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## *COUNTRY REPORT: ITALY*

Giovanna Zincone, Marzia Basili

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European University Institute, Florence  
Robert Schuman Centre for Advanced Studies  
EUDO Citizenship Observatory

***Report on Italy***

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## Italy

Giovanna Zincone and Marzia Basili<sup>1</sup>

### 1 Introduction

The Italian citizenship legislation can be classified as a familistic model. According to Michael Walzer's (1983) well-known typology, in the 'familistic' model, nationality and citizenship rights are reserved to 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). In the political and academic debate, according to Thomas Marshall's (1950) interpretation, we use the term '*cittadinanza*' when referring to civil, social and political rights, even if they are given to foreigners. We can also refer to nation as an ethnic cultural community and to citizenship as a political community. Here we will use both terms, unless we want to literally translate specific pieces of legislation; in that case we will use the same term used in the law.

Why did Italy originally adopt a *ius sanguinis*, familistic model? It was adopted 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 from 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 the ethnic community of nationals. This legislation aimed simultaneously to keep bonds strong between Italian expatriates and their descendants.

In the present Italian legislation, mainly regulated by the 1992 Citizenship Act, the familistic character was reinforced in comparison with the past.

While according to the previous 1912 'Nationality Act' all foreign residents had to wait five years to apply for naturalisation, the current law requires: ten years for foreigners from non-EU countries; five years for exiles and stateless people; just three years for foreigners of Italian origin (two if 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 a sort of extended family.

Another 'privilege' granted by the 1992 Citizenship Act 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.

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

Marriage was, until July 2009, the other possible easy route to citizenship. The 1992 Citizenship Act required only six months of marriage with an Italian citizen to acquire Italian citizenship. This fast track given to non-Italian spouses can be explained by the general concern about family unity characterizing the Italian catholic culture. Concerns in public opinion regarding the lack of legality and security, and translation of these fears into legislative measures, encouraged restriction of this too-easy route to citizenship. The Security Act, passed in July 2009,<sup>2</sup> includes a provision to discourage marriages of convenience: the length of marriage for couples resident in Italy was raised from six months to two years, requiring also that the bond persists at the time that the decision granting citizenship is taken. For those residing abroad, the time required is still three years. This amendment to the 1992 Citizenship Act represents the only relevant measure passed by the parliament aimed at changing the general familistic model of citizenship at the base of the Italian legislation; it did not, however, affect the *ius sanguinis* principle.

The easy access to Italian citizenship by descent contrasts with the severe approach characterizing 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, but only if they can prove their uninterrupted legal residence in the country. The requirements of continuity and legality were not present in the 1912 Citizenship Act. These supplementary requirements were relaxed by two 2007 Ministry of Interior circulars under the last centre-left government, but we cannot exclude the possibility of their reintroduction. Acquisition of citizenship by *ius soli*, at least, is a simplified procedure requiring only declaration.

Compared with the previous legislation, the 1992 Citizenship Act appears as a step backwards to the condition of an emigration country mainly interested in keeping (and reacquiring) expatriates as full members of its political community. The act contradicts both the social and the legislative context in which it was conceived: in 1992, Italy was already a country of immigration<sup>3</sup> and it was also politically aware of it. In fact, just two years before, in 1990, the Italian parliament had passed a fairly progressive law concerning the rights of non-EU immigrants.<sup>4</sup> The 1992 Act was the product of an impeded decisional system; it emerged only after a long series of bills had been proposed starting in 1960.<sup>5</sup> These were never approved by the parliament as it was afflicted with endemic instability and affected by the need to cope with dramatic priorities such as economic crises, the Red Brigades, and neo-Fascist terrorism.

Though the 1992 Act was supported by a vast coalition, during the parliamentary debate preceding the approval of the law centre-left MPs showed concern about the need to consider the new condition of Italy as an immigration country and the consequent urgency of adapting 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 was close to succeeding during the last centre-left government (2006-2008, Prodi government). However, the premature fall of the Prodi government in April 2008 put an end to the nationality reform project. The current, fourth Berlusconi government 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. The bipartisan project was decidedly

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<sup>2</sup> Act no. 94 of 15 July 2009.

<sup>3</sup> The positive balance had started in 1973.

<sup>4</sup> Act no. 39 of 28 February 1990, the so-called Martelli Act.

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

unwelcome to the majority of the governing coalition, apart from some changes concerning minors. The future of nationality reform is consequently quite uncertain.

Fortunately, access to Italian citizenship for foreigners, as far as other rights are concerned, is not crucial as, to date, all civil rights and nearly all social rights are granted to legal residents as well. In addition, access to public health and education for minors is also provided to undocumented immigrants. These rights, though strongly under attack, still survive under the fourth Berlusconi government and its restrictive reforms. Regarding political rights, long-term non-EU legal residents do not have access to local suffrage. But the largest immigrant nationality group is the Romanians who, being EU citizens, can vote. Many attempts to extend this right to non-EU citizens have been made. Even part of the centre-right seemed inclined to favour the measure, but the strong hostility of the Northern League, the most antiimmigrant component of the coalition, has prevailed so far. In some municipalities, however, immigrants were given the right to elect their own representative bodies, or one to two members of the Town Councils, though only with consultative functions. They can also elect members of the District Councils. On the other hand, according to article 51 of the Italian Constitution, 'Italians not belonging to the Republic' but of Italian origin and culture can be 'equated' to citizens for purposes of admission to public offices and elected positions. In addition, Italian communities abroad, mainly composed of descendants of expatriates with very loose cultural and social bonds with their ancestors' motherland, can, following 2000 and 2001 constitutional reforms, elect their own representatives to the Italian parliament.

## **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*) and 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 as 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 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 (obviously 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 engaged nationality in cases of doubt or conflicts of sovereignty. It did this partly in order to account for expatriate foreign residents and foreign spouses. It contemplated the possibility of children born abroad to emigrant fathers becoming subjects and acquiring 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 submit to 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* a clear source of nationality and combined 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 criterion for enjoying *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 not in the current Italian one.

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 can be fully understood. The Electoral Acts (1859, 1860), passed as an extraordinary measure (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 those quoted 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 challenged 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 could represent a reason for 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.<sup>6</sup> 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 nationality (no. 555 of 13 June 1912) was designed to encourage the repatriation of emigrants. It eliminated the requirement for special government authorisation for the reacquisition of nationality, and replaced it with an automatic procedure. Two years residence in Italy was sufficient to regain nationality (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 years<sup>7</sup> of residence required to apply for naturalisation per a 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 paragraph, 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.

### 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.

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<sup>6</sup> 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 (Cerese 2001).

<sup>7</sup> 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.

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 their adherence to the Anti-Comintern Treaty (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 also 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. '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 public education. For the first time article 4 of this Italian legislation 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 traced 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 quoted 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 citizenship law reform. The fact that gender equality was embedded in international treaties<sup>8</sup> was influential but not determinant. Gender equality in political citizenship, was achieved before the approval 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 Constituency 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 eventually resolved, though quite late. On the waves of feminist claims, in 1975, a general Family Reform Act was passed (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 ruling<sup>9</sup> that stated that the loss of citizenship for married woman contravened article 3. In

<sup>8</sup> 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.

<sup>9</sup> Judgement no. 87 of 9 April 1975.

1983, following another Constitutional Court ruling,<sup>10</sup> a new act<sup>11</sup> 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 Act,<sup>12</sup> which is still the main piece of legislation on the subject. Italian citizens at birth are those born of an Italian citizen or those born in Italy of unknown or stateless parents.

What is more peculiar is the fact that Italian legislation puts no limit 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. Indeed, the number of 'latent Italians' who have asked for recognition of their citizenship by applying for Italian passports is enormous: according to Ministry of Foreign Affairs data, from 1998 to 2007 about 786,000 passports were issued to Italians residing abroad (Tintori 2009). 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's official acceptance of dual nationality. In fact, the acquisition of another nationality does not entail the loss of the Italian one. Dual nationality has become inevitable following the application of gender equality principles, which in time has widened the catchment of the 'latent Italians' abroad. As analysed in the historical section, after the 1983 Act, both spouses have been given the opportunity to transfer their citizenship to each

<sup>10</sup> Judgement no. 30 of 28 January 1983.

<sup>11</sup> Act no. 123 of 21 April 1983.

<sup>12</sup> Act no. 91 of 5 February 1992.

other and to their children. However, since the gender equality principle on which that 1983 measure was based became part of Italian law only with 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 judgements have extended the possibility of *ius sanguinis* by maternal descent even for those born before 1948.<sup>13</sup> The most recent one is the Judgment no. 4466 by the Court of Cassation on 25 February 2009. That case 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, consequently, her son and her granddaughter must be considered Italian by descent.

To the numbers of ‘latent Italians’ who activated their nationality are to be added the 163,756<sup>14</sup> people of Italian descent living abroad who have reacquired Italian nationality by the programme of reacquisition included in the 1992 Act. As mentioned in the introduction, this special provision aimed at allowing people who had lost their Italian citizenship when the right to hold dual nationality was still uncertain, to reacquire it. According to the 1992 Act, this option was due to stay open until 1994, but the deadline was extended first to 1995,<sup>15</sup> and again to 1997.<sup>16</sup> In 2000, the same measure was extended for a five-year period to aliens of Italian descent living in the territories that, belonging to the Austro-Hungarian Empire before the end of the First World War, passed after the Second World War to the former Yugoslavia. 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. Contrarily, 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. It is worth noticing that the Act 124 of 2006 introduced for the first time a requirement meant to verify the persistence of co-ethnic ties by examining an applicant’s knowledge of Italian language and culture. As we have already mentioned, after the 2000 and 2001 constitutional reforms<sup>17</sup> Italian citizens residing abroad<sup>18</sup> were granted the right to vote in the Italian parliamentary elections and to elect their own representatives.

In accordance with its persistent co-ethnic attitude, the current legislation concedes to foreigners of Italian origin privileged access to citizenship by residence. 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, the five years for refugees and stateless people, and the 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 (a kind of *in-laws*). EU nationals are, hence, another (though slightly less) privileged category. This

<sup>13</sup> Court of Cassation judgment no. 15065, sect. I, 22 November 2000. In favour of retroactivity before 1948, see the judgment of the Turin High Court (Lucero case), 12 April 1999.

<sup>14</sup> Italian Foreign Office data by the end of the year 1997.

<sup>15</sup> By the Decree of the President of the Republic no. 572/1993.

<sup>16</sup> By the Decree of the President of the Republic no. 362/1994

<sup>17</sup> 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.

<sup>18</sup> According to the Ministry of the Interior data, there are three and a half million Italians registered at the AIRE, i.e. the registry for the Italians residing abroad.

affinity perception has changed after the more recent enlargement that includes Romania, and the fact that the recent securitization debate, in Italy, mainly concerns high criminality rates in some Eastern European communities.

There were 1,131,767 EU nationals residing in Italy on 1 January 2009, corresponding to 29 per cent of the total foreign residing population. People from Romania represent 70 per cent of the total population of EU nationals in Italy and, with an incidence of 20 per cent of the total foreign population, they are the primary foreign resident community in Italy. The 2009 ISTAT<sup>19</sup> Annual Report shows a decrease in the relative growth of inflows from EU countries, starting from the year 2008. Recent economic crises affecting the Italian economy, the increased circulation opportunities (to leave and return), and even the fears deriving from a hostile public opinion can explain this decrease.

Another familistic feature of the Italian citizenship law made marriage an extremely easy means of acquiring nationality. According to the 1992 Citizenship Act, very few requirements had to be satisfied: citizenship could be acquired after six months of marriage if the couple was residing in Italy or after three years if the couple lived abroad. Furthermore, on the requirement of the persistence of the marriage, the 1992 Act was vague enough to leave room for generous interpretations. 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). And in 1992 and 1993, the Council of State delivered 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. However, marriage is no longer a viable mode of easy access. The Security Act, passed by the parliament in July 2009<sup>20</sup> 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 has to have been married for two years (instead of six months) if residing in Italy (or three years, as it was already stipulated, if the couple resides abroad). 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. The procedure for acquiring citizenship by spousal transfer remains easier than via simple residence, because the residence time required is shorter; it is not clear if it may still be interpreted as less dependent on the discretion of the public authorities.<sup>21</sup> The public authorities can refuse the application only if there are serious impediments such as a criminal record or evidence of a convenience marriage.

The ease of acquiring citizenship by spousal transfer, possible until June 2009, explains why this was by far the most common mode for foreigners of non-Italian descent to become Italian citizens. It was becoming less popular already on the eve of the approval of the present, more severe regulation. The almost 25,000 cases of acquisition by spousal transfer in 2008 represent a decrease if compared to the 32,000 of the year 2007. 63 per cent

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<sup>19</sup> The Italian official statistical institute.

<sup>20</sup> Act no. 94 of 15 July 2009.

<sup>21</sup> 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 brought to the following wording: ‘the spouse of an Italian citizen can acquire Italian citizenship, residing, after the marriage, for at least two years in the country, or after three years of marriage if residing abroad, when there is no dissolution, annulment of the marriage or personal separation of the spouses’. This new wording could display a wider margin of discretion.

of acquisitions are still based on marriage versus 37 per cent on residence, but in 2007<sup>22</sup> there were four and a half times as many acquisitions by marriage as those by residence.

For a non-EU foreign citizen, marriage to an Italian citizen represented an easy means to acquire Italian citizenship and all the benefits connected with European citizenship. In fact the number of marriages involving Romanian citizens has started to decrease since 2007, the year in which Romania became a member of the EU. To date, it is not possible to evaluate the likely 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. The technical report attached to the Security bill estimates that it will produce a decrease in the number of acquisitions of citizenship by spousal transfer to less than 20,000 per year.

In contrast to the easy route to citizenship by marriage and the persistent opportunity to maintain and to acquire citizenship by descent, the acquisition of Italian citizenship is quite a difficult task for those aliens who cannot rely on family ties with present or former Italian nationals.<sup>23</sup> As we have mentioned, the 1992 Citizenship Act requires for non-EU aliens ten years of legal residence before being eligible to apply for naturalisation (art. 9). And its delivery is at the discretion of the Public Administration. The very low number of Italian acquisitions by residence confirms the difficulty of this mode of access. According to Ministry of the Interior data, in 2007 there were only 6,900 acquisitions of Italian citizenship by residence. Comparing such data with the estimated 630,000<sup>24</sup> foreigners potentially holding the main requirement for acquisition of citizenship by residence, i.e. ten years of legal residence, we obtain a rate of naturalisation by residence of 1 per cent. The number of such acquisitions, as well as the rate, appears to be very low, but considering the last five years, the number of acquisitions by residence in the year 2007 are seven times those in 2002 (with an increase of 650 per cent), while the acquisitions by spousal transfer in the year 2007 are 'just' three times more than the ones in 2002 (an increase of 225 per cent). In 2008, acquisitions by residence were 14,500. This is still a very low number, but more than double than that of the previous year. It is not possible to calculate the 2008 increase in the rate of naturalisation since the data on the potential beneficiaries is still unavailable.

The increase in the number of acquisitions of nationality by residence has several reasons. First, one reason is the settlement of immigration flows and the consequent higher number of long-term resident immigrants. The introduction of some new procedures to speed up the bureaucratic process is another. Though the maximum term for the administration to attend to the required items of the procedures was fixed by Decree No. 362 of 1994 at a quite lax 730 days, the average continued to be even higher and could reach six years. To face this problem many small devices were adopted by the Ministry of the Interior, and one of importance by the Presidency of the Republic. President Carlo Azeglio Ciampi, starting in November 2004, discontinued the practice of personally signing each decree. The President of the Republic signs a decree containing a list of naturalisations while the signature of each single decree is delegated to the Counsellor of the President for legal affairs.

It remains quite difficult for minors born to foreign parents in Italy to become citizens. According to the law, they are entitled to acquire Italian nationality only at the age of eighteen

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<sup>22</sup> They represented 70 per cent of all naturalisation, *ius soli* included. This percentage results from crossing the Ministry of the Interior data on acquisition of nationality by spousal transfer with the ISTAT data on the aggregated total amount of acquisition of Italian nationality.

<sup>23</sup> 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.

<sup>24</sup> ISTAT data from the elaboration of the Ministry of the Interior data on the residence permits.



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 had held a regular residence permit during all eighteen years. The availability of such documentation made the acquisition of Italian nationality quite a difficult goal when the foreign parents were undocumented residents at the moment of the birth of minors', which is quite likely to happen in Italy,<sup>25</sup> and did not immediately register the birth of the child. Furthermore, children of immigrants may happen to spend long periods of time with their grandparents in their family's country of origin. In order to reduce these difficulties, in 2007 the Ministry of the Interior issued two<sup>26</sup> circulars<sup>27</sup> that provided for a flexible interpretation of the 'uninterrupted legal residence' required by the 1992 Act. In particular, according to the circulars, late registration of birth, which is highly probable, 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. Nationality by *ius soli* has always occurred by registration at the local register office; for this reason, we are not provided with systematic information about the number of acquisitions by *ius soli*: data are collected only by the single municipalities and there is no central survey.

The only source of data on *ius soli* acquisitions is the 2001 census, which says that the number of children born in Italy of foreign resident parents and registered as Italian was 3,400. According to the 2001 census there were 135,000 underage children of foreign resident parents born in Italy.

According to ISTAT more recent data, in 2008 there were 72,472 births registered to foreign parents (corresponding to 13 per cent of total registered births) and 862,000 underage resident foreigners (corresponding to 22.2 per cent of the total underage resident population). But we do not have data on immigrant children born in Italy who have reached majority.

Acquiring citizenship can be 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 for a foreign administration or State or for an international institution of which Italy is not a member. The second concerns those Italian citizens that, in the case of war between Italy and a foreign country, are employed by that State, or perform military service, or acquire the citizenship of the enemy State. In accordance with the familistic model Italian citizenship by descent cannot be lost by residing abroad.

Having analysed the main characteristics of current Italian citizenship legislation, it is worthwhile to explain the reasons that brought about the approval of the 1992 Act, which remains the main piece of legislation regulating Italian citizenship.

The 1992 Act, as suggested in the introduction, was a public decision that was both delayed and divided. It was conceived as if Italy was still a country of emigration<sup>28</sup> (Zincone & Caponio 2002), or a country of immigration that was beginning to experience an anti-immigrant backlash, or as if it had a considerable number of nationals living against their will

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

<sup>26</sup> 5 January 2007 and 7 November 2007 circulars.

<sup>27</sup> A circular (*circolare*) is an administrative provision aiming at clarifying the correct management of a procedure.

<sup>28</sup> See the typology by Weil (2001).

immediately outside its borders, as did other European countries that have adopted and reinforced strong co-ethnic criteria.

By contrast, Italy had already clearly 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 openly pro-immigrant. The 1990 Immigration Act was immediately followed by the 'First National Conference on Immigration' (1990), in which the political class's awareness of the fact that Italy had become a country of immigration, and the favourable attitude of that class towards this phenomenon, clearly emerged. For this reason, the 1992 Act can be considered a delayed-action provision. Furthermore, the 1992 Act was not in tune with public opinion, which was starting to resist immigration, but was prepared to extend citizen rights to already resident documented immigrants (IRES 1992).<sup>29</sup> Neither were the decision makers under political pressure, since the general public concerns about immigration had not yet found an effective xenophobic political voice. We can explain it only if we understand that it was conceived in a very different context; it suffers 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 itself as) a country of emigration (Zincone 2006). The first reform project was 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 reasserted. The Act was not preceded by a serious and divided 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 between all parliamentary forces' (Basili 2005a). The result of research on the content of the newspapers of the time (Ciccarelli 2005) shows a virtually 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'. 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 also had to face new problems connected with immigration. The bill was unanimously passed despite this. It was a delayed-action measure based on a myth destined to last until the present day, the myth of *L'altra Italia*, of another Italy made out 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 parliament there have been at least ten parliamentary bills on citizenship. The only exception was the eleventh parliament, which immediately followed the approval of the 1992 Act, and which counted quite obviously just one bill.

The parliaments that produced the highest number of bills on the issue were the fourteenth (2001-2006, second and third Berlusconi government) and the fifteenth (2006-2008, second Prodi government), with 34 and 22 bills respectively. These are also the only two parliaments in which the parliamentary Committee<sup>30</sup> in charge of the matter was able to

<sup>29</sup> See also Bonifazi (1998 and 2005).

<sup>30</sup> I Committee for Constitutional Affairs, Chamber of Deputies.

deliver a Unified Text.<sup>31</sup> We focus our analysis on the bills of the fifteenth parliament (the parliament in which the legislator was closer to passing a new law), and on those present in the current parliament.

An overview of the 22<sup>32</sup> bills of the fifteenth parliament (centre-left government) shows three main political aims. 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 nationals of EU) and non-EU immigrants. The reduced terms varied from a minimum of three to a maximum of seven years. Like most of them, the government bill (the Amato bill, named for the Minister of the Interior<sup>33</sup>) 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 generation one and a half, i.e. children educated in Italy or having resided in the country 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 the Italian laws is already in the 91/92 Act (article 10). The third political intention, mainly an expression of the centre-right MPs, aimed again at allowing foreigners of Italian descent to reacquire Italian nationality, even if they still reside abroad. The political demands articulated by descendants of Italians are well resourced because the recognition of the right of Italians residing abroad to vote has provided Italian communities abroad not only with the support of a lobby but also with representatives in parliament.

As we have seen, at the time of the fall of the second Prodi government (April 2008), the I Committee of the Chamber of Deputies, where the citizenship reform project was discussed, had elaborated the Bressa Unified Text (named for the contemporaneous *rapporteur*). Its main elements were the following: 1) the possibility of non-EU foreign residents acquiring Italian citizenship after just five years of legal residence, conditional on successful completion of a linguistic and cultural test - this method was not to be considered as a replacement for the acquisition of Italian citizenship after ten years of legal residence, but as a second possible 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 but 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 that was actually at its base, incorporated not only this last measure aimed at eliminating marriage of convenience, but also other stricter requirements, such as language competence and adhesion to common public values, that could have attracted the support of parts of the centre-right opposition. Nevertheless, much of the opposition did not seem prepared to accept the reform and was more interested in using the refusal of the citizenship bill as a way to increase popular consensus and to reinforce the strategic alliance between Berlusconi's Forza Italia and Bossi's Northern League.

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<sup>31</sup> A Unified Text is the text resulting from the political agreement on the different bills examined by the parliamentary Committee.

<sup>32</sup> Twelve by centre-right coalition MPs, nine by centre-left coalition MPs and one governmental bill.

<sup>33</sup> 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.

To sum 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.

At the time of writing, Spring 2010, ten citizenship reform projects are under discussion at the I Committee (for Constitutional Affairs) at the Chamber of Deputies. The debate has involved eleven parliamentary bills: nine are from the centre-right, one from the centre-left (from the already-quoted MP Bressa) and one is bipartisan.

The bills from the centre-right coalition are mainly devoted to adding requirements for the naturalisation procedure (a linguistic and civic test and/or a fee) and to providing for the reacquisition of Italian citizenship for women married before 1 January 1948.<sup>34</sup> As to the three main political aims singled out in the fifteenth parliament citizenship bills, the centre-right bills are expression of only the second and the third political aims. However it is possible to identify two other political aims, though they still do not play a crucial role to date. The first is a security aim, interested in the revocation of citizenship in the case of specific crimes (among which are terrorist crimes). The second intends to moderate the familistic imprint by introducing new requirements to keep and acquire Italian citizenship by Italian descendants, such as attendance at an Italian language school, membership in Italian cultural associations, and demonstration of knowledge of the Italian language and of the main constitutional principles. This means that even factions of the centre-right are becoming aware of the 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. Another limit to transmission abroad is applied only to naturalized citizens, i.e. to people of non Italian origin, and would consequently confirm the familistic character of Italian citizenship: naturalized citizens, but not those who acquired their citizenship through *ius sanguinis*, will lose their Italian citizenship when not resident in the country for two consecutive years .

If the current fourth Berlusconi government reaches an agreement about departing from the familistic model, as far as acquisition by descent abroad is concerned, it can afford this political move. The present majority, unlike the previous centre-left majority, is not dependent on the support of the MPs from the districts abroad.

The Bressa bill reproduces the Unified Text of the fifteenth parliament. This means that, in contrast to the centre-right bills, it is designed to facilitate acquisition for non-EU immigrants and their children and to favour the second generation or those foreigners arriving when still very young.

Though the majority of the centre-right was inclined to restrict access to nationality, in the second part of 2009 something new was put in motion by a centre right faction. In a press release of 12 May 2009, Gianfranco Fini, President of the Chamber of Deputies and an eminent centre-right leader, announced the intention of some centre-right and centre-left MPs to present a bipartisan bill. The bill was presented in July 2009 by two MPs, Fabio Granata (of the PdL and close to Fini’s positions) and Andrea Sarubbi (PD). In September the bill was subscribed to by fifty MPs. They belong to all the parties in parliament, PdL included, with the exception of the anti-immigrant Northern League. The Granata-Sarubbi bill is very similar

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<sup>34</sup> 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 provided for an extension of this right.

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 refers 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 majority, acquisition is automatic, while according to the Bressa bill, declaration is necessary; 3) the Bressa bill envisages 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 does not include 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 the Committee. But in fact, in December 2009, the Constitutional Committee (of the Chamber of Deputies) approved as a base text for the debate on citizenship the one 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, in addition to the introduction of 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 recognized by the Italian State in order to access citizenship at the age of 18 for second generations born in Italy). To sum up, the Bertolini text is even more restrictive than the present law.

At the end of December, the Bertolini text, passed by the Committee, was sent to the Assembly of the Chamber of Deputies. After only one plenary discussion on the bill, the Assembly decided on 12 January 2010 to send the debate on citizenship back to the Commission in order to reconsider the issue of minors. However, the debate on citizenship was scheduled to be reopened only after the Regional elections of spring 2010.

## 5 Conclusions

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 predilection for foreigners of Italian origin. The Italian legislation puts no limit to the transfer of citizenship by *ius sanguinis*, even in the case of descendants of citizens expatriated in the distant past; on the other hand it makes acquiring citizenship difficult for non-EU immigrants and their children. This legislation does not reflect the present reality of Italy as an immigration country, or even 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 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 general increasingly anti-immigrant attitude of Italian public opinion. Public opinion was and remains concerned about the rapidity and the size of the inflows, 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 in the country to become Italian. 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, these being requests with which it is more

difficult to comply (Zincone 2006). Furthermore, the action of pro-immigrant parties and party factions, and the pressure of benevolent lobbies, primarily Catholic in character, were mostly concerned with protecting the rights of the weaker part of the immigrant population, i.e. the undocumented (Zincone 2006). Components of the centre-right governing coalition also showed an interest in facilitating naturalisation for long-term residents and minors, but we cannot expect a liberal reform project in the immediate future. Not only because this is not a priority on the political agenda, but also because of the more determinant role of the Northern League in the ruling coalition. The Northern League counts on its anti-immigrant stance as an important electoral asset, and so far its gambit has been successful. As a consequence of a top-down process led by political xenophobes, we can even expect the rise of less tolerant attitudes in public opinion in matters of nationality and citizenship rights. This is not a desirable scenario.

The present legislation is in need of reform because it produces an evident detachment of Italian society from its political community. Some data can help to set this discrepancy in focus. In January 2009, there were nearly four million foreign people legally resident in Italy, representing 6.5 per cent of the total population. 8.9 per cent of employees and 4.5 per cent of the self-employed are immigrants in Italy. According to the 2009 Report of the Bank of Italy, immigrants contribute 4 per cent of fiscal and contributory receipts and consume only 2 per cent of welfare spending. There are 240,594 enterprises with a non- EU foreign holder<sup>35</sup> that contribute about 204 million Euros per year to Italian GNP (Stuppini 2009). Immigrant communities also help in combating demographic decline. In 2007 there were 64,000 registered births to foreign parents (corresponding to 11.5 per cent of the total registered births). In the same year 574,133 foreign students (6.4 per cent of the total number of students) attended Italian schools.

An increasing number of people permanently living, working, studying and, in some cases, even born in Italy are destined to remain foreigners due to the strenuous obstacles in place before acquiring citizenship. They cannot vote and thus cannot be fully included in the political community. So far, long-term resident non EU immigrants cannot even vote in local elections.

By contrast, after the 2000 and 2001 constitutional reforms, Italians continuously residing abroad were given the right to vote for their own representatives. It is important to underline the adverb ‘continuously,’ i.e. permanently, since Italians abroad only temporarily (students, visiting professors, managers, seasonal or temporal migrant workers) are quite unlikely to enjoy this right. This is because one has to register before the end of the year preceding the elections and cannot always predict in advance that one is going abroad; neither can one predict, for instance, anticipated 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 around 3.5 million, but we should not overlook that the numbers of ‘latent Italians,’ of the *oriundi* (people of Italian origins), are estimated to be around 60 million. As already mentioned, during the period 1998-2007, almost 800,000 people claimed to be Italian and asked for an Italian passport. 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. Being an Italian national implies the opportunity to ask for an Italian passport, which represents a useful instrument: it means avoiding the

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<sup>35</sup> Unioncamere (2009).

application process for a USA visa, otherwise compulsory; it entitles its holder to indirectly acquire European citizenship with the possibility of moving and working in the European Community.

Is this side of the Italian familistic model more likely to be reformed? Starting from the 2006 political elections, Italians abroad elected their own parliamentary representatives. The results of the 2006 elections illustrated that these can be the determining votes in assigning the victory to one coalition rather than another. The following Prodi Government had to rely upon them as well. In contrast, the present Berlusconi Government, elected with a wide majority in April 2008, does not depend on the votes of the MPs elected by Italians abroad. For this reason, it can afford to modify the current legislation on citizenship, adding new requirements to check the persistence of real bonds. The recent scandal concerning a Senator elected in the Europe constituency under a false title of residence in Brussels and with 'Ndrangheta organized crime votes is likely to produce some change in the procedures for voting abroad and possibly to encourage some general reflection on the *ius sanguinis* abroad issue.

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