4.1 Introduction

The terms nationality and citizenship are perhaps so often confused precisely because they are so closely connected. O’Leary warns that “their present legal significance and content are of recent origin and are closely linked to a series of historical and political developments which have varied from place to place.” The words are often used interchangeably, depending on the language in which a text is written, an author’s concept of the underlying relationship or status being described, and the legal system within which a particular commentator works.

Aside from their historical significance, Arendt’s words are cited here as an illustration of popular usage of the terms nationality and citizenship which does not accord with their usage in international law. Arendt uses the term “citizenship” to characterize Jaspers’ connection to the Swiss state, and the term “nationality” to point to his ethnic German background and subjective identity. For the purposes of international law, the connection that links individuals to a particular state is labeled a link of “nationality” notwithstanding a particular individual’s ethnic background or origin, or identity. The word “citizenship” on the other hand should not strictly be used to denote that an individual belongs to a state for the purposes of international law, but that an individual possesses particular rights under a state’s municipal law.

In this case, Jaspers had become, by virtue of his naturalisation in the City and Canton of Basic (Basel), a Swiss national for the purposes of international law, and a Swiss citizen for the purposes of Swiss law. Because Germany withdrew its nationality from Jaspers as a consequence of his naturalisation in Switzerland (in any case, Swiss law at the time required applicants for naturalisation to undertake to

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Some authors writing on subjects related to international law use the word citizenship to denote the conceptual and practical status or relationship which has traditionally been labeled nationality. In terms of municipal and international law, such usage is imprecise, and it behoves us to maintain a theoretical distinction because the practical legal consequences of these statuses can still be distinguished. This is true notwithstanding the fact that under the municipal laws of many countries, nationality and citizenship seem to be the same thing. Whether they are considered to be the same thing is influenced by views of the nature of the state, in addition to black letter law.

The concept of domicile remains of fundamental importance in the rules of the conflict of laws prevailing in common law countries. But its preeminence is less secure than was formerly the case. Despite reforms made by statute, or proposed by law reform agencies, in the law of domicile with the object of removing its less satisfactory features, the courts and especially, the legislature, are making increasing use of various forms of residence and of nationality as connecting factors, a reflection in part of the growing influence of international conventions on the English rules of the conflict of laws.

4.2 Meaning of Citizenship

Citizenship denotes the link between a person and a state or an association of states. Possession of citizenship is normally associated with the right to work and live in a country. A person with citizenship in a state is called a citizen of it.

4.3 What is the Dual Citizenship?

Dual citizenship is a status in which a person is concurrently regarded as a citizen under the law of more than one state. Dual citizenship exists because different countries use different, and not necessarily mutually exclusive, citizenship requirements.
4.4 Nationality and Citizenship

The term “nationality” is a politico-legal term denoting membership of a State. It must be distinguished from nationality as a historico-biological term denoting membership of a nation. In the latter sense it means the subjective corporate sentiment of unity of members of a specific group forming a “race” or “nation” which may, though not necessarily, be possessed of a territory and which, by seeking political unity on that territory, may lead to the formation of a State.

Nationality in that sense, which is essentially a conception of a non-legal nature belonging to the field of sociology and ethnography, is not the subject of this work. The use of the same term for two different notions, belonging to two different branches of science, is, however, not merely accidental. It can be explained by historico-genetic reasons and is not entirely irrelevant when treating of nationality as a legal concept, as will be shown later.

The indiscriminate use of the term is, however, apt to lead to dangerous confusion. The danger is less in the English language, where the word “nationality” is less frequently used in its ethnical sense as denoting membership of a race. While the existence of an English or Welsh or Scottish nation is not in doubt, membership of such a nation is not usually described as English, Welsh or Scottish nationality; this term is used exclusively for British nationality meaning the quality of being a subject of Her Majesty, i.e., a citizen of the United Kingdom and Colonies or in so far as citizenship of a member of the Commonwealth confers British nationality of the British commonwealth of nations.

In English the term “subject” is used as a synonym for national. It stresses the quality of the individual as being subject to the Sovereign, and is typical of the feudal concept of nationality prevailing in Anglo-Saxon law, which regards nationality as a territorially determined relationship between subject, and Sovereign by which the subject is tied to his Sovereign (liege lord), the King in person, by the bond of allegiance. This conception differs from the Roman one prevailing in States which derive their law from Roman law, where nationality is not determined by a territorial link but is a purely personal relationship. It is usually acquired by descent, and connotes not a relationship to the Sovereign but membership of the State which in
itself is conceived of as a personal association or corporation of member-individuals. Hence, among other reasons, the prevalence of *jus sanguinis* in Roman law countries and of *jus soli* in common law countries. In countries with a republican constitution the term “subject” is rarely used and is unpopular; it has been replaced by the term “citizen.” This applies particularly to the United States of America.

One of the terms frequently used synonymously with nationality is citizenship. Historically, this is correct for States with the Roman conception of nationality, but not for States with the feudal conception of nationality, where citizenship is used to denote not political status but membership of a local community. It has, however, become usual to employ the term citizen instead of subject in republican States including common law countries such as the United States: “he who before was a subject of the King is now a citizen of the State” and in that sense and in those States the terms “nationality” and “citizenship” must be regarded as synonymous. It is no mere coincidence that American writers are prone to use the two terms indiscriminately and frequently alternatively. The practice is further evidence of the historic coalescence of State and nation.

Conceptually and linguistically, the terms “nationality” and “citizenship” emphasise two different aspects of the same notion State membership. “Nationality” stresses the international, “citizenship” the national, municipal, aspect. Under the laws of most States citizenship connotes full membership, including the possession of political rights; some States distinguish between different classes of members (subjects and nationals). In the United States, for example, Philippine citizens were, until 1935 when the Philippines became independent, not citizens of the United States although they owed allegiance to that country. The distinction between citizens and nationals still exists in the United States Immigration and Nationality Act, 1952. According to Dutch law, persons born in the Dutch possessions (or, in certain circumstances, descendants of such persons) have the status of “Dutch subjects” as distinct from “Netherlanders.” The laws of certain Latin-American States distinguish between nationals and citizens. The law of Honduras, for example, distinguishes between Hondurans and “citizens.” Similarly, Title I of the 1948 Constitution of

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Nicaragua, is entitled “Nationality,” Title III “Citizenship”. Article 28 declares: “Nicaraguans over 21 years of age and those over 18 years who know how to read and write, or who are married, are citizens.”

Another case in point was that of the Roumanian Jews, who up to 1918 were considered as Roumanian subjects (“suppusi Romani”) but not as Roumanian citizens. The same applied to the Jews in the Papal State.

It follows even from this brief survey that the terms “national” and “citizen” overlap. Every citizen is a national, but not every national is necessarily a citizen of the State concerned; whether this is the case depends on municipal law; the question is not relevant for international law. From the point of view of international law it is not incorrect to say, in the words of Oppenheim: “Nationality of an individual is his quality of being a subject of a certain State and therefore its citizen.” It is likewise a logical consequence of the exclusive relevance of nationality for the purpose of international law that distinctions made by municipal law between various classes of nationals are immaterial from the point of view of international law. Oppenheim states:

*In general, it matters not, as far as the Law of Nations is concerned, that Municipal Law may distinguish between different kinds of subjects— for instance those who enjoy full political rights, and are on that account named citizens, and those who are less favoured, and are on that account not named citizens.*

In the fifth and later editions, edited by Professor Lauterpacht, reference is made in this connection, by way of illustration, to the distinction between German citizenship, which was limited to “persons of German or cognate blood,” and German nationality, which was created by the German Reich Citizenship Law of September 15, 1935, one of the so-called “Nuremberg Laws.”

It is submitted that the thesis of the irrelevance in international law of differentiations between nationals under municipal law requires a further

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3 Cf., for example, the decision of the Egyptian Mixed Court of Appeal in *Romano v. Comma* (Gazette des Tribunaux Mixtes, 1926, p. 158; Annual Digest, 1925 – 1926, Case No. 195), where it was held that “the enjoyment of political rights which is a regular part of citizenship, is not essential to nationality which is principally based on the idea of subjection to the sovereign of the State.”

qualification, namely, that if provisions of municipal law concerning nationality amount to an infringement of essential elements of the conception of nationality in international law, they do become relevant for international law. The present writer has elsewhere tried to prove that persons belonging to the specific group of “German nationals” (Staatsangehoerige) in the meaning of the Reich Citizenship Law of 1935 were not to be regarded as nationals in the meaning of international law. A State may not only be restricted from differentiating between different classes of subjects by treaty but such a restriction also exists under general customary international law. Once municipal law in defining the nationals of the State cuts across the definition of nationals under international law, once it takes away from the meaning given to nationality according to municipal law elements which are essential under international law, such municipal law is inconsistent with international law: its definitions of nationals must be disregarded when the nationality status of an individual has to be determined for the purpose of international law by international tribunals. What the essentials of the nationality concept are under international law.

Other terms in foreign languages which are sometimes confused with nationality are Indigenat (in German enactments prior to 1919), Heimatrecht (in Austrian law), Vecindad (in Spanish law). Like “citizenship” in the feudal State, these terms refer to a territorial relationship, to membership of a municipality, rather than to nationality, “Denizen” is a term of English law connoting a specific class of subjects on whom this quality has been conferred by Letters Patent and who have somewhat inferior rights to those enjoyed by other subjects a distinction which is irrelevant from the viewpoint of international law.

### 4.5 Historical Development

Writers disagree on the meaning and consequences of the terms nationality and citizenship. Both involve concepts of the relationship between the individual and the state (or Wider Community), or the status of the individual within the state. It is clear that the specific relationships and statuses have changed over time, as political relations and systems of governance have changed and developed. As already indicated, the terms are not synonymous in international law, but have largely converged in modern times because the people who are nationals of a state most often

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also make up its citizens. O’Leary points out that this convergence in modern times is “a result of the democratization of the state, the development of the idea of one nation state, the development of an industrial and capitalist society and the consequent tendency to close off his nation state”.6

4.5.1 The Nature of Greek and Roman Ideas of Citizenship

Greek and Roman ideas of citizenship help us to understand how we got to where we are today, but are not direct predecessors of the “nationality” used at present in international law. This is because the modern concept of nationality is of recent origin, with feudal European roots, and essentially related to power over territory as well as natural persons. Nevertheless, Greek and Roman ideas of citizenship can be said to provide a foundation for today’s notion of “nationality” and are directly relevant to current definitions of citizenship.

In ancient Greek cities (in the centuries around the third century BCE), Concepts of citizenship revolved around political and economic rights at the local level,7 in addition to religious privileges and duties. Only in later times did the concept expand to rights within a wider community. O’Leary cites Koessler’s definition of modern citizenship as “possession….. of the highest or at least of a certain higher category of political rights and or duties, established by the nations or state’s constitution”. This definition of citizenship, adopted herein, reflects the ancient a Greek concept of citizenship, related to the rights of persons within a community, and the relationship among citizens as members of a “polis” or community. In ancient Greece for example, the laws prohibiting marriage or cohabitation of Athenian male citizens or Athenian women, with foreigners, were based on principles against the usurpation of citizenship rights and the rights of offspring in the community. The prohibition was not related to any conflict that might arise between communities over the individuals in question. In this sense, citizenship does not seem to have had negative ramifications outside the polis, or in terms of the relationships among poleis.

Multiple citizenship however, was indeed a possibility:

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In ancient Greek poleis the assembly of the citizens could grant citizenship to an individual or to citizens of other poleis in exceptional circumstances. [Accordingly] the Thasians extend the right to Thasian citizenship to all those, men and women, born by Thasian women living in Neapolis, one of their colonies in the mainland, as part of the reorganization following the political upheavals of the late 5th century BC.

Likewise, citizens of different poleis could receive reciprocal rights or privileges by agreement, for example in the context of colonisation. In the colonisation of Naupaktos by Lokris in 460-450 BC,

The citizens of the colony lost some of their rights as citizens of Lokris but could participate in the sacrifices and other ceremonies of the mother-polis, as foreigners. In particular, arrangements were made for the property left behind and ateleia was granted, oath of allegiance and alliance was to be sworn, and the citizens of both mother-polis and colony would have judicial preference in courts.

O’Leary remarks that the practice of conferring citizenship on allied poleis became common, which in turn reduced the value of citizenship in terms of its exclusivity. Roman concepts of citizenship also involved the rights of certain groups vis-à-vis other groups in society. Patricians, who owned property, were citizens who “had certain public duties and responsibilities within the city-state”. Plebians, or landless tenants, did not. As in Greek city-states, “little by little the internal importance of the citizenship/ non-citizenship distinction diminished until it finally disappeared around AD 212 when citizenship was granted to most of the Roman world”. The Significance of Roman citizenship is best understood in terms of the application of Roman law.

Roman (private) law was a personal, not a territorial law. It controlled and was applicable to, not all persons within a certain district but, all Roman citizens, wherever they were. Originally law made by and for the citizens of Rome, it always had its chief seat in Rome and within a mile outside the walls. After the second Punic war, prefects were sent to the Campanian towns to administer Roman as well as other law. In the provinces the
Governors administered it, though not to the exclusion of the Roman praetor. Further the Roman dominion was a complex of communities; and those which did not possess the citizenship of Rome, whether formally autonomous like the Latin’s, or federated peoples, or simply permitted to remain autonomous, maintained their own administration of justice, when neither party to a suit was a Roman citizen. If one was a Roman citizen, the Roman law usually applied. But the autonomy was sometimes broken by arbitrary interference on the part of Roman officials. Foreigners at Rome were apparently readily admitted to the Roman Courts.  

Acquisition and loss of status could occur by various means, and as in the Greek provisions mentioned above, the status inherited by a child depended on the status of his or her parents. Roman citizenship could be acquired by birth, grant, manumission and statute. In this sense, although the nature of Roman citizenship was not the same as nationality in international law today, there are certain similarities in the form of the rules surrounding the acquisition and loss of Roman citizenship and rules on the acquisition and loss of nationality, as well as parallels related to personal jurisdiction. The inherent differences between the two statuses should however, not be confused as a consequence.

4.5.2 The Origin and Definition of “Nationality”

Although Koessler states that “nationality” is a young word. Its matrix, the French nationalite, appeared for the first time in the 1835 edition of the Dictionnaire de l’Académie Française”, it does appear to have Roman origins. As opposed to political participation, rights, and applicable law, the Roman origin of ideas related to nationality involved belonging to a group of persons, the group, or nation, being determined either by lineage or geography. The idea of a nation in this sense was not specifically linked to political or legal structures. This is what O’Leary, drawing on much preceding scholarship, defines as an “historic-biological” notion of “subjective” corporate sentiment of unity of members of a specific group forming a “race” or “nation”. This is also the way Arendt, cited above, used the word “nationality” to

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characterise Jaspers’ relationship to Germany, although in the terms of international law he had lost his German nationality.

In the Greek and Roman world the rights of citizenship outlined above reflected the fact that political interaction was seen as taking place within communities, as opposed to between them. This changed in Europe in the Middle Ages, when political life:

Tended to centre on the struggle for power between different political administrative entities. Members enjoyed privileges and immunities and were subject to obligations on the basis of established social hierarchies and on the basis of their relationship of allegiance with the sovereign. They were treated as subjects rather than individuals.  

As in Roman times, the link that bound the individual to authority under Anglo-Saxon and feudal law had nothing to do with an idea of ethnic or national groups as such. In mediaeval Europe the link that bound the individual to authority was a territorial one, individual being tied to the land, and subject to the sovereign who controlled.

Today’s definition of nationality in international law has evolved from these feudal ties, linking individuals to territories. O’Leary labels this second concept of nationality a “politicoc-legal” notion of legal membership in the community (state, or nation), defined by law.

The connection between the two aspects of the word “nation”, and their evolution with respect to one another, is directly traceable to the emergence of the modern Westphalian system of sovereign states after 1648. Throughout the 19th and early 20th centuries, the idea of the “nation-state” mostly corresponded to a “romantic” ideology of the state, according to which states were in fact made up of “nations” in the “historic-biological” sense. Radan mentions German and Italian unification, the emergence of Albania, Bulgaria, Greece, Norway, Romania, Serbia, and Sweden, and the break-up of the Austro-Hungarian Empire, as examples.

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Illustrating that the idea is far from gone, he cites the (romantic) national pressures on
the Federal Republic of Yugoslavia in the 1990s, and its subsequent break-up more-
or-less along what were perceived as ethnic lines. The romantic (“historic-biological”) idea of the nation is thus still a major force in domestic and international relations.

Certain states, however, did not fit the romantic idea of the nation-state in reality or ideology. Exceptions to this ideology included the United States and France following their respective revolutions in 1776 and 1789. These states were instead defined by a “liberal national” ideal, according to which the focus of the individual’s self-identification and loyalty was the state itself, as opposed to a nation. Radan labels this the “citizen-state” as opposed to the “nation-state”. He argues that much semantic confusion stems from the appropriation of terminology relevant to the “nation-state” by the “citizen-state”, such as when states which do not pretend to have “nations” as their fundamental basis continue to be referred to as “nations”. On the other hand, whether a state is itself a “nation” or made up of “nations” is a matter of controversy in many places, such as in Spain, where any hint of regional identity that might claim to be national was severely repressed under the dictatorship of Francisco Franco.12

Thus, since the emergence of the modern system of sovereign states within a system of international law and relations, both concepts of nation and nationality can be said to have reflected different views of the state. Both developed in tandem with the modern notion of the community of sovereign states, each the equal of the other in international law. But at some point, the political nation-state was divorced from romantic ideas of the nation-state, and the “politico-legal” notion of nationality as a tie that binds the individual to the sovereign (or state, as personal ties to monarchs were replaced by ties to republican governments or constitutional monarchies), clearly distinguished from ethnicity. One might speculate that influences included ideological developments in relation to the equality of individuals within states, or perhaps it became clear that many states did not in fact have at their core a nation in the historic-biological sense. This is still an area of much heated controversy. What is important for the arguments herein is that politico-legal nationality be distinguished from

12 Witness the heated debate in 2005 over whether Catalonia should be allowed to define itself as a “nation” within Spain, and whether Spain is a “nation” or state constituted of “nations”. See Renwick McLean, Spanish Parliament to weigh Catalan autonomy, International Herald Tribune, 4 November 2005 (internet), http://www.iht.com/articles/2005/11/03/news/Spain.
“historic-biological” nationality, as only the former gives rise to a juridical definitional link between the state and an individual in international law.

It should be mentioned that some states practice seems to make the water even murkier, as they give some, albeit limited, legal effect to the “historic-biological” notion in their municipal law. Soviet policy was to recognize and categorise people in municipal law according to what was arguably the “historic-biological” notion of nationality described above, their Soviet “politico-legal” nationality as part of the state as a whole being a separate issue. Koessler provides other examples that demonstrate that nationality, ethnologically, while essentially a sociological conception with political implications may occasionally have a palpable legal effect. Again, this is not the nationality in question here.

A clear illustration of confusion and arguably abuse in the delineation of people in relation to nationality, and an apt example of the issues that surround delimitation of groups along ethnic, state, identity, rights-based, and indeed even religious lines, was the attribution of nationality to Greeks and Turks in the aftermath of almost twenty years of conflict that resulted in a massive population exchange. Rather than place of origin or residence, subjective identity, language, and certainly not according to the individual’s will,

*The only criterion used was religion. Over a million Christians (some of them monoglot Turkish speakers) were deported from Anatolia, and hundreds of thousands of Muslims (some of them Greek-only speakers) were dispatched from Greece to Turkey. By turning Greece into a country that was 97% Orthodox Christian, at least in name, the population swap made church and nation seem even more inseparable. To be Greek was to be Orthodox, most people thought, and the church hierarchy did nothing to discourage the idea.*

4.5.3 **The Convergence of Nationality and Citizenship in Certain States**

In many states, as citizenship (political, property and other) rights were extended to all sectors of a state’s community over time, any distinction that may have existed between the concepts of nationality and citizenship began to disappear. In terms of international law however, the two categories are arguably still
distinguishable. Weil and Hansen note a convergence in the municipal legislation on nationality in European states, a parallel issue. Nationality can be:

Regarded as an undetermined attribute which is used as a tool by municipal, international and even European Community law to determine who belongs to what state. In other words, it identifies who enjoys what legal consequences, rather than which legal consequences they enjoy. The latter task is left to citizenship. Indeed, some authors have argued that nationality is a purely “formal frame” which gives rise to no fixed legal consequences.\(^{13}\)

4.6 The Meaning of Nationality in International Law as Opposed to Citizenship

The “nationality” which is the subject of the present study describes the specific, primary relationship between the state and an individual, which gives rise to particular rights and obligations in relation to that individual on the plane of the law of nations. This status is sometimes described as citizenship precisely because citizens form the greatest part of a country’s nationals, and writers thus tend to use the words interchangeably. This is however incorrect in a pure sense, as the inverse is not true: not all of a given state’s nationals are its citizens.

On appelle en general citoyen le national investi de la plenitude des droits. Il ne faut pas confondre, comme on le fait trop souvent, ces deux termes. Tout national, en effet, n’est pas citoyen, si tout citoyen est national. En France, par exemple, les mineurs, les femmes mariées, les interdits ne sont pas citoyens, mais sont pourtant de nationalité française: ils sont privés des droits politiques et n’ont que la jouissance des droits civils………Il ne sera question, bien entendu, ici, que de la nationalité nue, et nullement des droits qui en sont

There are many historical examples for this proposition, but notwithstanding changes to notions of civil rights in many countries, for example the emancipation of women and minorities, the characterisation of nationality holds true today. The convergence of nationality and citizenship in many states municipal legislation should not be interpreted as a convergence of the nationality and citizenship on the plane of international law. Furthermore, examples of non-citizen nationals still exist, especially in the context of colonial territories, whose populations have sometimes been accorded the nationality of the metropolitan state, without the rights of citizenship. This is the case of British Nationals Overseas who possesses British nationality due to their connection with Hong Kong when it was a Crown Colony of the United Kingdom. Likewise, the legal category of United States non-citizen National still exists, although it relates only to “persons born in or having ties with” American Samoa and Swains Island, as well as “certain inhabitants of the Commonwealth of the Northern Mariana Islands”.

These US nationals can obtain the rights of US citizenship easily if they move to the United States.

Caporal points out that non-citizen national still include persons deprived of political or other rights, or citizenship, who remains subjects of the state, or nationals. Deprivation of citizenship rights does not necessarily mean deprivation of nationality, although it may.

In his 1906 Digest International Law, Moore presents another argument that the terms should not be used interchangeably, stating:

N[ational character, in legal and diplomatic discussion, usually is denoted by the term, “citizenship”. In most cases this is not misleading, since citizenship

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14 (Translation: In general, nationals invested with full rights are called citizens. These two terms should not be confused, as is too often the case. All nationals are not in fact citizens, while all citizens are nationals. In France, for example, minors, married women and convicts are not citizens, but are of French nationality: they are excluded from political rights and do not enjoy civil rights. We are here of course only speaking of nationality in a bare sense, and not of the rights which ordinarily ensue from it, but we can see that the latter are not essentially and necessarily tied to it.) George Cogordan, La nationalité au point de vue des rapports internationaux, Paris, L.Larose, Libraire-Éditeur, 1879, pp. 6-7.

is the great source of national character. It is not, however, the only source. A temporary national character may be derived from service as a seaman, and also, in matters of belligerency, from domicile, so that there may exist between one citizenship and his national character, for certain purposes, an actual diversity. For these reasons on my work on International Arbitrations, I gave to the chapter in which citizenship is discussed the title Nationality,” in order that it might comprehend not only those who may be called “citizens,” but all those who, whether they be citizens or not, may be called nationals.16

Moore’s view is still representative, as it sees nationality as reflecting relationships between the individual and the state. There are various views of the nature of nationality. Moore cites Chief Justice Waite in Minor v. Happersett,17 who characterises nationality as the relationship of a political community, or nation, to its members. Members owe allegiance to the collective, and the collective in turn owes its member’s protection. These obligations are reciprocal, one compensating the other. O’Leary sees weaker consequences. He also emphasises the nature of the juridical link of nationality as a relationship as opposed to a status, but states that rights and duties may flow from the primary legal nationality relationship between the individual and the state, but they are not the essence of that relationship. Koessler goes further, seeing nationality as a formal status divorced from a specific right-duty relationship.

The views are not perhaps nor as opposed as might they seem: the authors arguably agree that nationality does not give rise to citizenship rights per se.

O’Leary characterises citizenship as the “internal reflection of state membership”, a status conferring political, social and economic rights, whereas nationality is the “external manifestation of state membership” Moore seems to approve:

Citizenship, strictly speaking, is a term of municipal law, and denotes the possession within the particular state of full civil and political rights, subject

16 John Bassett Moore, A digest international law as embodied in diplomatic discussions, treaties and other international agreements, international awards, the decisions of municipal courts, and the writings of jurists, and especially in documents, published and unpublished, issued by Presidents and Secretaries of State of the United States, the opinions of the Attorneys-General, and the decisions of courts, Federal and State. 8 vols. vol. 3 Washington, Govern- ment Printing Office, 1906, p.273.
to special disqualifications, such as minority or sex. The conditions on which citizenship is acquired are regulated by municipal law.\textsuperscript{18}

Robert agrees with this definition of citizenship, but stipulates that citizens must be nationals. If citizenship is indeed regulated by municipal law, this may be questioned. In this sense, the increasing provision of certain rights of citizenship to non-nationals, as in the rapidly evolving framework of agreements underpinning the free movement of persons, goods, and capital in the European Union, underscore the difference of nationality and citizenship. It would seem to be a matter of controversy whether citizenship as a status of municipal law produces consequences in international law.

4.6.1 Nationality and Citizenship in Federal States

Regarding federal states, using the United States as an example, where the word “citizenship” is used at both the state local and the federal levels, Moore says that as conditions for state local citizenship vary greatly, some states provinces may consider people to be their “citizens” even though they remain non-citizens on the federal level, even allowing them to vote in elections. Only federal citizens can however, be considered U.S. nationals “on the grounds of citizenship”.\textsuperscript{19} Whether an individual is characterized as a “subject”, an “inhabitant” or a “citizen” depends principally on the form of government, but these are categories of municipal law.

Beaud discusses nationality in federal states in terms of the dual nature of citizenship in such states (citizenship on the local and federal levels), and the rights of individuals on both levels. He cites the effects of a federal nationality on the constituent parts, and in terms of the consequences for the federation itself. But he does not distinguish between nationality and citizenship as done herein. Jackson does make the distinction, suggesting that the experience of federal states provides an illustration of the issues and conflicts raised by competing legal hierarchies and loyalties in relation to multiple nationalities. While essentially remaining neutral in relation to the desirability of multiple nationality, she argues that “the federal form

\textsuperscript{18} Moore, \textit{A digest of international law}, U.S. Government printing office, 1906, p. 273.
\textsuperscript{19} Moore, \textit{A digest of international law}, U.S. Government printing office, 1906, p. 274.
provides a useful set of models for a gradual process of developing new legal regimes in which multiple citizenships are accommodated but not necessarily encouraged.\textsuperscript{20}

\subsection*{4.7 The Importance of the Meaning and Context of Citizenship}

Having distinguished between nationality and citizenship, note should be made of the specific ideas and context of citizenship itself. This is important not only because citizenship status is so closely related to nationality, but because it is possible to imagine that the two concepts may merge, or draw further apart, in the future. Likewise, state practice toward multiple nationalities is clearly influenced by the perceived consequences of nationality, and as citizenship is most often one of these it cannot simply be dismissed as not relevant to the present study.

In most countries, attribution of nationality by the state means possession of citizenship and the rights attached, with notable exceptions, such as the United Kingdom. Just as the attribution of nationality at international law is a matter left to states, so is the attribution of citizenship. As presented above, the effects or consequences of nationality are not the same as the effects and consequences of citizenship. Some countries extend many of the rights usually associated with citizenship to non-nationals/citizens, usually permanent residents. Possession of the status of citizen does however not necessarily mean that citizenship rights or entitlements can be exercised. For example, in many countries citizen’s resident overseas cannot exercise their franchise in their home countries.

On the other hand, citizen status, or even permanent resident status, can produce obligations that must be fulfilled, simply on the basis of that connection. In the United States, the obligation to file an income tax return applies not only to permanent residents of the country, a typical provision in tax laws, but to all citizens of the United States, regardless of their place of permanent residence. The obligation of military service is a similar category, although state practice would seem to be moving toward a more defined link based on age and residence, in addition to citizenship status or nationality.

It was outlined that the policy that would be addressed is only that which directly relates to multiple nationality, as opposed to the many areas of municipal law that are arguably affected by multiple nationality, considerations which can often be labeled as related to citizenship. In this sense the separation of the two areas seems more difficult. Because the two categories are so closely woven together in much municipal legislation, one is confronted with the issue whether in terms of policy they can in fact be separated. For example, where authors do not specifically differentiate between nationality and citizenship, their analysis must be considered to reflect the fact that some of the factors that states incorporate into their municipal laws on acquisition and loss of nationality arguably have to do with the exercise of rights and performance of duties belonging to citizenship, as opposed to nationality, yet the state labels them as the same thing.\textsuperscript{21}

Thus when persons lose nationality by taking part in a foreign election, as was the case in the United States until the Supreme Court case of \textit{Afroyim v. Rusk},\textsuperscript{22} or when naturalisation abroad results in a loss of the rights of citizenship, the two categories are easily confused. If exercising the franchise is the exercise of the political rights of citizenship, which provokes a loss of nationality, it is unclear whether the policy involved is related to the nationality relationship, or the citizenship status or rights exercised. In those terms, citizenship as a factor in the production and elimination of multiple nationalities should be taken into account in any study of multiple nationalities, but given the lack of separation between the categories in most municipal legislation, this would seem difficult.

\textbf{4.7.1 Classes of Citizenship}

Just as all classes of nationality must be included in the current study, where they exist, the question is posed whether the disparate treatment of citizens by a state in effect creates a different class of persons for the purpose of nationality. States do not typically create labels for such groups, as they do for classes of nationality, where the latter exist. For example, should a government program benefiting one group or part of society be considered as diminishing or changing the value of the citizenship


\textsuperscript{22} \textit{Afroyim v. Rusk}, 387 U.S. 253 (1967).
that applies to those outside the group? Should “affirmative action” programs in the United States, special government funding to Aboriginal communities in Australia, or legal preferences and benefits extended to the Bumiputra (ethnic Malay or assimilated groups) majority in Malaysia be considered as affecting the nature or value of these groups’ citizenship vis-a-vis other groups?

For the purposes of this study, even if it is accepted that the quality of the citizenship rights is indeed affected, it is only necessary to enquire whether such classes of citizenship affect the relationship of nationality of such groups to the state. But it should be asked, in terms of multiple nationalities, are such groups treated differently? Do any of the ingredients of state policy vis-a-vis multiple nationalities reflect such classes of citizenship?

4.8 Multiple Nationalities and/or Multiple Citizenship

Another question that should be canvassed is whether, although this essay examines state practice toward multiple nationalities, the identifiable effects in international law would change if the issue were practice toward multiple citizenship? While this question seems beyond the scope of what is examined here, due to the inter-penetration of the two statuses, or insufficient definition of one status in relation to the other in municipal law, its context is certainly relevant. Robert’s comment reflects a negative answer:

……..les nationalites peuvent se juxtaposer: on parlera de double-nationaux. Les citoyennetes, elles, ne peuvent eventuellement que se superposer. L’Union europeenne, n’étant pas un Etat, ne peut accorder une nationalite! Mais elle peut creer une citoyennete qui se superposera aux citoyennetes nationales en confrerant a son titulaire plusieurs droits, par exemple la liberte de circulation sur l’Etat de l’Union, le droit de vote et l’eligibilite aux elections locales et europeennes, la protection diplomatique et consulaire…….. 23

23 (Translation: . . . nationalities may be juxtaposed: one may speak of dual nationals. Citizenships may only be superimposed. The European Union, not being a state, may not attribute a nationality! But it may create a citizenship which is superimposed on national citizenships by conferring various rights on the recipient, for example the freedom of circulation within the Union, the right to vote, and eligibility to stand for local and European elections, diplomatic and consular protection .).
This statement clarifies that whether diplomatic and consular protection is a right of citizenship depends on municipal law. Under international law it is a state’s right vis-à-vis other states pursuant to a link of nationality. It is arguable that should the European Union provide for a “right of citizenship” which includes diplomatic and consular protection; this would in fact be no more than an international agreement giving rise to a “protégé” relationship, still based on a link of nationality.

It was argued at the outset of this part that nationality and citizenship are still recognizable categories for the purposes of municipal and international law, as their consequences are separable, and the individuals included in each category do no coincide in certain states and do not have to. Should it become evident, however that the categories membership overlaps exactly in a large majority of states, this would create a need for an examination whether their consequences in international and municipal law have indeed merged.

4.9 Nationality, Ethnicity and Globalisation

O’Leary’s, Oppenheim’s and Weis’ presentations of issues surrounding the “historico biological” aspect of nationality can be said to coincide with ideal of ethnicity. While the reader may by now appreciate that this is not the subject of the present study, analyses of ethnicity and nationalism gives pause for reflection in terms of the associated legal implications for the context in which multiple nationality is viewed and related norms have developed.

Friedman argues that the idea that nation states are made up of ethnic groups which have long perceived themselves as such, and which are united by commonalities, is both new, and false. Instead, most nation states are recent constructions and cannot be said to coincide with individual’s historical self-definition, or their relationship to other groups of people. He postulates that “nationalism creates ethnicity, it also creates majorities and minorities”, and that countries need to create a sense of ethnicity, even when there was none before. He then relates these developments to technological progress, arguing that affiliations that seem to be innate are in fact often a matter of choice, and that governments have an interest in manipulating these choices. Friedman goes on to state that in the present context, technological advancement is the primary factor in the movement of people
from poor to rich countries traditional notions of which countries produce emigrants and which countries take immigrants no longer hold true, and the source of pressure on the laws of citizenship and immigration.

McNeill agrees, but takes the argument further. He argues that the wars of 1914-45 augured the eclipse of nationalism and of ethnic homogeneity within separate polities as clearly as the wars of 1702-1815 had announced the triumph of the principle of nationality and of an assumed ethnic homogeneity within separate sovereign States.24

Miller takes the opposite view, arguing that an ethnic idea of nationality is, and should be, deeply held. While recognizing that there is indeed something distinctively modern about our idea of nationhood, even though it builds upon ideas about the tribal division of the human species that can be traced much further back in time, he maintains that nationality as identity, and politically expressed through the nation state, is not only desirable, but here to stay. Attacks on the “historico-biological” aspect of nationality by cosmopolitanism, multiculturalism, and the homogenizing cultural effects of the global market will lead to the impoverishment of the group he labels the majority *non-elite*, and will be to the detriment of the common good.

The argument that technological advancement caused individuals perception of their relationship to the wider world to change from local to “national” and caused nation states to find ways to bind individuals to the state has clear implications for state practice regarding multiple nationality. Attempts to reduce or eliminate multiple nationalities seem to provide evidence for such views. But aside from adding to the discussion on why states make rules about nationality and multiple nationalities, the argument raises the effects of the consequences of continued technological advance. Do current trends toward political and economic integration or globalisation stemming from or resulting in technological advancement continue to cause states to bind individuals more closely to themselves? If so, one would expect intolerance of multiple nationalities in national legal frameworks to coincide with attempts to define

state membership in exclusive terms. Conversely, does an increasing tolerance of multiple nationalities indicate that technological advancement has reached a level requiring a supra-national need for mobile human capital, thus in fact breaking down the exclusivity of a relationship of nationality?

Even weightier questions are provoked by such ideas, however. If the “national” concept involving some form of ethnic or other created homogeneity was indeed an anomaly, does this portend the demise of the state as we know it, and the system of international law based on sovereignty? Although McNeill sees increasing resistance to polytechnic societies, and the “pretense of ethnic unity within sovereign national states for some time to come”, he does not doubt that the trend is definite, and otherwise. More importantly, drawing on historical models, he sees the “participatory equality” and political freedom of liberal national states as threatened by an ever more closely-linked world.

4.10 Identity or the Psychology of Nationality and Citizenship

It would be remiss not to mention the connection between the specific legal regulations applicable to nationality and citizenship, and individual and collective identity. Here, nationality seems to enter the realm of emotion and conviction, but with palpable legal effect. The extent to which identity is, or should be an issue in conferring citizenship rights or nationality is a matter of controversy.

In raising the “desacralization of citizenship”, Brubaker highlights the fact that even nationality as a “politico-legal” relationship is seen or interpreted in two ways: (1) as purely instrumentalist or functional, versus (2) incorporating values of belonging divorced from juridical convenience bringing with it obligations of sacrifice for the state.25 Those advocating the latter view favour policies including restriction on acquisition of nationality or dual nationality which to Brubaker also reflects an assumption that certain immigrants are unassimilable. Views of the role identity should play in the relationship of nationality and the statuses of citizenship thus have consequences in the legal realm. Even systems of attribution of nationality can be said to reflect world views of individual and collective identity: *jus soli* focuses

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on presence in designating a tie to the state, whereas *jus sanguinis* focuses on transmitted ideas or values.

The transformation of immigrant into citizen and national can be seen as the source of much proposed nationality law reform, as well as specific rules adopted regarding nationality. Views of individual and national identity clearly influence how states respond to issues of integration and equality in the context of immigration. In this sense Brubaker argues that debates about citizenship in France and Germany revolve around identity as opposed to interest, and there is no reason to think that such considerations should be limited to those two countries. Trans-national ties and identification also influence ideas of the state’s role and its formal ties to other states, such as in the case of the developing European Union.  

Views of nationality’s practical essence instrumentalist versus obligations entailing sacrifice are important as far as they may influence municipal legislation on nationality. The topic also raises the issue of the allegiance required of nationals, and prompts us to enquire whether this involves difficult-to-qualify trappings of identity, either in its definition or in its requirements, in terms of the state’s right to represent a national vis-à-vis another state. In other words, does a subjective standard related to identity influence supposedly objective or black-letter legal norms in international law?

Identity is thus an issue for nationality in terms of the specific rules states make regarding acquisition and loss of nationality and practice in terms of multiple nationality, and the nature of the relationship that catapults the state’s link to an individual onto the international level. It also bears on the legal consequences of nationality in municipal law, in terms of a given state’s framework of the rights of citizenship.

4.11 Notes on Citizenship and Theories of the State

Just as the term nationality is used to denote various ideas, the term citizenship is also used in a broad sociological context and in relation to theories of the state, encompassing ideological views of politics and morals. Citizenship as a national legal

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status which confers rights and/or entitlements under municipal law, to which nationality as used in this essay has been compared, must be distinguished from such broader usage.

In this sense, “Max Weber distinguished three distinct meanings for citizenship in social history: classes that share a specific communal or economic interest; membership determined by rights within the state; and strata defined by standard of living or social prestige”.\(^{27}\) The second of these meanings is that which is usually confused with, compared to, or equated with the “politico-legal” aspect of nationality. The broader spectrum within which this aspect of citizenship is placed involves discussions about the essence and workings of the state and society. Much recent comment and scholarship in this field stems from the work of T. H. Marshall, who divided citizenship into three progressive stages or types: legal, political, and social.

In practical terms, the issues surrounding these broader parameters and ramifications of citizenship are well illustrated by the way governments view them. In its inquiry about establishing a system of national indicators and benchmarks on citizenship, the Australian Senate Standing Committee on Legal and Constitutional Affairs sought to measure at regular intervals the extent to which the legal, economic, social and cultural rights and responsibilities of Australian citizens are implemented. Kashyap sees Indian citizenship in terms of both legal status, and broader values.\(^{28}\)

4.12 Ressortissant

It is a matter of debate whether the French term *ressortissant* is synonymous with national in international law, or whether it is broader, encompassing non-nationals who are nevertheless under a state’s protection. This is mainly due to non-uniform usage in treaty texts. Weis mentions the debate, but seems to side with the latter view, citing French and international tribunals which held that *ressortissant* includes non-national members of the armed forces who are assimilated to nationals, 


as well as nationals of states which were under foreign protection. Thus Tunisian nationals were French ressortissants while Tunisia was under French protection and Egyptian nationals were British ressortissants while Egypt was under British protection. Protégés and protected persons can be considered ressortissants, while stateless persons cannot.\textsuperscript{29} Whiteman characterises the Mixed Arbitral Tribunals interpretation of the term as “liberal”, citing a case where a line was drawn nevertheless: a Turkish subject who had been an Italian Consular Agent in Turkey, was held not to be a ressortissant.\textsuperscript{30}

Ruzié states that ressortissant applied to categories of foreigners and points to the term’s use by the European Union. The term ressortissant:

\textit{servait a designer parmi les étrangers, des personnes relevant d’un régime plus avantageux que l’ensemble de la catégorie des “étrangers”, distinguées des “nationaux”. Ainsi, depuis la mise en place progressive de la C.E.E. et notamment dans le cadre de la consécration de la liberté de circulation, en arrivait-on à utiliser l’expression de “ressortissants des pays membres de la C.E.E.”. Desormais, le contenu de la situation juridique de ces “ressortissants” s’enrichira, en quelque sorte, non seulement d’un droit de vote et d’éligibilité pour certaines élections, limitativement énumérées par le traité de Maastricht mais également d’un droit à une protection diplomatique de la part d’un autre État membre.}\textsuperscript{31}

4.13 Protected Person

Protected persons are those who, while not considered nationals, may enjoy a state’s diplomatic protection on the basis of a link of responsibility to the state or territory of which they are inhabitants or nationals. Such persons have been held to be

\textsuperscript{29}Weis, \textit{Nationality and statelessness in international law}, London, Steven and Sons, 1956, pp. 8-9.


\textsuperscript{31}(Translation: served to designate among foreigners, persons benefiting from a more advantageous regime than the rest of the category of “foreigners”, distinguished from “nationals”. Thus, since the progressive establishment of the European Economic Community EEC and notably in function of the right to free movement, the expression “ressortissants of EEC and member states” has come into use. Henceforth the content of these “ressortissants” legal situation was in some sense expanded, not only by a right to vote and eligibility to stand in certain elections as set out in the Treaty of Maastricht, but also by a right of diplomatic protection by other member states.) Ruzié, “Citoyenneté et nationalité dans l’Union Européenne”, Saarbrucken, Europa Institut/ Universitat des Saarlandes, 1994, pp. 14-15.
ressortissants of the power granting protection. The status was used to a great extent by Great Britain, to describe the inhabitants of British protectorates and mandated and trusteeship. Whiteman maintains that the right of the protecting state to represent such persons is trumped only if the individual in question is the national of another state.  

4.14 Distinction between Nationality and Citizenship

Often nationality and citizenship are considered to be synonymous with each other. But the fact is otherwise. There is a great difference between nationality and citizenship. By nationality under international law, we mean the legal relationship which exists between the nation and the individual. Citizenship, on the other hand, denotes the relations between the person and the State law. In other words we may through nationality the civil and natural rights of a person may come under international law whereas the rights of citizenship are the sole concern of the State law. It is possible that all the citizens may possess the nationality of a particular State, but it is not necessary that all the nationals may be the citizens of that particular State. Citizens are those persons, who possess full political rights in that State. But a person who possesses only nationality in a particular State may not possess all political rights.

4.15 Meaning of Domicile

Domicile is the status or attribution of being a permanent resident in a particular jurisdiction. A person can remain domiciled in a jurisdiction even after they have left it, if they have maintained sufficient link with that jurisdiction or have not displayed an intention to leave permanently if that person has moved to a different state, but has not yet formed an intention to remain there indefinitely. A corporation’s place of domicile is equivalent to its place of incorporation.

4.16 Nationality and Domicile

Until the beginning of the nineteenth century domicile was universally regarded as the personal law of purposes of the conflict of laws. The change from domicile to nationality on the continent of Europe started in France with the promulgation of the Code Napoleon in 1804. One of the principal objects of the
codifiers was to substitute a uniform law throughout the whole of France for the different coutumes of the French provinces. In matters of personal status these coutumes applied to persons domiciled within the province, wherever they happened to be. It was natural that the new uniform law should apply to Frenchmen everywhere, and article 3 (1) of the Civil Code provided that “the laws governing the status and capacity of persons govern Frenchmen even though they are residing in foreign countries”. No provision was expressly made for the converse case of foreigners residing in France, but the French courts held that in matters of status and capacity they too were governed by their national law. The provisions of the French code were adopted in Belgium and Luxembourg, and similar provisions were contained in the Austrian code of 1811 and the Dutch code of 1829.

The change from domicile to nationality on the continent of Europe was accelerated by Mancini’s famous lecture delivered at the University of Turin in 1851. Under Mancini’s influence, article 6 of the Italian Civil Code 1865 provided that “the status and capacity of persons and family relations are governed by the laws of the nation to which they belong.” Mancini’s ideas proved extremely influential outside Italy too, and in the second half of the nineteenth century the principle of nationality replaced that of domicile in code after code in continental Europe, although domicile was often retained in specific contexts. The result is that the nations of the world have become divided in their definition of the personal law; and it is this fact more than any other which impedes international agreement on uniform rules of the conflict of laws. What then are the arguments in favour of nationality and domicile as the personal law?

The advocates of nationality claim that it is more stable than domicile because nationality cannot be changed without the formal consent of the state of new nationality. However, as has been well said “the principle of nationality achieves stability, but by the sacrifice of a man’s personal freedom to adopt the legal system of his own choice. The fundamental objection to the concept of nationality is that it may require the application to a man, against his own wishes and desires, of the laws of a country to escape from which he has perhaps risked his life”.

It is also claimed that nationality is easier to ascertain than domicile because a change of nationality involves a formal act of naturalisation and does not depend on
the subjective intention of the porosities. This is undoubtedly true, though there may be difficult cases of double nationality or of statelessness. But it does not follow that the most easily ascertained law is the most appropriate law. Many immigrants who have no intention of returning to their country of origin do not trouble to apply for naturalisation.

The decisive consideration for countries like the United Kingdom, the United States, Australia and Canada is that save in a very few respects, there is no such thing as United Kingdom, American, Australian or Canadian law. Since the object of referring matters of status and capacity to the personal law is to connect a man with someone legal system for many legal purposes, nationality breaks down altogether if the State contains more than one country in the sense of the conflict of law. International conventions commonly contain provisions seeking to resolve this problem; they may leave it to the law of the nationality to determine the territorial unit whose law is to govern, or rely on some other connecting factor to make that determination.\footnote{E.g. the Hague convention on matrimonial property regimes, art. P.16, (1976).}

4.17 Distinction between Nationality and Domicile

Nationality is a possible alternative to domicile as the criterion of the personal law. These are two different conceptions. Nationality represents a person’s political status, by virtue of which he owes allegiance to some particular country; domicile indicates his civil status and it provides the law by which his personal rights and obligations are determined. Nationality depends, apart from naturalisation, on the place of birth or non parentage; domicile, as we have seen, is constituted by residence in a particular country with the intention of residing there permanently. It follows that a person may be national of one country but domiciled in another. If one looks at the historical development, it will appear that, over the last two centuries, the ascertainment of the personal law, which ought to be governed by legal and practical considerations, has in fact been influenced by varying political and economic factors. The French revolution, the struggles of Italy to win independence, the wave of nationalism that swept Europe in the nineteenth century, the desire of the poorer countries to share in the prosperity of their emigrants—these and other similar circumstances have led to a widespread idolatry of the principle of nationality. At
present many countries is Europe and South America adopt nationality as the criterion of personal law, whilst the common law jurisdictions of the Commonwealth and the USA, among others, still stand by rest of domicile, as immigration has gained ground at the expense of nationality.\footnote{Palsson (1986) \textit{IV Hague Recueil}, pp. 316, 332 et seq.}

It may be asked, what are the respective merits of domicile and nationality as a determinant of the law to govern status and personal rights generally? Each has its merits and demerits

4.17.1 The Merits and Demerits of Domicile

The English preference for domicile is based on two main grounds. First, domicile means the country in which a person has established his permanent home, and what can be more natural or more appropriate than to subject him to his home law? It is difficult to agree that he should be excommunicated from that law merely because technically he is a citizen of some State that he may have abandoned years ago. Secondly, domicile furnishes the only practicable test in the case of such political units as the United Kingdom, Canada, Australia and the USA where the same nationality embraces a number of, sometimes diverse, legal systems. The expression ‘national law” when applied to a British subject is meaningless. It is one system for England, another in Scotland; similarly for a Canadian, there is one system in Ontario and a quite different one in Quebec.

In the course of its development in England, however, the law relating to domicile has acquired certain vices. First, it will not infrequently happen that the legal domicile of a person is out of touch with reality, for the exaggerated importance attributed to the domicile of origin, coupled with the technical doctrine of its revival, may well ascribe to a person a domicile in the country which by no stretch of the imagination can be called his home. Secondly, an equally irrational result may ensure from the view, sometimes accepted by the English courts that long residence is not equivalent to domicile if accompanied by the contemplation of some uncertain event the occurrence of which will cause a termination of the residence. Thirdly, the ascertainment of a person’s domicile depends to such an extent on proof of his
intention, the most elusive of all factors, that only too often it will be impossible to identify it with certainty without recourse to the courts.

4.17.2 The Merits and Demerits of Nationality

Nationality, as compared with domicile, enjoys the advantages that it is relatively easy to understand as a concept and normally it is easily ascertainable. Nevertheless, it is objectionable as a criterion of the personal law on at least three grounds.\(^{35}\)

First, it may point to a country with which the person in question has lost all connection, or with which perhaps he has never been connected. It is a strange notion, for instance, that a Neapolitan, who has immigrated to California in his youth without becoming naturalised in the USA, should throughout his life remain subject to Italian law with regard to such matters as marital and testamentary capacity. Secondly, nationality is sometimes a more fallible criterion than domicile. In the eyes of English law no person can be without a domicile, no person can have more than one domicile at the same time on the other hand, the person may be stateless or may simultaneously be a citizen of two or more countries. Thirdly, nationality cannot always determine the internal law to which a person is subject. This is the case, as we have seen, when one political unit such as the USA comprises a variety of legal systems. Similarly, nationality breaks down as a connecting factor in the case of the United Kingdom where, for many purposes, there is no such thing as United Kingdom law. The application of the concept of nationality in such circumstances will lead to eccentric decisions such as that given in Re OKeefe.\(^{36}\)

4.18 Summary

The two expressions “citizenship” and “nationality” are often used interchangeably in international law, through there may certain shades of distinction between the two. Citizenship is acquired by birth or by naturalisation. Nationality, on the other hand, is more a description of cultural identity than a matter of political and personal rights. In some Latin-American countries, for example, the expression

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\(^{36}\) (1940) ch 124, (1970) 1 All ER 216, and Rejohnson (1903), 1 ch 821.
citizenship is used to denote the sum total of political rights of which a person may be deprived, by way of punishment or otherwise without being divested of his or her nationality. A different kind of distinction between the two terms exists in the U.S.A. The States of the United States of America may grant citizenship to their residence in their respective territories after fulfilling certain conditions under their laws, whereas the Federal Government of U.S.A. confers American nationality. Moreover, persons belonging to territories and possessions which are not among the States forming the Union are described as nationals. They owe allegiance to the United States and are United States nationals in the contemplation of international law but they do not possess full rights of citizenship in the United States. It is their nationality in the wider sense, not their citizenship, which is internationally relevant. In the Commonwealth, it is the citizenship of the individual states of the Commonwealth which is of primary importance for international law, while the concept of a British subject or Commonwealth citizen is relevant only as a matter of the internal law of the countries concerned.

The advocates of nationality claim that it is more stable than domicile because nationality cannot be changed without the formal consent of the state of new nationality. International conventions commonly contain provisions seeking to resolve this problem, they may leave it to the law of the nationality to determine the territorial unit whose law is to govern, or rely on some other connecting factor to make that determination. When it comes to establishing an intention to settle, this was shown in one case by the fact, inter alia, that the family furniture was sent to that country. However, common sense would suggest that if, for example a child has been living with its mother for ten years it would take the same habitual residence as the mother, even though during this period the mother has been acting in defiance of a court order to return the child.