THE CONSTITUTIONAL INTERPRETATION OF URUGUAYAN NATIONALITY ACCORDING TO THE URUGUAYAN CONSTITUTIONAL METHODOLOGY[1]

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The National Directorate of Civil Identification[3] (DNIC) of Uruguay, based on an interpretation of the Uruguayan Constitution made by the esteemed jurist Justino Jiménez de Aréchaga, today issues Uruguayan passports to legal Uruguayan citizens (naturalized citizens) but refuses to recognize them as nationals of Uruguay[4]. In other words, legal Uruguayan citizens carry a passport that indicates that they are not nationals of Uruguay. To put it mildly, this creates confusion at borders, at foreign embassies and at the seats of government of other nations. It also reflects a deeper discrimination between different classes of Uruguayans that became more evident recently with the changes in the passport system[5].

The DNIC, without the express consent of any other nation and in possible contravention of international obligations, assigns legal Uruguayan citizens a "nationality" based solely on place of birth. This ignores the reality that legal Uruguayan citizens are not, as a matter of law, necessarily nationals of the country in which they were born. Moreover, the best interpretation

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[1] This work is part of a larger ongoing research project. The full paper includes an analysis of Uruguayan consular manuals and passports issued throughout the history of the Republic, international communications from 1830 to the present indicating Uruguay's interpretation of its nationality laws and Constitution, Uruguayan international conventions and the role of international law in this issue, as well as possible violations of statelessness laws by the Uruguayan state and the possibilities and risks of seeking redress through the right to an amparo remedy. In addition, comparative international materials were reviewed that examine the development of other states that departed from the Cadiz Constitution but, despite Uruguay's lack of progress, have managed to overcome the linguistic and historical division of nationals and citizens.

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[3] https://dnic.minterior.gub.uy/index.php/

[4] A nation normally only issues passports to its own nationals, unless such individuals are refugees.

[5] In 2005, the 188 member states of ICAO [United Nations International Civil Aviation Organization] adopted the new rule that all states should start issuing machine-readable passports in accordance with Doc. 9303 by 2010 at the latest. As of 2015 at the latest, all non-machine-readable travel documents should have expired. Only in 2015, amplified by incorrect administrative interpretations, did Uruguay bring to light its practice of consigning in Uruguayan passports what may well be a false "nationality" for its legal citizens.

of the Uruguayan Constitution, using Uruguay's own methodological approach, indicates that all Uruguayan citizens should be considered nationals of Uruguay. This interpretation also mutes the current debate that the Uruguayan practice of denying nationality to legal citizens violates international treaties and norms.

Since 2015, when the Uruguayan state began to apply the provisions of the agreement it signed with the International Civil Aviation Organization (ICAO), the passport of legal citizens indicates, in the nationality field, the nationality that corresponds to the country of birth. The DNIC Manual (immigration manual) states that "nationality" is an innate human characteristic and that it cannot be changed or modified. The Uruguayan state defined nationality in this way based on an opinion about the Constitution made by the jurist Justino Jiménez de Aréchaga. The opinion, with little legal or historical justification to support the conclusion, was delivered in the middle of the 20th century.[6]

THE ORIGIN OF THE DIVISION OF NATURAL AND LEGAL CITIZENS INTO NATIONALS AND NON-NATIONALS

The DNIC's administrative decision and a legal opinion prepared in its support reflect a widespread misunderstanding of the Uruguayan Constitution. The misunderstanding may have arisen from reliance on secondary textual materials that incorporated prior constiutuional opinions, such as that of Justino Jiménez de Aréchaga, that were neither rigorous nor complete.

On August 29, 2018, the Directorate General for Consular Affairs and Liaison noted that the DNIC's practice of issuing Uruguayan passports with third-party nationality was causing "a big problem"[7]. The Ministry of Foreign Affairs, through the Directorate General, had initiated a review to see if the DNIC could issue passports with "See pages 4 or 6" in the nationality field and then write, "Ciudadano Legal Uruguayo" on the referenced remark page of the passport.

The Ministry of Foreign Affairs indicated that the laws on which it relied to issue Uruguayan passports with third-party nationality were Laws Nos. 16,021 and 19,362[8], respectively. The Ministry further stated that it believed that these laws established that natural citizenship was

[6] The same jurist argued in his work The National Constitution, that Section III, which refers to Citizenship and Suffrage, "is plagued with very serious technical defects, which make a clear definition of both nationality and citizenship almost impossible".

[7] Request, File No. 2018-4-31-0003664, Ministry of Foreign Affairs, Date Started 08/29/2018, Subject MRREE Suggests Modifying the Nationality Field in Uruguayan Passports of Legal Citizens.

[8] The DNIC does not clarify how the grandchildren of those born in the country are nationals; law 19.362 determines them as natural citizens, but not nationals.

equivalent to Uruguayan nationality, but that legal citizenship was not. The same Ministry correctly pointed out Uruguay's unique status in the world.

> "The countries of the region and the world, when they naturalize a foreign person, note in their travel documents the place of birth but in their nationality appears the country that granted such privilege".

On September 19, 2018, the Legal Department of the Ministry of Interior, National Directorate of Civil Identification, issued a legal response on this issue. The legal opinion relies on secondary legal textbooks on constitutional law written by Rubén Correa Freitas, H Cassinelli Muñoz and Risso Ferrand, to support the proposition that the Constitution of Uruguay requires that Uruguayan nationality be denied to legal citizens. Each of these authors relies on the opinion of Justino Jiménez de Arechega, developed almost one hundred years ago. One of the purposes of the paper is to examine whether the opinion of Jiménez de Arechega itself has legal, historical or methodological depth[9]. The conclusion, elaborated below, is that it is unsupported by significant historical or legal evidence nor does it follow the standard methodology of interpretation applied in Uruguay.

Legal scholarship and public policy depend on careful attention to secondary materials when those materials, such as academic abstracts, are used as a source of existing law. The legal opinion of the Ministry of Foreign Affairs supporting the denial of nationality, Opinion No. 302/2018, incorporates legal statements that seem unacceptable in modern international and domestic political discourse. The legal arguments on which Opinion No. 302/2018 is based to support this interpretation of the Uruguayan Constitution are the following:

1. Nationality is a concept of a real or sociological nature, with an ontological reality based on the natural order, while citizenship is a mere concept of juridical creation.
2. Although, we are told, the 1830 Constitution clearly treats the terms "natural born citizen" and "legal citizen" as synonymous, the current legal conclusion of the Ministry of Foreign Affairs, without historical justification, is that "strictly speaking they are not." No justification is provided for this sweeping conclusion.
3. The legal opinion admits that the Constitutional question requires the application of the Uruguayan methodology of interpretation because the legal opinion itself admits that, "With respect to Nationality, the Charter does not expressly contain a definition of it, but refers [only] to Citizenship".

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[9] The opinion refers to three jurists. Correa Freitas, R., Derecho Constitutcional Contemporaneo, Volume 1. 3d Edition, April 2007, FCU Page 305. Cassinelli Muñoz, H. Derecho Publico 3d Edition. July 2009. FCU. Risso Ferrand, M. Derecho Constitutioncal 2d. Edition March 2006. FCU. Pag. 789. There is a reference to "Pérez Pérez", but neither the full name nor the citation is provided, and, if the reference refers to Alberto Pérez Pérez, the idea attributed to him is not the one he defended. The inclusion of Pérez Pérez appears to be an error.

4. Law 16.021 was implemented to "clarify the doubts and uncertainties generated by the inadequacies of the constitutional text," an admission by the author of the legal opinion that the text of the Constitution is not clear, must be properly interpretated in a methodological manner, and that mere reliance on non-methodological opinions may be misplaced.

The Opinion is an effort to support the DNIC's position that the current practice of denying nationality to legal citizens is soundly reasoned and supported by Uruguayan constitutional law, without devoting any effort to determine whether the secondary sources relied upon are, in fact, accurate. To do so, it is necessary to revisit the primary source materials and to review in depth the reasoning and support provided by the academic texts. This paper undertakes the task of reviewing the primary materials and surrounding history in the methodological fashion that the DNIC should have applied in 2015 or 2018.

The Uruguayan Constitution clearly does not legitimize the outcome defended by the legal opinion of the DNIC, and Uruguay remains the only nation in the world[10] that denies all immigrants the right to become nationals. (Acosta & Harris, 2022; Vink et al., 2021). Moreover, the Uruguayan Constitution, both now and throughout its history, does not define who is a national. Uruguayan jurists could reexamine the erroneous constitutional interpretations that have caused serious consequences for its legal citizens in the manner suggested by this paper.

In fact, the Constitution, when analyzed according to the method of constitutional interpretation widely accepted in Uruguay, reinforces a thesis contrary to that arrived at by the aforementioned jurists mentioned in the previous paragraphs. In fact, the Uruguayan method of constitutional interpretation is the one that best reaffirms the conclusion that all Uruguayan citizens, both legal and natural, are Uruguayan nationals.

In this brief review, I will describe the Uruguayan constitutional interpretation methodology. It is called the "teleological systematic logical method" and was developed by Jiménez de Aréchaga (Jiménez de Aréchaga, 1992). In the following, I will suggest, through the application of this constitutional interpretative method, that the Uruguayan Constitution endorses the modern international definition of "national" and grants that status to all Uruguayan citizens, both legal and natural. Contrary conclusions in the last century seem to have been derived from the ethnic and racial sentiments of international distrust during the interwar period rather thant from a rigorous application of the logical-systematic-teleological method, the standard and accepted methodology in Uruguayan legal scholarship.

Although the different legal systems of various nations share approaches to understanding the law, each legal system has a preferred set of methods for constitutional interpretation. The

[10] Myanmar has a very restrictive naturalization process that, while technically allowing some individuals to naturalize, is functionally equivalent to the denial of a naturalization process.

question of how Uruguay today defines a "national" and the relationship of the concept of "nationality" to those of "natural citizen" and "legal citizen" is a matter of constitutional interpretation[11].

THE TRADITIONAL URUGUAYAN METHODOLOGY OF CONSTITUTIONAL INTERPRETATION: THE LOGICAL-SYSTEMATIC-TELEOLOGICAL METHOD

The Uruguayan Constitution currently in force was enacted in 1967[12]. The Constitution can be briefly described using international classifications as a written codified Constitution, which means that it is contained in a single body or normative text. It is "inelastic," meaning that the Constitution itself defines the type of political regime that is acceptable. The Constitution is "rigid" or "semi-rigid", in the sense that the process for amending the Constitution is different from the process for passing laws. Finally, the Constitution is long, consisting of more than 332 articles, and it is programmatic and democratic.

Let us now turn to the question of "interpretation". Interpretation can be understood as the unraveling of a meaning of an unclear provision or the construction of a meaning consistent with the Constitution when omissions are discovered. Interpretive schools of legal thought are often divided into those who believe that there is only one correct meaning for any provision and those who believe that there are several possible interpretations. Whichever side of the "single" or "multiple" meaning debate one finds oneself on, law is simply language. Law, according to the scholar H.L.A. Hart[13], is expressed through language and understanding law is about understanding language (Hart, 2011).

Rocca (2016) indicates that interpretation and interpretive tools are especially important when considering the Uruguayan Constitution.

> In Constitutions such as ours, made up of a veritable flood of provisions (suffice it to recall that the 1967 Constitution has been amended four times), the difficulty arises of

[11] The following summary of constitutional interpretation in Uruguay is largely based on María Elena Rocca's (2016) *Teoría de la constitución y el estado para principiantes*, published in association with the Universidad de la República. An excellent overview can also be found in Risso Ferrand, Martín (2014). Towards a new constitutional interpretation: The reality in Uruguay. Estudios constitucionales, 12(1), 239-284.

[12] The current Constitution is the nation's seventh and was also amended by plebiscites in 1989, 1994, 1996 and 2004. Two of the previous Constitutions were adopted without following the process established by the previous Constitution for their modification or replacement. Those two Constitutions (those of 1934 and 1942) have a more tenuous validity than the others, although legal scholars may argue that the subsequent plebiscites, which included general approval of the originally extra-constitutional clauses, render those provisions constitutional.

[13] The linguistic and interpretative character of law was developed by Hart beginning in the 1960s.

> analyzing how new provisions have an impact on the interpretation of previous ones over time.
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> In addition, the constitutional provisions contain certain rhetorical turns of phrase that also make interpretation difficult, especially with regard to the so-called programmatic provisions.

(Rocca, 2016).

Uruguayan jurists begin the subject of constitutional interpretation by admitting that the Uruguayan Constitution itself contains no rules on how it should be interpreted. Nor does it contain a preamble, which usually helps subsequent scholars to interpret and understand the intent. Over the years, a consensus developed in Uruguay around the consensual methodology which, as mentioned earlier, is known as the "logical-systematic-teleological method."

This consensual methodology was most clearly developed by Jiménez de Aréchaga. (Jiménez de Aréchaga, 1992; Esteva, 1992; Cagnoni, 2006) In this review, I will describe the steps and precepts of the methodology before attempting to interpret the constitutional provisions relating to citizenship.

According to the "logical-systematic-teleological method", the interpreter uses three main approaches to understand the Constitution. The first aspect of the method is to determine whether the text in question is clear. If the text is clear, the interpreter must follow the text of the Constitution. Another way of saying this is that, if the text is clear, the "literal canon" or the full meaning of the words must be followed. If the text is not clear, the history of the provision, including its context, may be considered, but any conclusion reached must not contradict the letter and context of any provision in the interpreted language.

In short, the first step in the standard approach to constitutional interpretation is to ask whether the clause in question is clear. The answer to this question closes the door on the question of moving forward with a detailed exploration of the clause and allows the interpreter to continue on the path of interpretation, but only if the text is unclear. To know whether a text is "clear," which can be a very subjective determination, the Uruguayan Civil Code is used as a guide[14]. With this first step to determine whether the clause in question is clear, we use articles 17 and 18 of the Civil Code.

1. Article 17 of the Civil Code. "When the meaning of the law is clear, its literal tenor may not be disregarded under the pretext of consulting its spirit".

[14] This sounds incongruous, at first. In this interesting legal solution developed in Uruguay, the guidelines on how to interpret the Constitution are found in the laws passed under the authority of the Constitution to be interpreted. This produces a logical tautology. For the purposes of this analysis, this inconsistency is ignored.

2. Article 18 of the Civil Code. "Words must be understood in their natural and obvious sense".

Scholars also extend these guidelines with at least two additional principles. One is that sentences are interpreted in such a way that their internal distribution and punctuation are advised by the rules of grammar (Guibourg, 1997). Second, in no case should a term be assumed to be "superfluous".

At this point, the interpreter of the Constitution will be forced to determine whether the meaning of the clause or rule in question is, according to these guidelines, clear. If it is clear, the inquiry ends. If it is not clear (and it is likely to be clear or the inquiry into its interpretation would have been improbable), the next two steps of the Uruguayan constitutional interpretive method can be used. If step one has resulted in the conclusion that the clause or rule is unclear, steps two and three seek to bring clarity to the phrase or rule that is considered unclear.

Step two of three of the logical-systematic-teleological method calls for a review of the Constitution in a systematic way and directs the interpreter to "pay attention to the context". (Rocca, 2016). A constitutional provision must be interpreted within its normative system. The interpreter must draw logical inferences from the way it is used in the text and look for connections to other terms or provisions. There are two principles that apply to this phase of the inquiry. They are listed below and should be applied to the provision in question.

1. The interpreter must avoid normative contradictions. If a possible interpretation of a norm contradicts another norm or provision, the postulated interpretation must be abandoned.
2. The interpreter should not consider any clause in isolation. The interpretation that harmonizes the provisions and not those that put in conflict different clauses of the Constitution, affecting its essential homogeneity, cohesion and coherence, is always preferred.

(Rocca, 2016).

Both in sequence and in isolation, a third element of the Uruguayan methodology can be used to interpret the Constitution. This is the teleological stage of constitutional analysis. Along with an investigation of the context of the text, the interpreter can resort to the purpose of the text in order to understand it. Jiménez de Aréchaga (1992) indicates that a constitutional provision is directed to achieve an end or goal. This is the teleology of the law. In the process of interpretation, the interpreter can consider the objective of the drafters of the constitutional text and try to understand the normative objective of a provision. When the interpreter considers the objective (the teleology of the norm), the interpreter can use the objective to understand the language.

This is simplified by the fact that not only do the various individual provisions of the Constitution have a goal, but the Uruguayan Constitution itself in general is constructed with a

goal in view. It has a general purpose. Jiménez de Aréchaga (1992) wrote that the general purpose of the Constitution is to ensure the peaceful coexistence of all the inhabitants of Uruguay so that it may be governed democratically. Cagnoni (2006) further offers the perspective that Article 72 demonstrates that the objective or purpose of the Constitution is to protect individual rights in order to affirm the human person.

In this third step of the Uruguayan methodology, the perceived objectives of the various provisions of the Constitution and the overall purpose or objective of the Constitution itself inform the interpretation of the unclear text. The application of teleology to understand an unclear text can be reduced to two principles.

1. When there are several interpretative solutions to a text, the criterion to be chosen is the one that best suits the purpose that the constitutional rule was intended to achieve.
2. When several interpretations of the Constitution are available, the one that best supports the general purpose of the Constitution must be chosen.

The logical-systematic-teleological method should again be applied to the provisions of the Constitution that refer to citizenship or nationality. Uruguayan legislators, administrators and judges should not rely on an opinion or opinions from the last century that do not appear to have been carefully considered and that contain sentiments about race and national origin that are no longer acceptable in the modern world.

APPLICATION OF THE URUGUAYAN LOGICAL-SYSTEMATIC-TELEOLOGICAL METHOD OF CONSTITUTIONAL INTERPRETATION TO THE URUGUAYAN NATIONALITY QUESTION

According to other nations and international conventions, nationality defines the legal relationship or legal bond between the citizen and his or her State. It is based on social factors of attachment and gives rise to rights and duties on the part of both the State and the citizen (Edwards 2014). This definition is found in the *Nottebohm* case decided by the International Court of Justice. The rights commonly included in the entitlement of a national of a state are:

- Right of residence;
- Participation in public life;
- Consular protection and assistance abroad;
- Social benefits; and,
- Obligations to pay taxes, perform military service or vote.

Many modern international jurists argue that the words "citizen" and "national" are interchangeable. Indeed, "the label is less important than the ability to exercise rights" (Edward, 2014). Nationality "always implies some kind of membership in the society of a state"(Edward, 2014).

The international community has moved far beyond the Uruguayan academic literature that refers to nationality as an innate and immutable characteristic based on place of birth. "In the past, nationality was largely regarded as a privilege, of a somewhat rigid and almost mystical character, conferred by the state" (Lauterpacht, 1979). In contrast, it is now "an instrument for securing the rights of the individual in the national and international spheres". It is considered the "right to have rights" and is the most important right within a State (Lauterpacht, 1979).

Let us identify the provision of the current Uruguayan Constitution that causes some commentators to state that Uruguayan legal citizens and natural citizens do not share equally in the possession of Uruguayan nationality. The source of confusion is Article 81, reproduced here.

> Nationality is not lost even by naturalization in another country, being sufficient to recover the exercise of the rights of citizenship to settle in the Republic and register in the Civic Registry. Legal citizenship is lost by any other form of subsequent naturalization.

This article of the Constitution uses the terms "nationality", "naturalization", "the rights of citizenship" and "legal citizenship" in a way that most readers will agree is unclear. One reading of the words could be that "nationality" is not lost because a "natural citizen" obtains the nationality of another nation. A natural citizen is free to leave Uruguay and obtain a new nationality without fear of losing Uruguayan nationality. According to this reading, but only by implication, a natural citizen who obtains another nationality must lose "citizenship rights" because there is a mechanism identified for the national to reacquire "citizenship rights". The last sentence, according to this way of reading the article, means that legal citizens lose their legal citizenship upon naturalizing and acquiring the nationality of another country, which is the only form of permanent connection the legal citizen has to Uruguay. Legal citizens are therefore no longer connected to Uruguay in any way after a subsequent naturalization.

Let us point out at this point in our review that this interpretation is neither automatic nor clear. The Constitution does not define in any article who is a "national". The Constitution does not affirmatively state that nationals lose their citizenship rights when they accept another nationality. The Constitution certainly does not say that "natural citizens" are "nationals". The article contains only the words we see, open to many interpretations[15].

[15] One argument that can advanced, for example, is that the clause should be read as indicating that Uruguayan nationality, an aspect of both natural and legal citizens, is not lost by subsequent naturalization in another nation. Nationality is not directly defined as an exclusive quality of natural born citizens. The constituent drafter or drafters of the 1934 Constitution seems to have intended that the right of nationals to participate in voting and political life would be suspended after an Uruguayan left the country and became a national of a new country. When a Uruguayan returned for a sufficient period of time or with connections to register, those political rights were restored. It is likely that the last sentence was meant to indicate: "This is so because those rights of political participation as a citizen are lost by the naturalization mentioned in this article".

Faced with an article of the Constitution that is different from all the others, that uses terms that are not repeated elsewhere, and that is in apparent contradiction with other provisions of the Constitution, the interpreter of the Uruguayan legal tradition must use the logical-systematic-teleological method developed by Jiménez de Aréchaga and other constitutionalists.

The current dominant understanding of Article 81 does not come from this methodology. Instead, it comes from a philosophical and legal justification created by legal scholars such as Justino Jiménez de Aréchaga. The argument seems crafted to shore up and defend the accidental, ill-advised and probably mistaken wording of what is now Article 81. Jiménez de Aréchaga does not follow the precepts of the Uruguayan constitutional interpretive method for which he advocates. Instead, he only presents outdated notions of ethnicity, national origin and racial essentialism. Uruguayans must ask themselves whether they still agree with the justifications presented in support of his opinion.

Speaking as if he were delivering a lecture on Uruguayan racial philosophy, rather than a discourse on constitutional interpretation, Jiménez de Aréchaga writes: "In the first place, nationality is presented to us as a natural bond, derived from birth, from blood". He is confident that "nationality corresponds to a certain sociological or psychological reality." Speaking on behalf of the drafters of the Constitution of 1830 and subsequent constituent drafters, Jiménez de Aréchaga concludes: "The quality of nationality depends, therefore, on a fact: birth in the territory of the State." Therefore, "nationality is irrevocable." (1992).

These are not legal arguments. On the contrary, they are mere conclusions. This approach does not follow any methodology, but merely imputes to the drafters opinions from the time of Jiménez de Aréchaga.

Jiménez de Aréchaga concludes that the drafters of the 1918 Constitution supported the granting of nationality only to natural born citizens with weak and indirect evidence. He writes: "the Constitution, by referring.... to natural citizens, wanted to define nationals, our nationals, and this is clear from the antecedents, especially from the opinion of the 1917 Constitution Commission". This sounds promising, at first, because Jiménez de Aréchaga refers to the historical evidence of the intention of the drafters. But hope for academic rigor is lost when we review the support for the opinion. The support is simply that one drafter wrote a statement that said, more or less: "I have never seen men; I have only met Frenchmen, Italians and Germans." Jiménez de Aréchaga concludes from this witticism that the use of "natural citizen" must have been synonymous with "the orientals, our nationals." (1992).

These arguments, based on racial essentialism, are described as ethnolinguistic nationalism. Most people no longer find such arguments acceptable nor persuasive. Uruguay could renounce them and reclaim a position as a defender of immigration and a land of equality. The constitutional justifications for the interpretation of Article 81 do not meet the standards of Uruguayan legal scholarship or the standards of its commitment to human rights and equality.

A fair and simple interpretation of Article 81 and of the Constitution is based on the application of the Uruguayan methodology of interpretation. Let us recall, first of all, that this methodology indicates that the interpreter must avoid normative contradictions when seeking to understand Article 81. If a possible interpretation of Article 81 contradicts another norm or provision, the postulated interpretation must be abandoned. Furthermore, the interpreter should not consider Article 81 in isolation. The interpretation that harmonizes the provisions is always preferred. The clauses of the Constitution must not conflict, affecting its essential homogeneity, cohesion and coherence. When there are several interpretative solutions that clarify a text, the criterion to be chosen is the one that best suits the purpose that the constitutional provision was intended to achieve. Moreover, when multiple interpretations of the Constitution are available, the one that best supports the overall purpose of the Constitution must be chosen.

To analyze the Constitution in this way, the interpreter can examine the terms of the current Constitution or go back in time to the clauses of previous Constitutions. In the Constitution of 1830, the antecedent of Article 81 was simple and clear.

> Citizenship is lost by naturalization in another country. Art. 12.3.

The drafters of the Constitution simply meant to state that Uruguayan **citizenship**, whether natural or legal, was lost by **naturalization** in another country. **Citizenship** is the only term used for what we today call nationality.

The corresponding clause of the 1918 Constitution is also clear and simple.

> Citizenship is lost … upon naturalization in another country, being sufficient to recover it by domiciling in the Republic and registering in the Civic Registry. Article 13.

Again, both natural and legal citizens are informed that **citizenship** is lost by naturalizing in another country. If citizenship did not equal national in the minds of the drafters, it would be illogical for it to be lost by naturalizing elsewhere. However, in the Constituion of 1918 Uruguayan citizens were provided a way to "regain" citizenship. The process was established and defined so that a citizen could demonstrate a connection to the nation on return.

Other aspects of the 1830 Constitution support this interpretation that all citizens were nationals, whether the Constitution used that term or not. The legal regime relating to the classification of the inhabitants of Uruguay is straightforward. The text is clear. The State of the Oriental Republic of Uruguay is described as consisting of **all citizens** living in the territory. This is reinforced by stating that **all citizens** form the nation of Uruguay. Art. 1. The drafters of the Constitution stated that there were two categories of **citizens**. The first category is that of **natural citizen** and the second that of **legal citizen**. **Natural citizens** were defined as free men born in the territory of Uruguay. **Legal citizens** were defined as eligible citizens who immigrated to Uruguay after the founding of the nation. The category of legal citizen also included "the parents of natural born citizens" and the **children of natural born citizens** born outside the

territory. Finally, and of crucial importance, **citizenship** (whether natural or legal) was lost upon **naturalization** in another country. Art. 12.3.

Using the logical-systematic-teleological method to provide coherence and consistency to Article 81 of the current Constitution, we can look to the origins of the conepts, as found in the 1830 document and the constituent materials, and we note that the drafters of the 1830 Constitution never used the term national. The only term present is **citizen** and its use is clear. The nation is composed of citizens. Citizens born in the territory are **natural citizens**. Those who become citizens by other means are **legal citizens**. The linkage of citizens to the State is obvious and the association of rights and obligations between the citizen and the State includes all those rights and obligations that the international community today includes in the term national, a term that is also today a synonym for citizen.

The interpreter, according to the Uruguayan method of interpretation, should not consider the term **citizen** in isolation. As stated earlier, in Article 12.3 of the 1830 document, the drafters of the Constitution juxtaposed the loss of **citizenship** with **naturalization** in another State. The interpretation that harmonizes the provisions is always preferred over the one that brings different clauses of the Constitution into conflict, affecting its essential homogeneity, cohesion and coherence. The simplest harmonization is that the juxtaposition is intentional and that it is logical that naturalization (the process of becoming a national in another state) entails the loss of citizenship because citizenship was used as the term for nationality.

The interpreter of the 1918 Constitution, the terms of which were mentioned above, encounters a landscape very similar to that of 1830. Uruguay is defined as made up of **inhabitants** (a broader concept than citizen in the first Constitution)**.** Art. 1. The term **citizen,** divided into **natural and legal**, is used to designate certain of those inhabitants (as compared to foreigners and visitors who may be resident). All **citizens** are declared members of the **sovereignty** of the nation. Art. 9. The same juxtaposition of **citizenship** and **naturalization** is present in Article 13. Citizenship is lost by subsequent naturalization, although in this Constitution the possibility is present that it may be regained by a return to Uruguay. The meaning remains clear. Uruguay is made up of **citizens**. No mention is made of nationals because the term citizen included all the rights, obligations and concepts that today we consider associated with nationality.

The 1934 Constitution adds a clause that further strengthens the interpretation of the Constitution presented in this paper in that it provides an equality between **citizen**, the term used throughout the document, and **nationality**. For the first time in an Uruguayan constitution, we find the term nationality, in Article 66, and it is used as a **synonym for citizen**. This Constitution establishes that the *adoption* of Uruguayan citizenship has no relevance to the question of whether an Uruguayan must renounce a previous nationality. This is a new concept in Uruguayan Constitutions. Article 71 establishes the opposite principle. Uruguayan nationality is not lost by naturalization in another country. The simplest reading, the plain meaning, of the text, according to the Uruguayan methodology of constitutional interpretation, is that

citizenship is used in the same way that the modern world uses national and that nationality and citizenship were interchangeable for the drafters of the 1934 Constitution.

The 1934 Constitution introduced, for the first time in Uruguayan history, the clauses that we now see in Article 81 (but in 1934 contained in Article 71). This article contains language indicating that the right to participate in the **exercise of citizenship** is lost, or pehaps suspended, if a citizen naturalizes in another country but that it may be regained under certain conditions. As discussed earlier, this article begins by stating that “nationality is not lost even by naturalizing in another country.” The article does indicate who has nationality nor does it specifiy if the nationality that is not lost belongs to natural citizens, legal citizens, or both. The next phrase in this section of the article indicates that “to recover the rights of citizenship” after naturalization in another country a person must simply “come to the Republic and register in the Civic Registry.” Again, the clause provides no information up to this point that “the rights of citizenship” of any person were lost. The clause provides no information on what persons may “recover” this right to citizenship that was, we must assume, lost. Finally, the second sentence of the article provides that “legal citizenship is lost” by subsequent naturalization. The clause provides no information on the people to whom this sentence is directed. That is, we have no information throughout each of the instructions whether they are addressed to natural citizens, legal citizens, or both.

There are at least two meanings to Article 71 (now Article 81) that rigorous interpretative methodology provides.

First, it could be argued that the drafters of the 1934 Constitution intended to state that natural citizenship could not be lost by naturalization in another country, although the right of natural citizens to participate in the political life of the State (what is better called political citizenship) today acknowledged by the Credential system in Uruguay, was suspended, and could be recovered by returning to Uruguay and participating in the life of Uruguay. In this interpretation, the interpreter assumes, based on no other information in the 1934 Constitution or its predecessors, that nationality is held only by natural citizens. Continuing, under this interpretation, the final sentence simply means that “legal citizenship,” as the term is used to define citizens other than natural citizens, is lost by legal citizens who undertake subsequent naturalization[16].

A second interpretation equally or better supported by interpretative methodology is that the drafters intended to suspend or revoke "citizenship rights,” those rights today that flow from obtaining the Credential, for both natural and legal citizens by any act of subsequent naturalization. Those political rights, called “the exercise of the rights of citizenship,” could be

[16] The interpretation of "losing" as a sanction (and distinct from the right to change nationality) in Article 81 is argued by Professor Pablo Sandonato de León, in Nacionalidad y extranjería en el Uruguay. Un estudio normopolítico.

regained as specified. In this interpretatino, Uruguayan nationality itself, which is given to both natural and legal citizens, is never lost.

This appears to satisfy Uruguayan constitutional interpretative methodology to the greatest degree. The final setence of this article, stating that legal citizenship is lost by subsequent naturalization, appears to simply be out of sequence. It should likely have been the first setence in this article. It appears to have been maintained because it is similar to provisions in the 1830 Constitution and the 1918 Constitution. Recall that each of those constitutions stated only that "citizenship is lost by naturalization in any other country" (Art. 12.3) and "citizenship is lost by naturalizing in any country" but "could be recovered" by returning to Uruguay and registering.

To summarize, the table below compares the provisions of Article 12.3 from the 1830 Constitution, Article 13 from the 1918 Constution, and Article 71 (now 81) from the 1934 Constitution. Boxes in the table without an entry indicate that the Constitution in question did not address that topic.

Constitution	Loss of Citizenship	Recovery of Citizenship	Nationality
1830	Citizenship is lost by becoming naturalized in another country.		
1918	Citizenship is lost by becoming naturalized in another country.	To recover Citizenship, it is sufficient to be domiciled in the Republic and to be registered in the Civic Registry.	
1934	Legal citizenship is lost by any other form of subsequent naturalization.	In order to regain the exercise of citizenship rights, it is sufficient to reside in the Republic and register in the Civic Registry.	Nationality is not lost even when naturalized in another country.

The context of the 1934 Constitution, its internal structure, and the use of the terms nationality and citizen support the interpretation that both natural and legal citizens were considered nationals of Uruguay. In the 1934 Constitution, a plausible interpretation is that the term "legal citizenship" should have been written as "the exercise of citizenship rights," as it is in the second column, above. The 1934 Constitution may be understood as having introduced a change in Uruguayan law. In the prior constitutions, we have seen that the most reasonable interpretations are that the term citizen functions in the same way as national, today. The 1830

Constitution indicates Uruguayans who naturalized in other countries lost their nationality. The 1918 Constitution indicates the same loss of nationality but provides a path for nationality to be regained. The 1934 Constitution divides “nationality” from “the exercise of citizenship rights,” indicates nationality is never lost by subsequent naturalization, but indicates “the exercie of citizenship rights” are lost, but those rights can be restored.

This interpretation simplifies the resulting confusion in the interpretation of the current Uruguayan Constitution. The Constitutions of 1938, 1942 and 1952 followed the terms and structure of the 1934 Constitution. Today, the Byzantine construction of natural citizen, legal citizen and national citizen is a consequence of a misinterpretation of this addition to the 1934 Constitution, now found in Article 81. Article 81 is the single clause that breaks a simple and coherent reading of the current Constitution, aligned and calibrated across other provisions, and coherently located in the temporal history of the Constitutions of Uruguay.

Applying the logical-systematic-teleological method also means that the interpreter must examine the terms used in the current Constitution by looking through the different articles of the Constitution. No other article of the Constitution uses the term “nationality” applied to an individual. The Constitution focuses on citizens, both natural and legal, both called inhabitants of the Republic, and all who participate in the sovereignty of the nation. All persons are equal before the law.

The interpretation of the current Constitution that most clearly adheres to the methodology endorsed by Jiménez de Aréchaga, when applied by examining the text of the Constitution, and considering its context and teleological purpose, indicates the following, presented here in summary form:

1. Uruguayan nationals are composed of natural citizens, often called citizens by birth or natural born citizens in other states, and legal citizens. Natural citizens are, of course, nationals. When an immigrant becomes a legal citizen, he becomes a national. This is the interpretation most in accordance with the logical-systematic-teleological method for articles 1, 8, 73, 74, 75 and 81.

2. The child of a national of Uruguay (here conceived as the child of an "Oriental,” with the word used an ornamental flair for natural citizen) is a natural citizen. Natural citizens are, by operation of law and logic, nationals. Nationality for such children is inherent from the moment of birth but in order to claim that nationality and have it recognized by Uruguay, said son or daughter must come to Uruguay and register in the Civic Registry proving facts of "avecinarse[17].” Article 74.

[17] Law 16.021 attempted to interpret the Constitution by stating that children of natural citzens born abroad are nationals prior to any act of registration and that upon completing the requirements of Article 74, they are also considered natural citizens. Fort he purpose of Constitutional analysis, performed in a manner consistent with the Uruguayan methodology, the past attempts at Constitutional interpretation found in Law 16,021 are not crucial

3. Natural citizens do not lose their nationality by naturalizing in another state. Political rights and obligations, today recognized in Uruguay by the Civic Credential, may be suspended on subsequent naturalization to a different nation but can be reactivated on return and compliance with presentation of evidence of connection to Uruguay. Article 81.

4. There are two possible interpretations of the impact of Article 81 on legal citizens according to the Uruguayan method of constitutional interpretation. Under both intepretations, both natural citizens and legal citizens are nationals. The interpretations diverge fro that point. First, it could be argued that legal citizens do lose their Uruguayan nationality upon naturalization in another. Since legal citizens are not prohibited from reacquiring Uruguayan nationality through a second legal citizenship process, this article, in essence, requires legal citizens to repeat the naturalization process in Uruguay if they accept another nationality. Second, as an alternative, it could be argued that "citizenship rights", evidenced today by the Civic Credential, are suspended for both natural and legal citizens by any subsequent act of naturalization, but that those rights can be restored for both natural and legal citizens by fulfilling the requirements of registration in the Civic Registry.

Before examining the Uruguayan law that interprets and applies these constitutional norms, we must explore what the text of the Constitution establishes with respect to the children and grandchildren of natural born citizens.

> Natural citizens ars e all men and women born anywhere in the territory of the Republic. The children of an Oriental father or mother are also natural citizens, independently of the place of their birth, by the fact of coming to the country and registering in the Civic Registry. Article 74.

The constitutional provisions are simple. Natural citizens, one of the two types of nationals, are those born in the territory and their children, even if they were born outside the territory. The content of the necessary information to be submitted for registration in the Civil Registry is not defined at the level of the Constitution. The drafter of the Constitution only wanted to indicate that the registration was necessary. As a result of legal and constitutional provisions, these children would be in the same status in terms of the exercise of political rights as children born in the territory.[18]

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nor are they probative. This is especially true in light of the fact all such prior efforts began with a misinterpretation of Article 81 and continued with a división of natural and legal citizens.

[18] As a result of the current academic interpretation of the Constitution, the Uruguayan positive law establishes today that both groups have the right to citizenship, but with slight differences in application. Those born in

The current Uruguayan legislation interpreting these rules is unnecessarily complex due to the misunderstanding of the term national and its synonym "natural citizen", which is simply one of the two types of national, engendered by the confusion of Article 81. Law 16,021, as amended by Law 19,362, now establishes the following rules.

> Article 1.- Men and women born anywhere in the territory of the Republic shall be considered nationals of the Oriental Republic of Uruguay.
>
> Article 2.- The children of any of the persons mentioned in the preceding article, regardless of their place of birth, shall also have said nationality.
>
> Article 3.-The children of the persons who by Article 2 of this law acquire the quality of nationals, born outside the national territory, shall have the quality of natural citizens.
>
> Article 4.- Article 74 of the Constitution is interpreted in the sense that proximity must be understood as the performance of acts that reveal, in an unequivocal manner, the will of the person in that sense, such as, for example:
>
> A. The permanence in the country for a period of more than one year.
> B. The lease, the promise to acquire or the acquisition of an estate to live in.
> C. The installation of a trade or sector.
> D. Employment in a public or private activity.
> E. Any other similar act that demonstrates the aforementioned purpose.
>
> Article 5.- The justification of the points required in article 4 above shall be made before the Electoral Court, which, once the fulfillment of at least two of the requirements (sections A, B, C, D, E or F) has been verified, shall proceed without further ado to the registration in the corresponding registry.

Much has been said about the confusion introduced into the law interpreting the Constitution by the inclusion in Article 3 of the expression "natural citizen" for the so-called "grandchildren" of "nationals." This is potentially confusing or contradictory to the choice of words for nationality status used in Article 2, which declares that the children of "nationals" are themselves "nationals" once registered. This confusion, although unnecessary, can be explained in relation to the writings of one of Uruguay's leading constitutional scholars who collaborated in the drafting of this law. That scholar, Dr. Rubén Correa Freitas, writes: "According to the constitutional text, nationality and natural citizenship are synonymous, that is, every man or woman is a citizen of the country." (Correa Freitas, 1984).

Uruguay have citizenship suspended (pursuant to Article 80) and those born abroad have it as a right not yet articulated until arrival and registration (pursuant to Article 74). These procedures are solely the result of positive law interpretating the Constitution. These interpretations arise from Articles 4 and 5 of Law 16.021. Again, the Constitution itself does not demand this complicated solution once Article 81 is properly interpretated.

If the leading scholar who advised the lawmakers who prepared the modification of the law at issue considers that "national" and "natural citizen" are synonymous, so should we. The problem with the current law is not in the granting of nationality to both children and grandchildren. Correa Freitas clearly thought that both children and grandchildren had nationality and natural citizenship. The terms are synonymous.

The problem with the current law is that Article 1, without justification and based solely on the confusion of Article 81, replaces, in its definition of "national," the phrase "men and women born at any point in the territory of the Republic" with what should be, according to the Uruguayan constitutional interpretation, "natural and legal citizens."

A proper constitutional analysis using Uruguayan constitutional methods indicates that "natural and legal citizens" have always been equivalent to nationals, as the modern word is now used. The confusion only arises from the inelegant wording found in Article 81, coming from the 1934 Constitution. All the other complexities, injustices, anomalies and peculiarities of Uruguayan application of nationality today arise from attempting to rationalize Article 81. That effort to rationalize Article 81 did not follow the accepted method of constitutional interpretation in Uruguay and is influenced by outdated conceptions of national origin and race. Uruguayan scholars could easily and with ample justification correct this misinterpretation of the Constitution and align Uruguay's laws with the corrected interpretation.

POSSIBLE CHANGES IN THE TRADITIONAL METHODOLOGY OF CONSTITUTIONAL INTERPRETATION IN URUGUAY

The respected jurist Martín Risso Ferrand noted in 2014 that "In Uruguay ... our legal operators have remained within the 'dream' and hope of achieving an interpretation of the Constitution that is legally pure, that dispenses with other issues" (Risso Ferrand, 2014). Consequently, "constitutional hermeneutics in Uruguay has dispensed with elements that are very valuable and that are, moreover, inescapable". One of the elements that Risso Ferrand believes Uruguayan jurists have omitted, or have attempted to deny, is the fact that constitutional interpretation is subject to forces beyond the text, including current social and political needs.

When considering whether a Constitution can be interpreted in the light of modern times, one sometimes finds the dichotomy of those who believe that a Constitution should be interpreted only as its drafters intended, sometimes called "originalists", and those who believe that a Constitution is itself "living" and, therefore, its meaning may change over time. In choosing one of these two categories, the traditional Uruguayan system would lean in the "originalist" direction.

Risso Ferrand is in favor of reexamining the traditional Uruguayan interpretative methodology. The logical systematic teleological method, in his opinion, is not necessarily the most conservative point of view, despite being labeled as originalist. He also points out that "it is not

true that originalism provides certainty and the interpretation of the Constitution as a living document the opposite". In fact, "the originalist tendency can lead to complex legal discussions that remove all certainty from a provision (different meanings or consequences are attributed to it), just as agreements are found within the living Constitution that give certain interpretations a very high degree of predictability". The rigid interpretation of Article 81 that gives rise to the division of Uruguayans into two classes, one national and the other not, may be precisely one example in which the textual rigidity of the past in accounting for Article 81 has added to the confusion.

Risso Ferrand argues that the logical systematic teleological method of constitutional interpretation used in Uruguay should be strengthened by adding several elements that have been missing from the process. The author indicates that one missing element is international human rights law. For example, "when a right or guarantee [such as nationality] is regulated differently by more than one provision, whether constitutional or international, the interpreter must opt for the provision that best protects and guarantees the right in question".

Risso Ferrand concludes his overview of the current Uruguayan constitutional interpretive methodology with a call for a great expansion of methodological tools. Each of the tools Risso Ferrand identifies will only strengthen the validity of the interpretation of the Constitution in which both natural and legal citizens are considered "nationals".

THE REFORM OF POSITIVE LAW

Uruguay has a developed method of constitutional interpretation that could be used to return to the constitutional source material, as done in this review, thereby avoiding historical opinions that may not have been adequate, and break the cycle of the authors of secondary materials merely repeating previous opinions that may have been subject to human error and bias. Whether by way of a disciplined application of the logical systematic teleological method or through the application of an extended methodology, as advocated by Risso Ferrand, the most reasonable interpretation of the Uruguayan Constitution is that all citizens, natural or legal, are "nationals" of Uruguay as that term is used in current international law and agreements. To the extent that it is necessary to revise various positive laws to honor the Constitution, work should begin on issuing a series of positive laws to correct past misinterpretations.

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