

Citizenship and biological stereotypes: The Argentine federal Constitution case*

Fecha de recepción: 25 de enero de 2018
Fecha de evaluación: 26 de julio de 2018
Fecha de aprobación: 14 de diciembre de 2018

Gastón Federico Blasi**

Para citar este artículo

Blasi, G. (2019). Citizenship and biological stereotypes: The Argentine federal constitution case. *Revista Vía Iuris*, (n° 26), pp. 149-164.

ABSTRACT

This article seeks to examine the notion of citizenship in Argentina as the basis for discrimination within the country. Tracing an unfounded biological discourse, rooted in the eugenics movement, this article suggests that social cohesion is being undermined by a separation of society into a hierarchy of races. As will be illustrated, in social terms, the idea of citizenship in Argentina foments xenophobic violence toward individuals who are assigned to certain categories. Through the use of different scientific methodologies —i.e. analytical, historical and descriptive—, the constitutional foundational yearning is compared with the cruel legal inequality and social exclusion that prevails in Argentine society, where a distinction between citizens of first and second class is made.

* This article is a detachment of my doctoral research project *–Biomedicine and Human Rights–*, which I have been developing under the direction of Prof. Dr. Ricardo Rabinovich-Berkman at the Faculty of Law, University of Buenos Aires. Periodo (2015-2019). Buenos Aires (Argentina).

** Doctoral candidate, Faculty of Law, University of Buenos Aires. Abogado - Facultad de Derecho, Universidad de Buenos Aires - 2004. Master di Il livello in Diritto Europeo - Facoltà di Giurisprudenza, Università degli Studi di Roma III - 2005/06. Master of Arts in Bioethics - K.U. Leuven, R.U. Nijmegen & U. di Padova - 2008/09. Buenos Aires (Argentina). Correo electrónico de contacto: gablasi@jusbaire.gov.ar

DOI: <https://doi.org/10.37511/viaiuris.n26a8>

Esta obra está bajo una Licencia Creative Commons Atribución-CompartirIgual 4.0 Internacional.

Keywords

Citizenship, class domination democracy, federal constitution, inequality, biological stereotype.

Ciudadanía y estereotipos biológicos: El caso de la Constitución federal argentina

Gastón Federico Blasi

RESUMEN

En este trabajo se aborda la siguiente temática: la noción de ciudadanía en Argentina es el instituto que motiva discriminación entre los integrantes de la comunidad. A través del prisma del infundado discurso biológico, sustentado en el movimiento eugenésico, este artículo identifica que la corrupción de la especie en razas ha socavado la cohesión social. Esto demuestra que, en términos sociales y culturales, en Argentina se padece una ciudadanía que fomenta la violencia xenófoba hacia determinadas categorías de individuos. Al respecto, utilizando diversos métodos de investigación, tales como el analítico, el histórico y el descriptivo, anhelado fundacional es comparado con la cruenta desigualdad jurídica y marginalidad social reinantes en la comunidad argentina, en la cual se evidencian ciudadanos e primera y segunda categoría.

Palabras clave

Ciudadanía, constitución federal, desigualdad, democracia estamental, estereotipo biológico.

Cidadania e estereótipos biológicos: o caso da Constituição federal argentina

Gastón Federico Blasi

RESUMO

Este artigo aborda os seguintes temas: a noção de cidadania na Argentina é o instituto que incentiva a discriminação entre os membros da comunidade. Através do prisma do discurso biológico infundadas, com base no movimento eugênico, este artigo identifica a corrupção das espécies em corridas minou a coesão social. Isso mostra que, em termos sociais e culturais, na Argentina uma cidadania que promove a violência xenófoba contra certas categorias de indivíduos que sofrem. A este respeito, usando vários métodos de pesquisa, como analítica, histórica e descritiva, o desejo fundamental é comparada com a desigualdade legal sangrenta e prevalecente marginalidade social na Argentina comunidade em que os cidadãos e as primeira e segunda categoria são evidentes.

Palavras-chave

Cidadania, constituição federal, desigualdade, democracia de classe, estereótipo biológico.

Citoyenneté et stéréotypes biologiques: le cas de la Constitution fédérale argentine

Gastón Federico Blasi

RÉSUMÉ

Dans ce travail, le sujet suivant est abordé: la notion de citoyenneté en Argentine est l'institut qui encourage la discrimination parmi les membres de la communauté. À travers le prisme d'un discours biologique non fondé, basé sur le mouvement eugénique, cet article identifie que la corruption de l'espèce dans les races a sapé la cohésion sociale. Cela montre que, sur le plan social et culturel, l'Argentine souffre d'une citoyenneté qui encourage la violence xénophobe à l'encontre de certaines catégories d'individus. À cet égard, diverses méthodes de recherche, telles que le désir fondamental analytique, historique et descriptif, sont comparées à l'inégalité juridique sanglante et à la marginalité sociale prévalant dans la communauté argentine, dans lesquelles les citoyens sont représentés dans les première et deuxième catégories.

Mots-clés

Citoyenneté, constitution fédérale, inégalité, démocratie de classe, stéréotype biologique.

INTRODUCTION

Throughout their lives, humans are classified and labeled according to different origins, goals and purposes.

One of the first distinctions, precisely, is given by attachment to a particular political community or citizenship. This conditions human individuals as members of a certain legal order, as they inherit and participate in its systematization and its continuity.

Since the French Revolution people stopped being subject to the power of the king, and instead they have become their own masters, or citizens. It is true that the meaning of citizenship has been much-discussed; it has frequently been used as a synonym of *nationality*:¹ It has always had the function of regulating —restricting or expanding— individual prerogatives and freedoms within a given human collective settled in a carved out geographic space, allowing a greater or lesser level of participation.

From a strictly legal point of view, especially with the emergence of the rule of law, the definition of citizenship *tout court* has spread as the relationship of the individual with the state structure. The term effectively describes the legal status of a person within a particular political system, and thus forges the criteria along which individuals understand themselves and relate to others. In short, citizenship defines the (legal) rights and responsibilities of a person in the context of a constitutional community (state), providing a certain legal as well as socio-political identity.²

The concept of applied citizenship (and its inherent inclusive/exclusive force), hence must also be examined in light of the many inequities upon which it is constructed. In Argentina, those inequities are based on biological stereotypes,³ which continue to persist through society, thus undermining the validity of Argentine citizenship.

To sum up, the problem is concrete: Does the notion of applied citizenship in the Argentine daily social context create division between the members of the community, which determines the scope of fundamental rights and their effective enforcement and protection? What does that mean for the legitimacy of the State apparatus if it has been designed in a democracy of class domination?

Given the breadth, complexity and layered nature of this topic, the study will be conducted in a methodological manner based on the following outline. First, it is convenient to travel to the dawn of the Argentine

1 The etymology of the term *nation* comes from Latin *nasci*, which accentuates the idea of birth, ergo it refers to the place of birth. But this is ambiguous, and ambiguous has also been the use of the word. It has never had a very precise connotation; however we could find that there are two different meanings. Traditionally, *nation* designates a human community, not a society, which presents certain common features, namely, race, language, religion, habits, history and perspective of the future. Its second meaning, on the contrary, refers to the group of individuals gathered under the same law and government. It is thus synonymous of State, although some prefer to define *nation* as the inhabitants of a State, with which, in such a way, would happen to be synonymous of People. What is born, then, is a new political society, since no community has its origin in a law. See Ortega y Gasset, 2003, chapter 14.

On the other hand, it has been stated that the term *nation* is not the result of a conglomerate of people united by sharing the same geographic space, a racial lineage and a specific language —with its idioms and idiomatic turns. In reality, it is a product of the formal bond that is born from a common historical legacy and, of course, the will to want to live together. See Renan, 1882.

A highly renowned Argentine constitutionalist publicist understood that a nation cannot organize itself because it cannot acquire institutionalizing structures, thus it does not become a state. In this regard, he observed that “our constitution handles a misconception of the politicized nation or State: on the one hand, it uses the locution *Argentine nation*, invoking the People; on the other hand, it institutionalizes the same locution to refer to the State’s official name in section 35, imposing it mandatory for the sanction of laws. Along the text it is mentioned many times: the inhabitants of the *nation*, the president of the *nation*, the territory of the *nation*, etc., when, strictly speaking, the *nation* is not inhabited, the *nation* has no leadership, the *nation* lacks territory. Thus, it is evident that our federal constitution has adopted the idea that the state is the politically and legally organized nation” (Bidart Campos, 1999-2000, 612).

2 For a deeper study on the subject matter, read Aláez Corral, 2015, pp. 115-135; Mercogliano, 2015.

3 “A stereotype is a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group (e.g., women, lesbians, adolescents). In this view, a stereotype presumes that all members of a certain social group possess particular attributes or characteristics (e.g., adolescents are irresponsible), or perform specified roles (e.g., women are caregivers). It does not matter for purposes of characterizing a generalization as a stereotype that attributes or characteristics are or are not common to individual members of that group, or whether members perform those roles or do not. The key consideration is that, because a particular group is presumed to possess those attributes or characteristics or perform those roles, an individual, simply by virtue of membership in that group, is believed to conform to the generalized view or preconception. All the dimensions of personality that make that individual unique are consequently filtered through the lens of a generalized view or preconception of the group with which the individual is identified” (Cook & Cusack, 2010, p. 9).

constitutional state in order to interrogate the idea of citizenship as imagined (and, perhaps, achieved) during the foundational era. Second, it is necessary to scrutinize the domestic normative framework in question to describe the impact of its application (or non-application) on everyday Argentine society. Finally, bearing in mind the mutations that the international community has experienced these last centuries, particularly from a point of view of the technological and scientific advances, the evolution of the concept of citizenship will be inferred.

METHODOLOGY

The scientific methodological approach mainly consists in the compilation, systematization and analysis of primary and secondary sources from the collected and selected bibliography drawing on different disciplines that have contributed to the study of this question: Philosophy, Constitutional law, History and Sociology.

The historical method is used to unravel, explain and describe the origins, evolution and projections of the meaning of the term *citizenship*, particularly in relation to the birth of Argentina's constitutional State.

Further, each of the philosophical, sociological and legal quandaries raised and deployed in the application of citizenship in daily life are examined, compared, and criticized. This will lead to develop an analytical, synthetic and comparative judgments of the manifestations of this phenomenon.

Finally, this research is descriptive in that it is intended to recognize a socio-legal reality as the first step toward attempting its transformation; that is, the results of the study are intended as a source of resolution to the problems raised.

DISCUSSION AND RESULTS

Retrospective view

The 1819 and 1826 failed Argentine constitutional works were extremely exclusive in relation to the subject of *citizenship*. Indeed, those efforts reflected what can be described as primordial objectives of that original era, *i.e.* consolidate national security *vis-à-vis* foreign powers, strengthen political independence with respect to the metropolis and, of

course, reaffirm sovereignty with respect to the ties of the Spanish crown.⁴

The aim, in short, was to remove any danger of being once again physically dominated and legally subjugated by any European power, especially when Spain had not yet recognized Argentina's independence –which did not happen until 1863. The Argentine Constitutional Assemblies of that time, instead of drawing in immigrants from developed nations, were focused on breaking any sort of relationship with Europe. The sole motivation, indeed, was to isolate themselves in order to build from within.

The fundamental norm of 1826, in section II, expressly contemplated who could become an Argentine citizen, but, likewise, it also established provisions that could be used to cancel citizenship rights or temporarily revoke their validity.⁵

The foreign policy program of that time, indisputably, did not respond to the shortcomings of that reality. It was completely closed and exclusive, to the extreme, even, to prohibit Spanish citizens without a letter of citizenship from being appointed arbitrators *iuris*. In other words, it carried over and applied the same ideas spread throughout Europe, with the important difference that the European countries were more densely populated and, in a way, the political-judicial system was already well-formed.⁶

Those failed constitutional attempts, precisely, did not lend themselves to political evolution, sustainable economic development and material and

4 By reading both texts it is possible to corroborate and identify the ideals and objectives that the constituents had in mind. The constitution of 1819, in particular, dedicated a chapter to the *Rights of the Nation*. There it was clearly established that sovereignty resided originally in the *nation* (see section 105) and the elected representatives were mere proxies who had to answer for their acts, since no authority was superior to the law. In turn, that of 1826 provided that the *Argentine nation is forever free and independent of all foreign domination* (see section 1). It also stated that this country *will never be the heritage of a person, or a family* (see section 2).

5 In this regard, read sections 4, 5 and 6 of the aforementioned constitutional text.

6 A founding father, on the other hand, sought to animate the Argentine political organization by germinating the opposite ideal: “[n]ations in formation, like ours, should not import requirements belonging to others already formed; they should not say to the settler who comes from outside: if you do not belong entirely to me, you do not belong to me at all. It is necessary to grant citizenship, without demanding the absolute abandonment of the original one. Deserted countries should not demand that sacrifice” (Alberdi, 2003, p. 62).

intellectual progress of the newborn state, instead obligating it to ostracism. This was compounded by ideological clashes at the domestic level, which led to numerous fratricidal armed conflicts across the region for several decades, thereby impeding and undermining the development of the country struggling to seize political power.

The battle of Caseros⁷ set the beginning of a new era, and a change of paradigm. The borders needed to be opened to populate that vast land. The political establishment abandoned then the obscurantism in which they had been immersed, resuming the interrupted path of the rationalist Revolution of 1810. After all, populating a new country with industrious and honest immigrants would probably lead to the consolidation of a civilized community.⁸

The federal constitution (ratified in 1853/60) was basically intended to encourage and retain immigrants. It was imperative, therefore, to encourage and incentivize the development of individual and family life. That is to say, the foreigner had to find sufficient guarantees for access to work and trade, to enjoy the personal freedoms recognized in every democratic society, to participate in the political life of the community without requiring the acquisition (or recognition) of the Argentine citizenship.⁹

Argentina's founding fathers recognized foreigners, without regard to their biological origins, guaranteeing them full enjoyment of *all the civil rights of the citizen* (cf. clause 20, currently in force in the same

terms). However, only the naturalized were granted the option for the term of ten years after obtaining citizenship, *to bear arms in defense of the country and its Constitution* (cf. art. 21).

It can be said that the concept of citizenship adopted in Argentina coincided with the formation of the constitutional state, where the *People*, as one of its constituent elements, should seek to organize politically in order to aid the construction of a common historical identity, rooted (for a relatively short time) in a sense of equality with the will to live together with future projection.

From a historical-sociological point of view, however, it is feasible to infer that the notion of citizenship in Argentina, despite coinciding with the rise of the constitutional State, finds its foundation in an alien structure. It is not ultimately linked to the consolidation of the political apparatus, but rather to the propagation of a certain ideal, that is the formation of an "Argentine community" as a virtuous human collective.

Therefore, it must be distinguished, on the one hand, citizenship as the individual legal and social status *vis-à-vis* the state and as a notion of personal identity within the global context;¹⁰ on the other, citizenship as denoting a collective that conforms to a particular community, which, in turn, seeks to be organized politically, but without differentiation between *civis* and *peregrinus*.¹¹ In this latter sense, *citizenship* is not a closed, inflexible construct, on the contrary, it is an elastic, mutable one, because it favors people joining voluntarily and freely.

It should be noted that the constitutional text uses the word "inhabitants" rather than "citizens," alluding to the more flexible and variable unity mentioned above. From an integrationist perspective, this group of individuals, without making any legal and social distinction between natives, naturalized and

7 Once Juan Manuel de Rosas was defeated, power was de-personalized and its exercise conformed to the constitutional mandate, thus moving away from the arbitrary and discretionary voluntarism of the ruling party, which allowed us to return to the path of political and economic progress. On this matter, read Quattrocchi-Woisson, 1995; Gálvez, 1953.

8 Population has to be "[t]he great and primordial end of the constitution for many years, and must guarantee this result through public guarantees of progress and of aggrandizement, guarantees of execution and reality –not promises. Thus, to populate the country, it must guarantee religious freedom and mixed marriage, without which there will be population, but sparse, impure and sterile. In addition, citizenship and property has to be offered to foreigners... to assimilate the civil rights of the foreigners, of whom we have a vital need, to those of the national civil rights, without conditions of impossible, illusory and absurd reciprocity... to allow them to occupy public employment of secondary level" (Alberdi, 2003. 122/3).

9 The original text of the federal constitution included –and still does–, in sections 14, 15, 16, 17, 18 and 19, a series of rights, freedoms and guarantees that are recognized to all the inhabitants of the Argentine soil.

10 "Citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal, with respect to the rights and duties with which the status is endowed. There is no universal principle that such rights and duties shall be, but societies in which citizenship is a developing institution and an image of an ideal citizenship against which achievement can be measured and towards which aspiration can be directed" (Marshall, 2009, 150).

11 Etymologically, the term *civis* comprised the individuals who lived in a city, while *peregrinus*, by contrast, were the ones that came from outside, the guests.



foreigners, ought to consent to the constitution of the Argentine *People*. For this reason, the founding fathers sought to recognize, respect, include and accept different biological origins, cultures and idiosyncrasies on the national soil, adopting a broad notion of citizenship rooted in a constant and direct link between individuals who live in a specific geographic space.

This elastic vision, as Tejerino Vargas (2010) indicates, encompasses the greater number of individuals who are willing to live and work for the development of the Argentine community, thus promoting a sense of integration by modifying the agreement, union and coordination in a territory marked by (biological) heterogeneity.

In this way, it would be possible to infer that the idea of citizenship adopted in the Argentine federal constitution breaks away, to a certain extent, the classic distinction between native and non-natives. Moreover, it contemplates identical social and legal standing among natives, residents and foreign-born people, since the reasoning aimed not only to grow the existing population, but also to support its integration.

On the one hand, citizenship can be distinguished as a link between people who decide to cohabit in a common physical space. On the other, it stands for a collective of individuals recognized by the state apparatus and the sovereign power —thus, in the eyes of the state, reducing the concept of *People* exclusively to the bearers of a citizen identity card. The interesting thing here is that the federal constitution has not conferred greater advantages (prerogatives) to the second over the first, on the contrary, it is understood that it positions them at the same (legal and social) level.¹²

In this sense, the institution of citizenship was originally conceived as a functional political instrument for the very development and consolidation of state power. But, it was also used to banish the static view of identity linked to territory and tradition, because the founding fathers thought it necessary to move completely away from the metropolis and expel everything related to its history and political

establishment. Although it is worth mentioning, they did make an important distinction: namely, the citizen (by birth or naturalization) has the right to access the most relevant public positions.¹³

The position of inclusion, both socially and legally, followed a basal logic, v.gr. to generate a sense of belonging to the group, without discriminating between natives, aliens and naturalized, founding a community that is open to the intercultural flow.

In short, the status of citizenship appears to be disconnected from the biological origin and cultural background, since everybody —at least on paper— shares the same benefits and obligations and contributes to the (constitutional) creation of the Argentine society, thus cultivating a collective feeling of citizenship, beyond the individualistic understanding (i.e. that of the citizen versus the state).

Notwithstanding the fact that genetic studies and knowledge about our species (and others) were scarce and insufficient during the nineteenth century —and in many cases wrong—, in words of Campillo Meseguer (2005) it is possible to assert that the construction of the idea of citizenship (in Argentina) recognized that all human beings, from a biological perspective, share a *common genealogical tree* that made us related to each other.

It is feasible to reason that the Argentine federal constitution rejected any kind of selection or preference for immigrants by biological origin —although one of the main Argentine constituents, Juan Bautista Alberdi, had made public his partiality for the Anglo-Saxon immigrants, rather than the Latin ones—,¹⁴

12 Articles 20 y 37 of the federal constitution established civil (expressly recognized to foreigners, identical to nationals) as well as political rights (without distinction between native and foreign).

13 According to the 1853/60 Argentine federal constitution, “to be a deputy it is necessary to have attained to the age of 25 years; to have been four years a fully qualified citizen; and to be a native of the province electing him or to have two years of immediate residence therein” (section 48); In turn, “to be elected senator the following conditions are required: to have attained to the age of 30, to have been six years a citizen of the Nation, to have an annual income of two thousand strong pesos or similar revenues, and to be a native of the province electing him or to have two years of immediate residence therein” (section 55); In this sense, “to be elected President or Vice President of the Confederation it is necessary to have been born in the Argentine territory, or to be the son of a native born citizen if born in a foreign country; and to have the other qualifications required to be elected senator”(section 89); finally, “to be a member of the Supreme Court it is necessary to be a lawyer of the Nation, with eight years of practice, and with the same qualifications required to be a senator” (section 111).

14 See Alberdi, 2003, 205/6.

especially once the constitution rejected slavery and codified equality before the law.¹⁵

This constitutional program, based on an integrative notion of citizenship, had as its ultimate objective to incentivize massive immigration of people to the territory, thus germinating a society characterized by the coexistence of various groups, where “Argentine DNA” was a conglomeration of disparate cultures, so as not to fracture society between first and second class citizens.¹⁶

Citizenship: its legal framework

The framers also considered important, in a strictly normative sense, to determine the legal status of each human individual who decides to inhabit the Argentine territory. In this way, they put at the head of the federal congress the power to dictate the guidelines and regulate the exercise of citizenship in line with the constitutional spirit.¹⁷

It is worth highlighting two aspects of such a normative framework: in the first place, it reinforces the purpose for which the Argentine legal system has been created, that is, an integrative (not segregationist) intent: Access to citizenship remains optional and, in principle, does not limit the exercise of the rights and protections recognized by the constitution; at the same time, it circumscribes the political rights

to only (native or naturalized) Argentines, thereby excluding other residents (see section 7).¹⁸

The federal congress, through law No. 346, has followed, to a certain extent, the constitutional guidelines stating that all individuals born or to be born in Argentina, as well as the children born to foreign-born natives who opt for citizenship, are Argentines. Likewise, it contemplates diverse assumptions for the foreigners who decide to become naturalized Argentines. In this respect, it would be enough to be over 18 years old, to have resided in the republic for two years and to show such intentions before a federal judge.

And the foundational ideals?

This analysis will focus on describing how the institution of citizenship, supported by unfounded biological stereotypes erected on the concept of race, has been applied to limit, differentiate and even suppress fundamental rights among inhabitants, in particular the constitutional right to vote.

In contrasting the motives that led a group of men –the framers– to plan the growth and expansion of Argentina with the current reality, it is possible to conclude that the ideal of *citizenship* has collapsed; or rather it has been undermined.

The streets of the Autonomous City of Buenos Aires abound with immigrants (mostly from African origins) selling all kinds of trinkets and goods on precarious stands supported by trestles and a plank of plywood, or even just tablecloths spread out on the street. News of clandestine sewing workshops or

15 Regarding these two basal principles, read articles 15 and 16 of the federal constitution.

16 In the year 214 a. C. Filippo V of Macedonia, in a letter addressed to the citizens of Larissa, showed his admiration for the Roman Empire regarding the granting of citizenship to slaves: “[s]e i cittadini di pieno diritto saranno il numero più alto possibile, la vostra polis sarà forte e i vostri campi non rimarranno incolti, come sono ora per vostra vergogna. Questa la meta cui dovete mirare, e io penso que nemmeno fra voi si udirà una sola voce contraria. Voi avete avuto modo di asservire altre comunità che seguono una politica liberale nell’estensione della cittadinanza. Un buon esempio è quello di Roma: quando i Romani affrancano i loro schiavi li ammettono in seno alla loro cittadinanza e consentono loro di accedere alle cariche pubbliche. Grazie a questa politica, essi non hanno soltanto reso più grande la patria, ma sono anche riusciti a inviare colonie in poco meno de settanta località” (Marotta, 2009, 33). In the same sense, Randazzo, 2013, 21/2.

17 The federal constitution prayed in section 65 paragraph 11 (now section 75, paragraph 12), that it is incumbent upon the national congress to “enact general laws for the entire Confederation on citizenship and naturalization.” After the 1994 constitutional reform, instead, it recognizes that it is the power of the legislature “enact general laws of naturalization and nationality for the whole nation, based on the principle of nationality by birth or by option for the benefit of Argentina.”

18 In the year 48 a. C., while discussing how to integrate the Roman Senate, became famous the speech of the Emperor Claudius to the Roman Senate backing the proposal to open to the Gauls the access to the public positions: “[é] il caso forse di pentirsi che dalla Spagna siano venuti i Balbi e dalla Gallia Narbonese uomini non meno famosi? Ci sono qui tra noi i loro discendenti, che non sono secondi a noi nell’amore verso questa patria. Perché mai pensate che siano decaduti Spartani e Ateniesi se non perché trattavano i vinti come stranieri? Romolo, il fondatore della nostra città, fu così saggio da considerare parecchi popoli, in uno stesso giorno, prima nemici e subito dopo concittadini. Stranieri ebbero presso di noi il regno e abbiamo affidato uffici pubblici a figli di schiavi affrancati. Senatori! Tutte le cose che si credono ora antichissime, un tempo furono nuove. Dopo i magistrati patrizi vennero i plebei. Dopo i plebei i Latini. Dopo i Latini quelli degli altri popoli italici. Anche questa nostra odierna deliberazione invecchierà e quello che oggi noi giustificiamo con antichi esempi sarà un giorno citato tra gli esempi” (Canfora, 18/10/2003, 35).



factories employing cheap labor (or even slave labor) provided by mainly Latin American immigrants is increasingly commonplace. These are people living across the territory in overwhelmingly precarious conditions, without access to housing, education, social security, and so on.

Criminal investigations have been carried out in various neighborhoods of the city of Buenos Aires to confirm the “irregular production” and sale of food, clothing, toys and other goods handled by organizations that force foreigners to work in unsafe conditions for a miserable stipend and without health benefits. The state’s focus tends to be on the recovery of public space, and fighting tax evasion and illegal aliens but disregarding those individuals lack of basic and essential needs.¹⁹

In this way, social and legal inequalities split the Argentine community between citizens of first and second category, *i.e.* separating national, naturalized, indefinite and temporary residents from irregular foreigners. Bottom line, the ideal of social cohesion that the framers established is being undermined by the proliferation of residents without access to citizenship rights and protections. This is happening in tandem with the strengthening and expansion of capitalism –a system of extraction that breeds inequality.

A report issued by *IPSOS* (08/2011) proves that this fracture is deepened by an unsubstantiated patriotism that unjustifiably spreads the idea that immigrants are the cause of high unemployment rates, crime in the streets and poor public services in education, health and transportation.

While it seems that, in principle, the Argentine juridical system would not subject the exercise of civil, political, economic and social rights to obtaining the status of citizen, the practice leads to conclude that, in reality, *citizenship* is endured, which in social terms foments xenophobic animosity toward certain categories of individuals. It gives rise to a hierarchy between the alleged races —or rather, ethnic or cultural origins that populate the territory— with the effect of social exclusion, labor exploitation and, overall discrimination.²⁰

¹⁹ For further reference, please see Tomino, 02/02/2014, p. 1, 28.

²⁰ It is not idle to emphasize, consequently, that “one of the main axes of power during the colonization process has been the social classification of the world population on the idea of

This sheds light on a larger trend: Every human being is appropriated by the State, subsuming him/her to the unfounded biological discourse —each one of us is arbitrarily catalogued according to origin—, to dissect humanity into races, to split the social group, to discriminate according to baseless stereotypes, to reject *the other*, to reduce his/her existence. This has fermented the conception of castes that contrive social (and biological) inferiority, to the extreme of denying human rights, which is assimilated to the individual (anticipated) biological death.

Those are ideas which fermented the origins of eugenics, an ideology that proposes improvement of the (human) species over generations in a similar way as it is done with breeding domestic animals and cultivating varieties of plants. In other words, it distinguishes hereditary characteristics in positives, or eugenics, and negatives, or non-eugenics, seeking to propagate the traits deemed as superior.

The scientific discoveries achieved in the nineteenth century gave impulse to such a movement.²¹ When many of the physical characteristics were found to be hereditary, proponents of this theory strove to promote human attributes considered positive and to suppress those pondered negative. This was achieved, on the one hand, by stimulating and encouraging, through economic rewards, men and women with positive characteristics to get married for reproductive purposes —policies of positive eugenics—;²² on the other hand, by banning certain individuals —with “undesirable” genetic traits from procreating through laws that enforced racial segregation and prohibition of interracial marriages— negative eugenics policies.²³

race, a mental construction that expresses the basic experience of colonial domination and, since then, permeates the most important dimensions of world power, including its specific rationality, Eurocentrism” (Quijano, 2000, p. 202).

²¹ To deepen on the eugenic practices of the nineteenth, read Galton, 1905, pp. 11-25.

²² This idea has been contested since ancient Greece. Plato, for instance, proposed that the State should control human reproduction, since progeny was a determining factor in the constitution of a good or bad State and, in turn, was key to the salvation of the species. In these terms he affirmed that the best men had to have sex, for procreative ends, with the best women (Platon, 1998, p. 350).

²³ In line with this philosophical conception, during the XIX century it was conceived the idea that the destruction of a society was highly related to the varied mass of inhabitants, with particular emphasis on the vitality of the human organism from an anatomical point of view. In fact, it was asserted that States that were composed with *degenerated elements* were

Across the twentieth century in the northern hemisphere, the eugenics movement culminated in public policies of sterilization and even genocide.

In Europe, the first steps that consented to the forced sterilization of human beings took place in Denmark under the initiative of a democratically elected socialist government. Not considering Nazi eugenic policies, Sweden was the second European country to carry out the largest number of racial selection activities with the ambition of keeping society abreast with the progressive industrialization and secularization of the population, for which the rulers of that time considered it necessary to free it from those diseases that were transmitted genetically and that affected the economic development of society. However, such activities led to the sterilization of approximately 62,000 people, mainly mentally ill, but also racial and ethnic minorities. Such practices continued over a period of 40 years beginning in the 1930s and ending in the 1970s. Other European nations that made similar policies of sterilization of those that the government declared mentally deficient were: France, Great Britain, Norway, Finland and Switzerland.²⁴

Meanwhile, in the United States of America, it began in 1896 when various states enacted laws prohibiting people who suffered from epilepsy or mental retardation from getting married, seeking to prevent those genes thought negative from being propagated eternally and thus impacting on the socioeconomic progress—biological hygiene policies seeking to improve the strain by eliminating the elements wrongly called impure.²⁵

The Federal Congress itself passed rules prohibiting interracial marriage in order to avoid contamination of the genetic heritage of the race considered superior. There was also a state policy that discouraged

the immigration of those races that were believed to be genetically inferior.²⁶

This racial segregationist was even reflected in precedents of the highest US federal court. The federal supreme court's justices held that the decision to sterilize individuals compulsively was a power reserved by each State under the constitutional text: "[i]t is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society to prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover the Fallopian tubes. Three generations of imbeciles are enough".²⁷

From the many examples outlined above, it is possible to infer that the applied notion of *citizenship* in different areas of the world, not only in Argentina, creates division in the daily social context that determines to which justice each individual can access, where (s)he should go and how (s)he can participate (or not) in the administration of the communities' affairs where (s)he is inserted, but despite his/hers claims, cannot integrate.

This, in sum, shows that while the plain letter of the Argentine federal constitution expresses a certain ideal of fusion and equality, the applied reality bestows a functional separation in the human substrate, marking a strong inequality based on an unreasonable biological discourse.²⁸

Briefly, the notion of applied citizenship is extremely restrictive, shielding itself from the protection of tradition and territory, and the preservation of local identity, whose logical outcome is the consequent

doomed. It referred specifically to the fact that people had lost the intrinsic value they once had as a result of continual adulteration of their blood, which had gradually affected its quality. For a more in-depth study, it is advisable to read Gobineau, 1915.

24 To deepen on the eugenic practices of the twentieth centuries, see Broberg, & Roll-Hansen, N. (Eds.), 2005; Colla, 2000; Dotti, 2004. Also, Butler, 1933, pp. 199-203. In the same line, Rose & Novas, 2003, pp. 439-463.

25 Read Haller, 1963; Kevles, 1985; Lombardo, 1996, pp. 1-25; 1998, pp. 421-452; 2001, pp. 247-255; 2003, pp. 192-218.

26 It is worth recalling the 1922 *Cable Act or Married Women's Independent Nationality Act*. This federal legislation prohibited married immigrant women to automatically obtain the citizenship of their husbands.

27 *Buck v. Bell* (274 U.S. 200, 05/02/1927). Among others, read *in re Dred Scott v. Sandford* (60 U.S. 393, 06/03/1857); *Pace v. Alabama* (106 U.S. 583, 01/29/1883); *Plessy v. Ferguson* (163 U.S. 537, 05/18/1896); *Takao Ozawa v. United States* (260 U.S. 178, 11/13/1922); *United States v. Bhagat Singh Thind* (261 U.S. 204, 02/19/1923).

28 The human species has always been considered a migratory one. For this reason, state borders, as well as legislative barriers, erode and undermine the full integration and incorporation of immigrants into society, ignoring the process of multiculturalism that characterizes today's global society, propitiating an involuntary immobility. In liberal democracies, the limits to freedom of movement contradict their status as open societies (Arango, 2003, pp. 5-21).



rejection of the process of cultural diversification. In this sense, “national cultural identities are entrenched through a defensive exclusivism and then regresses to a form of identity with aggressive racist and fundamentalist hints” (Mantecón, 1993, p. 82).

Nonetheless, it has been realized that there are no organic structural differences between the members of the human species, which implies that our existence depends, to a greater or lesser extent, on the relationship with *the other*. Accordingly, the construction of the personal identity is linked, not only to internal and individual processes, but especially to the connection established with *the other*. To omit these premises results unfailingly in denying our own existence.²⁹

These regressions, backed up by presumed biological stereotypes of superiority and inferiority of the social identities in which people are pigeonholed, determine the power relations, allowing to extend or to diminish the bar of exploitation, exclusion and discrimination as some pre-eminence is recognized by one group of individuals over another.³⁰

29 Indifference, negation and oblivion have been the germ of the greatest atrocities and aberrations that humanity has suffered, giving way to massive and systematic exterminations. That is why it is fundamental to remember and analyze the reasons why our species, between 1921 and 1945, reached the moment of greater cultural poverty that could have led us to even our own annihilation. Well, how can the past be forgotten if the present is not so dissimilar? Memory, undoubtedly, is the foundation of individuality, but also of collective identity. Not knowing our past generates the non-existence of individuals and, therefore, fosters the absence of the community's identity. If yesterday is forgotten, denied, hidden, or distorted, we could not have any expectation of remembering what happened a century or even a millennium ago. We should, perhaps, imitate Marcel Proust when he went *in search of lost time* and, comparing images of our (not so distant) history with the current reality in order to decide if we continue down the road that leads to the *disfigurement* of the human condition.

30 “La igualdad formal, tan analizada y estudiada en los centros jurídicos de la región, ha devenido en una entelequia especulativa que solo ha servido para *ejercitar* el espíritu de los futuros juristas y licenciados. Los derechos sociales, conquistas vitales en el desarrollo de los sistemas legales del continente van quedando como parte de programas académicos y transformándose en historia del derecho. La teoría constitucional y los pensamientos de Locke, Montesquieu y Rousseau, se vuelven teoría pura contrastada en la realidad autoritaria y represiva que corroe los sistemas políticos del continente. La libre competencia es reemplazada por la concurrencia imperfecta y el monopolio y el derecho económico se vuelven letra muerta en su tarea sancionadora y reguladora de la distribución y el consumo. En síntesis, los pilares del universo jurídico que sirvieran de base a nuestra formación como países, han ido replegándose y la juridicidad perdiendo su imagen y operatividad. La violencia y arbitrariedad se extienden en

In other words, the equal exercise of rights and freedoms depends on the social membership and, consequently, power is prevented from flowing in the diversity of human agents that give life to society.

These asymmetries and inequalities, evidenced in the social order, allow to implant a structure of domination that produces “subaltern positions as those who occupy these places are subject to the decisions of others, finding multiple and heterogeneous forms of submission which operate in subjection-subjection, producing and reproducing them” (Retamozo, 2011, p. 84).

Only in a participatory democracy that establishes its control scheme in social discrimination, it is reasonable to limit the exercise of political rights strictly to first class citizens. By virtue of such prerogatives, individuals can have access to the decision-making bodies of the state apparatus; therefore, if certain human beings are considered to be biologically inferior, then it would not be feasible to allow them to hold places of power or to have any political role.

Note that the Argentine federal constitution, however, does not explicitly rule out foreigners to be able to exercise political rights. It is even astonishing that from the harmonizing reading of its clauses it can be inferred that, without a doubt, they should not be reserved only to those who respond to a certain biological (or genetic) programming.³¹

In this sense, it can be certainly affirmed that Western liberal democracies amount to privilege feudal regions where the status of citizen is inherited and, consequently, provides greater possibilities for improving the individual quality of life obtained by chance (Batch *et al.*, 1994).

función de asegurar estructuras que no resisten la legitimidad, el consenso y el derecho” (Witker, 1975, p. 75).

31 The vision and proposal formulated by one of the most prolific Argentine jurists of the XX century in this respect is illustrative, since he considered that “[t]he formal constitution, by prescribing that foreigners enjoy the same civil rights as citizens, wants to clarify, a *contrario sensu*, that do not necessarily enjoy the same political rights. However, if our constitution does not directly confer the political rights on foreigners, neither does it prohibit the recognition by law... The progressivity and maximization of the total plexus of rights leaves room for our democratic system to extend the world of political rights in favor of foreigners who, settled as inhabitants, confirm a sufficient period of permanence in our country” (Bidart Campos, 2000-2001, 572).

This system has broadly influenced the stratification of the concept of citizenship in such a way as to subordinate the individual through the state apparatus designed, degenerating into a democracy of class domination.³²

It can be retained that the statute of Argentine citizenship, therefore, predisposes a degree between the members of the community and favors a greater or lesser enjoyment of constitutional prerogatives according to a prejudice based on the individual's biological identity.

CONCLUSIONS

It can be stated, following the study carried out here, that the validity of the institute of citizenship is linked to its functionality in relation to the normative system: to maintain the prevailing patterns of domination. However, establishing who belongs to a group by birth or by reception —complying with certain requirements that, depending on the case, allow to increase or decrease the number of members— is essential, only, to validate the legal apparatus of discipline programmed to consolidate the *status quo* in relation to the economic system it regulates.

The process of globalization demands a real liberation of the state borders, demanding the free

exchange of goods, ideas and, in particular, people, leading to the coexistence of diverse cultures in the same physical space. These new multicultural states demonstrate that the institute of citizenship, unfortunately, erects policies based on ideologies that favor cultural segregation.

The notion of *citizenship*, therefore, should recover its original concept; that is, the one that empowers individuals against any structural change that a given community could experience. A kind of open city that allows horizontal social mobility, allowing a true integration between the members of our species with the aim of guaranteeing a wide acceptance of the biodiversity that characterizes us.

Nowadays, the global conditions of the flow of capital, information, products and services, also call for the unhindered movement of people, discarding those barriers without certain sustenance (or protected by erroneous scientific concepts) that undermine the very essence of our species, that is, to travel through the land without suffering unnecessary detentions, thus opening up a cosmopolitan human society where the institute of *citizenship* is not linked to the place of birth, blood ties (or biological reality), nor social and cultural conditions, but to the effective integration and participation in the community.

32 Scientific and technological advances in the field of medicine, more specifically in relation to human genetics, allow today to see, with some degree of concern, the materialization of those utopian societies (located in an apparently not so distant future) that the sci-fi literature and cinematography have well imagined when showing a human species fractured in castes according to the genetic configuration that, randomly or voluntarily, was determined to each individual, which in turn allowed a greater or less integration and participation in community's life. By way of example, it is worth recalling the remarkable work of Aldous Huxley, *Brave New World*, and the film, written and directed by A. Niccol, *Gattaca*.

REFERENCES

Books

- Alberdi, J. B. (2003), *Bases y puntos de partida para la organización política de la República Argentina*. Buenos Aires: Losada.
- Batch, L. et al. (1994), *Nations unbound: transnational projects, postcolonial predicaments and deterritorialized nation states*. Sydney: Gordon and Breach Publishers.
- Bidart Campos, G. J. (1999-2000), *Tratado elemental de derecho constitucional argentino*, t. I-A. Buenos Aires: Ediar.
- Bidart Campos, G. J. (2000-2001), *Tratado elemental de derecho constitucional argentino*, t. I-B. Buenos Aires: Ediar.
- Broberg, G. and Roll-Hansen, N. (Eds.) (2005), *Eugenics and the Welfare State: sterilization policy in Denmark, Sweden, Norway, and Finland*. Michigan: Michigan State University Press.
- Colla, P. (2000), *Per la nazione e per la razza*. Roma: Carocci.
- Cook, R. and Cusack, S. (2010), *Gender Stereotyping*. Transnational Legal Perspectives. Philadelphia: University of Pennsylvania Press.
- Dotti, L. (2004), *L'utopia eugenetica del welfare state svedese (1934-1975). Il programma socialdemocratico di sterilizzazione, aborto e castrazione*. Catanzaro: Rubbettino.
- Gálvez, M. (1953), *Vida de Don Juan Manuel de Rosas*. Buenos Aires: Tor.
- Gobineau, J.-A. (1915), *Essay on the inequality of human races*. London: William Heinman.
- Haller, M. (1963), *Eugenics: hereditarian attitudes in American thought*. New Jersey: Rutgers University Press.
- Huxley, A. (1992), *Brave New World*. New York: Harper Collins Publishers.
- Kevles, D. (1985), *In the name of eugenics: genetics and the uses of human heredity*. New York: Knopf.
- Marotta, V. (2009), *La cittadinanza romana in età imperiale (secoli I-III d.C.). Una sintesi*. Torino: Giapicchelli.
- Ortega y Gasset, J. (2003), *La rebelión de las masas*. Madrid: Tecnos.
- Platón (1998), *República*. Buenos Aires: Eudeba.
- Quattrocchi-Woisson, D. (1995), *Los males de la memoria. Historia y política en la Argentina*. Buenos Aires: Emecé.
- Renan, E. (1882), *Qu'est-ce qu'une nation? Conférence faite en Sorbonne, le 11 Mars 1882*. Paris: Calmann Lévy Ed. Books' chapters
- Campillo Meseguer, A. (2005), *Ciudadanía y extranjería en la sociedad global*. En: Pedreño Hernández, M. & Pedreño Canóvas, A. (Coord.), *La condición inmigrante: exploraciones e investigaciones desde la región de Murcia* (pp. 107-124). Murcia: Compobell.
- Marshall, T. H. (2009), *Citizenship and Social Class*. En *Inequality and Society: Social Science Perspectives on Social Stratification*. New York: Norton and Co.
- Quijano, A. (2000), *Colonialidad del poder, eurocentrismo y América latina*. En: Lander, E. (Comp.), *La colonialidad del saber: eurocentrismo y ciencias sociales. Perspectivas latinoamericanas*. Buenos Aires: CLACSO.
- Randazzo, S. (2013), "Gli equilibri della cittadinanza romana". En: Kleijn, G. y Benoist, S. (Eds.), *Integration in Rome and in the Roman World. Proceedings of the Tenth Workshop of the International Network Impact of Empire* (pp. 21-42). Leiden-Boston: Brill.
- Rose, N. & Novas, C. (2003), *Biological Citizenship*. En: Ong, A. & Collier, S. (Eds.), *Global Assemblages: Technology, Politics, and Ethics*



as *Anthropological Problems* (pp. 439-463). Oxford: Blackwell Publishing.

Articles

- Aláez Corral, B. (2015), Nationality and citizenship in the Spanish Constitutional democracy. *International Journal of Human Rights and Constitutional Studies*, 3(2), 115-135.
- Arango, J. (2003), Inmigración y diversidad. Una nueva era en las migraciones internacionales. *Revista de Occidente*, 268, 5-21.
- Butler, F. (09/1933), Bedside medicine for bedside doctors. Human sterilization. *California and Western Medicine*, 39(3), 199-203.
- Galton, F. (1905), Studies in eugenics. *American Journal of Sociology*, 11(1), 11-25.
- Lombardo, p. (1996), Medicine, eugenics and the Supreme Court: from coercive sterilization to reproductive freedoms. *Journal of Contemporary Health Law and Policy*, 13(1), 1-25.
- Lombardo, p. (1998), Miscegenation, eugenics, and racism: footnotes to *Loving v. Virginia*. *University of California, Davis Law Review*, 21, 421-452.
- Lombardo, p. (2001), Pedigrees, propaganda, and paranoia: family studies in a historical context. *Journal of Continuing Education in the Health Professions*, vol. 21, 247-255.
- Lombardo, P. (2003), Taking Eugenics Seriously: three generations of ??? are enough?. *Florida State University Law Review*, 31, 192-218.
- Mantecón, A. R. (1993), Globalización cultural y antropología. *Alteridades*, 3(5).
- Retamozo, M. (03-06/2011), Sujetos políticos: teoría y epistemología. Un diálogo entre la teoría del discurso, el (re)constructivismo y la filosofía de la liberación en perspectiva latinoamericana. *Ciencia Ergo Sum*, 18(1).

Tejerina Vargas, V. S. (2010), Estado plurinacional y herencia colonial alternativas a la de-construcción de estructuras coloniales de poder. *Integra Educativa*, 3(1), 213-227.

Online articles

- Mercogliano, F. (2015), *Commercium, conubium, migratio*. Immigrazione e diritti nell'antica Roma. *Cultura giuridica e diritto vivente*, (2). Retrieved October 10th, 2016 from <http://ojs.uniurb.it/index.php/cgdv/article/view/484/467>.
- IPSOS, *Global views on immigration* (08/2011). Retrieved October 10th, 2016 from http://www.ipsos.fr/sites/default/files/attachments/globaladvisor_immigration.pdf.

Journals

- Luciano Canfora, *E Roma diede il voto ai Galli*, *Corriere della Sera*, 35 (10/18/2003).
- Pablo Tomino, *La venta ambulante, negocio de organizaciones de corte mafioso*, *La Nación*, 1, 28 (02/02/2014).

Jurisprudence

- United States Supreme Court. *Buck v. Bell*, 274 U.S. 200 (02/05/1927)
- United States Supreme Court. *Dred Scott v. Sandford*, 60 U.S. 393 (06/03/1857)
- United States Supreme Court. *Plessy v. Ferguson*, 163 U.S. 537 (05/18/1896).
- United States Supreme Court. *Pace v. Alabama*, 106 U.S. 583 (01/29/1883).
- United States Supreme Court. *Takao Ozawa v. United States*, 260 U.S. 178 (11/13/1922).
- United States Supreme Court. *United States v. Bhagat Singh Thind*, 261 U.S. 204 (02/19/1923).



Constituciones y leyes

Constitución de las Provincias Unidas de Sudamérica de 1819. Retrieved October 10th, 2016 from http://www.saij.gob.ar/docs-f/ediciones/libros/Constituciones_argentinas.pdf.

Constitución de la Nación Argentina de 1826. Retrieved October 10th, 2016 from http://www.saij.gob.ar/docs-f/ediciones/libros/Constituciones_argentinas.pdf.

Constitución of the Argentine Nation. Retrieved October 10th, 2016 from <http://www.biblioteca.jus.gov.ar/argentina-constitution.pdf>.

Ley n. 346. Ley de ciudadanía (10/01/1869). Retrieved October 10th, 2016 from <http://servicios.infoleg.gob.ar/infolegInternet/anejos/45000-49999/48854/norma.htm>.

Cable Act or Married Women's Independent Nationality Act (09/22/1922). Retrieved August 13th, 2018 from http://encyclopedia.densho.org/Cable_Act/

Films

Niccol, A. (1997), *Gattaca*. Los Angeles: Columbia Pictures.