects all the liberal features of the Granata-Sarubbi Bill (*ius soli* rules and shortening of the residence period for naturalisation). While maintaining the integration and language requirements for naturalisation, it introduces new conditions (e.g. the possession of an EU long-term-residence permit for the naturalisation of third country nationals and the requirement to have successfully completed compulsory education in schools recognised by the Italian state in order to accede to citizenship at the age of 18 for second generation non-nationals born in Italy). At the end of December 2009 a unified text (Bertolini text) was passed by the Committee and sent to the Assembly of the Chamber of Deputies. The text was even more severe than the law in force: it rejects the liberal features of the bills discussed during the previous legislative period and includes some of their restrictive measures.

In January 2010, after only one plenary discussion on the bill, the Assembly of the Chamber of Deputies decided to send the debate on citizenship back to the First Committee in order to reconsider the issue of minors. At the time of writing (October 2012), the committee is still debating as the MPs have not managed to find an agreement on a unified text yet.

The President of the Republic, Giorgio Napolitano, played a significant role in focusing both political and public opinion on the issue of Italian citizenship for minors born in Italy. In the context of celebrations for the 150th anniversary of the Italian Republic the President hosted 150 young Italian citizens born to foreign parents in a ceremony in the Quirinale Palace in November 2011. On this occasion, as in another public speech in the same month, President Napolitano expressed the need to recognise in these young people their Italian identity and their contribution to the demographic, social and cultural growth of Italian society.

At about the same time many municipalities in both the North and the South of the country took initiatives of their own, such as the bestowal of honorary citizenship as a symbolic means of supporting the need to recognise young non-Italians as full members of Italian society. Unfortunately, however, honorary citizenship generated some confusion – it made foreign minors believe that this recognition had legal value and possibly therefore they neglected to apply for the legal citizenship.

Among the bills presented by the recent centre-right coalition there are again bills aimed at granting Italian citizenship to foreign women married before 1 January 1948.³⁵ There are also bills aiming at moderating the familistic imprint by introducing new requirements for keeping and acquiring Italian citizenship by Italian descendants living abroad, such as attendance of an Italian language school, membership in Italian cultural associations, knowledge of the Italian language and of the main constitutional principles. This means that even factions of the centre-right are becoming aware of possible opportunistic reasons motivating the request for an Italian passport by descendants of expatriates: the possibility of indirectly acquiring European citizenship, together with all the rights connected to it (such as the possibility of residing, studying and working in the European Union), and the possibility of gaining access to the United States of America without a compulsory entry visa.

5 Conclusions

³⁵ Nowadays the possibility of inheriting Italian citizenship by maternal descent is granted only to people born after 1948, even if, as already mentioned, some recent rulings have provided for an extension of this right.

The 1992 Citizenship Act, which is still the main statute regulating the acquisition and loss of citizenship in Italy, is inspired by the principles of *ius sanguinis* and co-ethnic preference for foreigners of Italian origin. Even if there are clear signs of the weakening of the myth of *Another Italy* made up by our emigrants and their descendants, the Italian legislation still puts no limit on the transfer of citizenship by *ius sanguinis*, even in the case of descendants of citizens expatriated in the distant past; at the same time it makes acquiring citizenship difficult for non-EU immigrants and their children. The surviving legislation does not reflect either the present reality of Italy as immigration country, or the social context of the year in which the statute was approved. The positive balance between immigration and emigration was surveyed for the first time in 1973 and in 1992 it was widely consolidated. It was a ‘tribute’ to the Italy of the past, to a country of emigration.

The familistic model was later reinforced by the increasingly anti-immigrant attitude of Italian public opinion. Unfortunately the political elite improperly projected this negative attitude onto the citizenship issue. Public opinion was and remains concerned about the rapidity and the size of the inflows of immigration and it is frightened of the potential illegal and criminal components. However, at least until recently, it was also quite prepared to facilitate naturalisation for long-term residents and, even more decidedly, to make it easier for children born or educated in the country to become Italian citizens. The policy line of refusing citizenship law reform was adopted by the decision makers as a surrogate answer or as a combined response to demands to limit immigration and repress criminality, since it seemed more difficult to comply with these latter requests (Zincone 2006). Furthermore, actions of pro-immigrant parties and party factions, and the pressure of primarily Catholic benevolent lobbies were mostly concerned with protecting the rights of the weaker part of the immigrant population, i.e. the undocumented, and thus to obtain regularisation and basic provisions for them (Zincone 2006).

The present debate about a possible reform of the 91/92 law concerns mainly the aspect of acquisition by minors of foreign origin. The chances to have a liberal reform approved by the next Parliament have improved in so far as a centre left coalition is more likely to come to power after the next elections. The Italian party system is undergoing profound change and the new centrist political formation has a clear pro-immigrant attitude and a liberal imprint.

From a liberal democratic perspective the need to amend the present legislation is evident, since it produces a deep discrepancy between membership in society and membership of the state. Some data can help to set this discrepancy in focus. In January 2011, there were 4,570,317 foreign legal residents in Italy representing 7.5 per cent of the total population. 9.8 per cent of employees and 6.5 per cent of the self-employed are immigrants in Italy. Immigrants contribute 4.1 per cent of the fiscal and contributory social insurance revenues. Immigrant communities also help in combating demographic decline. In 2010 there were 78,000 registered births to foreign parents (corresponding to 13.6 per cent of the total registered births). In the same year 711,046 foreign students (7.9 per cent of the total number of students) attended Italian schools.

An increasing number of people permanently living, working, studying, and, in many cases, even born in Italy are destined to remain without citizenship due to the large obstacles for acquiring citizenship. So far, long-term resident non-EU immigrants cannot even vote in local elections, a factor that would at least partially include them in the political community. By contrast, after the constitutional reforms, Italians residing abroad were given the right to vote in political elections for their own representatives. Waves of criticism, coming also from former sponsors of the provision are rising³⁶ and we cannot exclude a stricter regulation of the Italian system for voting abroad. On the other hand, the local vote for third country immigrants could accompany the reform of citizenship.

³⁶ See Tintori 2012

Summing up the argument, the familistic model seems have entered a crisis both because of the weakening of the myth of *Another Italy* abroad and of the growing awareness that at least minors of immigrant origin must become Italians more readily. The possible formation of a centre-left majority will most likely make the reforms pass during the next parliament, which will be elected soon. This scenario should also take into account the impact of the economic and financial crisis both on the priority in the parliamentary agenda and on a possible scapegoat anti-immigrant syndrome. On the other hand, to date Italians do not seem to have abandoned their relatively positive opinion on the role of immigrant labour in the domestic economy. Will the obsolete 1992 bill be reformed in 2013? It is quite likely to happen.

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