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# *Challenges of Migration in Context of Cosmopolitan Citizenship*

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## **Abstract**

This article analyzes the different challenges of citizenship and rights in front of the new forms of flow migrations, especially in the Mediterranean and the case of Venezuelan migrants. The new conception of globalization and Sovereignty redefines the relations between the State and individuals, whether national or foreign, and must be the basis for rethinking the new issues of citizenship, of migrants and of dialogue between cultures, which must be addressed from the so-called "ethics" of hospitality "and based on the principles of interculturality, the good universality of human rights and substantive and cosmopolitan citizenship. In the expansion of the universal quantifier of human rights, at the time of the nomination of constitutional states of law, there are limitations on the universalist conception, whose archetypal point is based on the thesis of ontological monism. By virtue of this the correspondence between rights, guarantees and benefits were anchored in the course of the forms of government and State in the idea of homogeneity that appeared with the apogee of the nation - states, giving rise to the figure of the monism of the state. Venezuelan forced migration in the Latin America area points out the crisis of the theory of National state and forced to a new concept of citizenship. Starting from this case study, several other aspects of migrations and, more in general, of emerging human rights are addressed in this issue of the Journal of Mediterranean Knowledge.

**Keywords:** Cosmopolitan citizenship, Modern migrations, Emerging human rights, Venezuelan refugees

## *Introduction*

Human migration is one of the most relevant issues of the world today. With waves of refugees arriving in Europe every month and with thousands of undocumented immigrants living in the U.S., it is an issue that have gained more and more prominence in the public debate in recent years.

Migration is a phenomena inherent of humanity. Migration presents particular characteristics depending on the historical moment and the geographical location.

The political response to this issue has been widely different. On one side, there are figures like Angela Merkel with her “open door” policy towards refugees in the Mediterranean space, and the efforts of many countries in the EU to help those who are fleeing from violence in the Middle East. On the other side, there are figures like Donald Trump, who are advocating for a world with closed borders.

Yet both sides share the view that migration is a capital issue, although both have completely different views on it. Is undeniable that the treatment of migrants is one of the most important topics in modern political discussion, having a central role in both the Brexit vote and in Trump’s victory, perhaps the two most shocking elections in the last years. An on both cases, it was the closed border policy the victorious one, although regarding different kinds of immigration.

Since ancient times, different circumstances have made humans populations to relocate from one place to another. It’s possible to talk about a real *iusmigrandi*, a universal right to move and to have a residence in any place in the world, according to the Art. XIII and Art. IV of the U. Declaration of Human Rights of 1948.

Among those circumstances, we can mention wars or armed conflicts, within the country or between nations, adverse climate conditions, natural disasters, racial discrimination, religious or political intolerance and many others. Is inherent to human nature to hope to achieve better life conditions. And when this goal is not reached in the place a person lives, is natural for people to move to another place, looking for better life conditions. However, there are situations were people, in the face of serious threats to their lives, freedom or wellbeing, may have no other choice but to migrate to another place.

Although the case of the Syrian refugees and the illegal immigrants in the U.S. are the two most notorious and discussed stories, forced migration is taking place all over the world. In Latin America, the forced migration of thousands of Venezuelans (more than 1 million) to other countries is the most relevant in the Region.

### 1. *The thesis of Ontological Monism*

This being the case, when working spatial - geographic and not anthropocentric foundations in the notion of citizenship, the political and democratic scenarios have been constructed under this same dynamic. Proof of this work in the consolidation of the constitutional state of law, which comes with the end of the Second World War, where the concept of citizenship overlaps the sphere of the individual subject to the concept of rights in collaboration, predetermining positive and negative rights. However, the geographical link derived from the *iussanguini* still appears in the demarcation of the criteria of citizenship. An example is the Italian refusal to grant nationality to the children of migrants born in the country.

In this way, from the thesis of the methodological monism lies the formula of exclusion, originated in the appearance of modern States. This formulamimics the apparent contradiction given in the categories of citizens vs non-citizens; situation that can be translated into what is called the principle of the third party, excluded from international law, given in the national-foreign binomial (Quadros, 2012, p. 23).

This principle of the excluded third party in International Law matters in the use of *iussanguini* as a given element to demarcate the attribution of rights, whose consequence is the reduction in rights for the foreigner with respect to the citizen. Take the famous Jane Done case as an example. A seventeen-year-old Central American teenager, who crossed the border into the United States illegally, nicknamed Jane Done, applies in the State of Texas to exercise the constitutional right to abort. Despite having 15 weeks of pregnancy to raise the medical request, the Health Center and the government of Donald Trump prevent her from leaving in order to protect the life of the unborn. The argument of the executive and the health center determined that undocumented minors in federal custody do not have the constitutional right to abort; although the State of Texas allows it, this being an exclusive right of American women. Then, the attorneys of the Union for American Civil Liberties (ACLU) managed to get the State, in the first instance, to allow the young woman to move to a health center to practice abortion. Forty-eight hours later the government takes the case to the Court of Appeals in Washington, arguing their right to defend the birth of the unborn. In the end, the decision of the Court implied granting a term

to the Health Center to find a sponsor that deals with managing the pregnancy of the minor, ending by denying her the constitutional right to abort (BBC, 2017). In the argument that sustains the health center and the Trump administration, characteristics of ontological monism stand out, backed up by the concept of citizenship as follows:

1. The national-foreign binomial demarcates unequal attributions in the exercise of public and political rights.
2. Several fundamental rights are reserved, from the point of view of their ownership and exercise, for citizenship.
3. When constituting the government response, a sovereign exercise it is inferred that sovereignty operates, in turn, as a formula of exclusion in matters of citizenship.

However, as a criticism of the principle of a third party excluded from international law, a framework of homogeneity ensues in the binomial of the formula of national-foreigner exclusion where both categories are preached for or against people. In this way, the citizen condition elevates rights to people over others. This is how Ferrajoli proposes a formal definition in the concept of fundamental rights, attributable and subcategorized according to the status or condition of the subject that claims them.

In this way:

Fundamental rights are all those subjective rights that universally correspond to all human beings inasmuch as they are endowed with the status of persons, citizens or persons with capacity to act; understanding by subjective right any positive or negative expectation ascribed to a subject by a legal norm: and by status the condition of a subject, also provided by a positive legal norm, as suitability budget to be holder of legal situations and / or author of the acts that are exercise of these (Ferrajoli, 2004, p. 40).

According to this formal definition of fundamental rights, in the Jane Done case public rights and political rights would be subtracted. Now, the problem increases when the universe of cases derives from the relationship between fundamental rights, immigration and multiculturalism.

Picking up the two problematic fields that put in check the concept of citizenship (Immigration and multiculturalism) there persists between

them an anchoring point given in the concept of identity. Taylor in Waldron defines identity under the notion of authenticity, seen as the claim or struggle for recognition, which implies respect for what is real for each person, not according to the criterion of acceptance of others (Waldron, 2003, p. 157). In this regard, remember that the idea of citizenship is propagated as a common framework of homogeneity not only legal, but social and cultural. Therefore, although it is the same physical world in which it is inhabited, the way in which it is conceived is diverse. This diversification is the product of the birth of cultures, which enter is a kind of relativistic tension from cultural contact, since, it was given to each culture to predetermine its value system colliding with the possible the type of ethics that human rights contain. The notion of identity in modernity is due to Herder's romanticism in which each person seeks to achieve happiness according to their own vision of the world (Hylland, 2014, p. 53).

The problems of migration and multiculturalism are presented as the limit to the universalist extension of human rights, meanwhile, the term of link between fundamental rights and average people in the condition of citizenship. Exemplary situations occur in cases such as: i) The conflict given in the recognition of rights through cultural identity for the so-called aboriginal peoples and society in general as a major cultural model; Take for example the tensions between the principle of autonomy of indigenous peoples and the limitation to cases of ablation from a Western vision of Human Rights, or the tension in migration policies that have generated debates between the American majority and the authentic American natives; ii) The attribution of public and political rights to the undocumented migrant; iii) The economic migrant, who voluntarily leaves his country of origin in search of employment and economic opportunities; a situation that calls into question universality and demonstrates the fundamentability of the right to work; iv) The refugee who flees from his country of origin due to warlike conflicts, wars, internal conflicts or massive violations of human rights.

## 2. *The case of Venezuelan refugees in Latin America*

As an example in the Region of all these problematic is the current humanitarian crisis has forced thousands of Venezuelans to leave the country. And while Colombia has been the most common destiny, it hasn't been the only one. Other countries in the Region have also received an unprecedented number of migrants from Venezuela. These includes Panama, Ecuador, Chile and Peru.

Of all these Countries, Peru has been by far the most receptive. The president of Peru, Pedro Pablo Kuczynski, took a very firm stance in criticizing Maduro's government during his presidential campaign. And since his elections, has taken different measures to help Venezuelans migrants.

The first of such measure was the Supreme Decree N° 002-2017-IN of January 2th of 2017 which created the Temporary Permanence Permission (PTP in Spanish) which allowed Venezuelans citizens in Peru who have entered the country legally, even those whose visas have expired, to remain in the country for one year, without paying any fines, and also allowed them to work legally in the country<sup>1</sup>. The PTP only extended to those who were in Peru before February 2th of 2017, but was later expanded by a New Decree, N° 023-2017-IN to those who entered the country before July 31th (National Migration Superintendence, 2917).

But the most important measure was the enactment of the Legislative Migrations Decree in 2017, replacing the 1991's foreignness law. The new legislation is one the most progressive in the matter in the whole Region.

The most important innovation of the Decret is the creation of a humanitarian visa, for those that, are not qualified for asylum or refugee status, but are in a condition of vulnerability, facing clear danger to their lives or that require protection against threats or massive violations of their fundamental rights. It also applies to people displaced by natural disasters, victims of human traffic, victims of several and long conflict or that have

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<sup>1</sup> Full text on [busquedas.elperuano.pe/normaslegals/aprueban-lineamientos-para-el-otorgamiento-del-permiso-tempo-decreto.supremo-n-002-2017-in-1469654-3/](https://busquedas.elperuano.pe/normaslegals/aprueban-lineamientos-para-el-otorgamiento-del-permiso-tempo-decreto.supremo-n-002-2017-in-1469654-3/), retrieved 12 November 2018.



leaved countries in the middle of internationally recognized humanitarian crisis<sup>2</sup>.

These measures have received praise by the Inter-American Commission of Human Rights. The inter-American Commission for human rights, in particular, who earlier this year expressed its concerns regarding the situation of Venezuelan migrants, who, due the lack of legal, regular and safe channels had no choice but to turn to clandestine routes to escape from the humanitarian crisis (IACHR, 2017a).

Regarding the PTP, the IACHR consider it a model for the American Region, of how to address the matter. In a press release, the commission expressed that the fast and generalized migratory regularization was the foundation for the protection of migrants, following the principle of non-discrimination (IACHR, 2017b).

The first significant step towards the regularization of Venezuelan migrants came from Colombian Constitutional Court. In the sentence T-073/17 of February 6th, 2017, in a case regarding the closing of a motel near the Venezuelan border, where many Venezuelan women were working as prostitutes, the Court stated that “particular situations of socio-economic nature are certainly the ones that had driven these Venezuelan women to migrate to Colombia to do this kind of activities, seeing in passing the border an opportunity to improve their living conditions<sup>3</sup>.

Even though many Venezuelan women were working as prostitutes in the border regions of Colombia and the fact have been reported by several news sources, this was the first institutional response to the issue.

Undocumented or irregular migrants dedicate to sex work, are facing a tremendous risk, due to the fact that they are not being able to received medical care, or haven't got either the possibility to turn to authorities in cases of physical and sexual violence because of the fear of incarceration, deportation or economic sanctions. They are also more vulnerable to human trafficking.

Taking all these in consideration, the Constitutional Court decided in its sentence, that the Colombian authorities must ensure and integral

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<sup>2</sup>See the Legislative Decree of the President of the Republic of Peru n° 1350, 2017, art. 29.2.

<sup>3</sup> See the Sentence T-073/17 of 6 February 2017 of the Colombian Constitutional Court <https://corte-constitucional.vlex.com.co/vid/676118908>, retrieved 12 November 2018.

protection of the migrants, and in the particular case of Venezuelan sex workers, they must help them to acquire work visas and any other document needed to regulate their migratory situation.

Finally, in July 25th, the Colombian Ministry for Foreign Relations issued the resolution 5797, which created the Special Permanence Permission (PEP in Spanish), a measure similar to the Peruvian PTP, for the Venezuelan nationals residents in Colombia.

The requirements to apply for the PEP is having arrived before the issuing of the Resolution, having entered the country legally, and not having criminal records or an order of deportation. Once emitted, the PEP is valid for 90 days but can be extended for similar periods without exceeding 2 years. And just like the PTP, allows the migrant to perform any legal activity under any regime, although specific regulations still apply<sup>4</sup>.

While this certainly is a transcendental decision and it will help thousands of Venezuelan migrants in Colombia, it is not enough to solve the problem. Since the Resolution only covers those in Colombia before its publication, all those who had entered the country after July 25 cannot apply for the PEP.

Again there are no official records of how many Venezuelan citizens have crossed to Colombia after July 25, but given tendencies in migration, in the last two years and the fact that the humanitarian crisis in Venezuela shows no sign of improving, instead getting more worrying week after week, we can only assume there are many of them.

Issuing a new PEP will be a new palliative to the situation but the same scenario is likely to repeat. A more permanent solution would be the creation of a humanitarian visa, just like Peru did, which would allow any new migrant to request it, regardless the date they entered the country. But as of today, this has not happened.

The humanitarian crisis in Venezuela created by the failure of the government economic policies and the collapse of its democratic institutions, has forced thousands of its citizens to leave the country in an effort to achieve the means to survive.

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<sup>4</sup>See the Resolution 5797 of 2017 of Colombian Ministry For Foreign Relations, through which the Special Permanence permission is created.

Colombia, the most common destination for geographical reasons, and for the links that have tied both nations for centuries, have received in the past years an unprecedented number of Venezuelan migrants, many of them with the hope of settling there, at least until the crisis is over.

In conclusion, while Colombian institutions and authorities were certainly not prepared for this new phenomenon, they have reacted accordingly to the seriousness of the situation, even when bilateral relations were stained by the rhetoric of their Venezuelan counterparts.

But while their intentions have been good, their actions have been insufficient and to this day thousands of Venezuelan migrants still remain living in irregularity situation, without access to legal work and health services, and vulnerable to exploitation, human trafficking and other crimes.

As long as the humanitarian crisis in Venezuela continues, more and more people will leave the country every year. So Colombia and the other countries in the region need to adequate their legislation to the international standards for refugees and for people running away from humanitarian crisis, and take all the actions needed to ensure the protection of the human rights of the migrants.

### *3. Some experimental studies on emerging human rights*

The case of the Venezuelan refugees is only one of the issues related to forced migrations and emerging human rights, which today constitute one of the most sensitive topics not only for political leaders and decision makers, but also for scholars of social sciences and humanities. This issue of the *Journal of Mediterranean Knowledge* pays attention to some little studies subjects of the matter.

In the article *The great distance between the written and the living constitution for migrants and refugees in the Mediterranean territory* of Fernanda Navas-Camargo and Myriam Sepúlveda López, they say and I quote: “Migration is a complex phenomenon involving a wide variety of different factors. There are many reasons that may cause a person to desire to migrate to another country, either temporarily or permanently, like the desire to achieve better education, get access to better health services and

job opportunities, and in general, improving their living standards. On the other hand, there are also many reasons that may force someone to migrate, like wars or armed conflicts, ethnic or religious violence, widespread violations of human rights, and several other situations that imply and imminent threat to live”.

The first of this group is usually referred as “economic migrants” while the second are called “refugees” or “asylum seekers”, each group being subject to different regulations, usually those in the second category are being granted a bigger set of protections than those in the first.

However, the line that separates economic migrants from asylum seekers or refugees is not always as clear as it may seem at first, not only due to theoretical question regarding both definitions (existing many cases in which is difficult to fully determinate if a given person is one or the other) but also due to the fact that in many cases, both groups use the same routes to migrate.

This is the case of the migration across the Mediterranean Sea, one of the most important and concurred migration routes in the world, used by Africans to reach Europe.

In recent years, given the growing migration flows in the Mediterranean territory, the world attention has been placed in the treatment of the public policy for migrants in Europe and the policies of the governments of the Region, which in many cases have raised concerns from human rights activist and organizations.

This because, while most European countries take pride in their efforts to protect human rights, which are usually laid down on countries’ constitution, sometimes it appears that the category of “human” (and therefore holder on inalienable rights) only applied to nationals of that countries and not to migrants.

Of course, many countries have taken major efforts to perform public policies considering the dignity of migrants and have established programs to facilitate their social and political integration in the society of arrival, and protect them from discrimination and exploitation while others have maintained a “closed doors” policies. And many tragedies surrounding this issue, which have taken thousands of lives in the last decades, paint tragic scenes.

Is the treatment of migrants in Europe, either asylum seekers or refugees in accordance to human rights principles established in their constitutions? Because, if governments are responsible for the protection of human rights, then their responsibility can't be understood as only in regards of their citizens.

Victor Martin Fiorino in his article, *From an ethic of hospitality: reflections on democracy, citizenship and migrations*, describes how in the last XX century the world has witnessed several major tragedies and conflicts, such as wars, genocides, famines and natural disasters, with a scale and magnitude that overshadows the ones that have taken place in other history periods and that have affected an unprecedented number of people.

But the last century also saw the emergence of a new paradigm, the notion that all humans have fundamental rights that need to be protected. This improvement of human live and dignity appears as a brilliant light at the end of the dark tunnel that humanity had to cross. Tragedies and suffering of a still recent past have awakened us to the sacredness of human live. And the technology revolution, especially in regards of telecommunications, has helped to develop a more interconnected world and a real sense of global community has strongly started to take roots.

Under this paradigm, all humans are equal regardless of nationality, ethnicity and knowledge, and share growing set of rights, which also mean that States are responsible for the protection and guarantee not only of the rights of its nationals, but of the right of every person in its territory.

In accordance to this, it is necessary to embrace an ethical model based on the recognition of the others as equals in rights and dignity. An ethical model which encourage people to care about others, to express and practice their humanity, helping those who needed the most. Some authors, like the Spanish philosopher Innerarity (2001), call that model 'ethics of hospitality'.

Contemporary times present several conflicts and dangers, especially the threat of terrorism, has led to the reemergence of policies and ideologies advocating for protectionism, nationalism and close frontiers. Since fear births distrust and hate, many politicians have taken advantage of the situation to put forward a xenophobic agenda. (as an example, extremist groups of neo-Nazis, the extreme political parties that have a xenophobic agenda in some European countries).

Today more than ever the world find itself divided between two radically opposed tendencies: one of openness, solidarity and pacific coexistence, and one of isolationism and close borders. Both tendencies have clashed repeatedly in the electoral political arena achieving major victories and failures.

In this scenery, is fundamental to spread the principles and basis of the ethics of hospitality, our only hope to build a more humane world where kindness and collaboration replace selfishness and indifference.

On the other hand, in his article, *I was a stranger and you welcomed me. The papal magisterium and human mobility from Leo XIII to Paul VI (1878-1978)* Francesco Ferrari about Pope views on migration: Throughout the last one hundred years Catholic Church has established itself as one of the major voices in defense of peace, tolerance, freedom and recognition and protection of human rights.

And leading the Catholic Church efforts in these matters has been the Pope, the head and principal voice of the religious institution. The latest Popes in the last century have all distinguished themselves as staunch defenders of human rights and the agenda of the peace and international cooperation.

Being the biggest religion in the world, the social, political and cultural messages and the words of the Pope have served as important guidance and inspiration to millions of Catholics around the world. But his influence doesn't end here, being a well-respected spiritual and moral leader of the international community, many politicians, either Catholics or not.

With many tragedies of varying nature, the world witnessed in the last century, from wars, genocides, and humanitarian crisis, the Church have been more active and constituted as a moral actor than ever before, and the different Popes have criticized and condemned such criminal events.

Documents such as *The Apostolic Constitution Orientaliumdignitatis*, *The Magna Charta of the Migrant Apostolate*, and the *SummiPontificatus* of 1939, the Pope, in words of our author Ferrari, "have dedicated some chapters to the topic of migration, underlying the unbreakable bond of all human beings united within the great family founded on the evangelical truth".

Especially Migration, sometimes a natural consequence of a humanitarian crisis, other times a humanitarian crisis in itself, have also

being an important issue of discussion and reflection for the Church and its leadership.

Actually, as many migratory crisis are unfolding in different continents around the world, the current Pope Francis have repeatedly criticized the inhumanity treatment of migrants, particularly in Europe and the USA, which have produced polarized reactions, many supporting his words, others criticizing his approaches.

But, Pope Francis is certainly not the first Pope to have expressed an opinion on the subject. Facing different problems of their times, the XX century popes shared their views on the topic, specially Pope John Paul II, leaving behind a tradition of thought that shouldn't be ignored.

Luigi di Santo, in his article *Human rights, right of asylum, refugees, migrant's dignity as a common good*, proposes the passage from inter-culture to "intra-culture", as a new space of dialogue between cultures.

Migrations, citing Onorato (1989) are one of the most important factors in the evolution of civilization: they have contributed to the wealth and even the formation of many modern nations.

If the horizon is human-centric, "Everything suggests that a consequent development of human rights in planetary civilization [...] should lead to a restructuring of the national state and a relativization of sovereignty".

The proposal of Di Santo is the passage from a Theory of the National State to a Theory of Human Rights. In this context of rights, the migratory flows, 'rise up' as a new frontier for a real recognition of human rights.

The author emphasizes the dramatic closing of national borders, that affects fundamental rights of migrants, in spaces that have gross violations of humans rights (one of the violations for example, that we see is in the USA where Latin American mothers are deported from the country separating them from their children who have the nationality, thus generating the violation of the principle of family unity) but it also touches nodal points of 'the inviolable rights of the person'.

Thousands of refugees, especially in Europe, that have been recognized with a regular residence, are living in extreme precariousness, in metropolitan areas as in the countryside, forced to endure exploitation in work without respects of his labours rights, sometimes in conditions of labour slavery.

Montanari, cited by Di Santo, emphasizes in the need of a real and deep integration of migrants, in the sense that have to take place through pragmatic techniques, but having this techniques, their roots into a thought that has at its centre an anthropology that grasps the universal structure of the human being.

The presence of 'strategic hostility' cited by Del Lago(1999) for migrants, is very common in societies that receive migrants. In this sense, the social marginality of the migrant becomes a metaphor of the global marginality of the subjects of post-industrial civilization, affirms our author, Di Santo.

On the other hand, Di Santo points out the emerging multicultural identities, which fight for their rights for recognition and equal dignity. The called Europe of rights, profoundly changed since the falling down of the Berlin Wall, in 1989, groups of different nationalities ask to participate as equals in the called philosophical western 'dignity'. For this purpose, national minorities formed a group of a big ethical, ethnic, cultural and religious heterogeneity. In these contexts, Multiculturalism is based on the need for recognition of cultural differences, but preserving the equal dignity of individual cultural identities.

Some authors such as Kymlicka (1996) introduces some types of Cultural rights,that allow groups to preserve their identity, such as the rights of self-government, poli-ethnic rights and representation. According to Galeotti (1994, 2000), it's possible to reconcile the theoretical requests of multiculturalism with the fundamental liberal principles.

Also Di Santo, shows us the linear historical and philosophical steps of the notion of tolerance, in the ideal path from John Locke, through Voltaire up to the preaching of Gandhi's non-violence, is the proper way to understand the problematic question of active recognition of differences and for locating a political-juridical space for the practice of multicultural rights.

Finally, theinracultural vision for the author, calls into question the western concepts of democracy and human rights, rediscovering in this point a common religious roots of the peoples of the Mediterranean, following Giorgio La Pira, but with a new message that gives a real sense of peace with the connection between freedom and responsibility, and the protection of human rights with political pluralism.



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