

The Application of Daniel Sharp’s Publicity Theory of Naturalization and Nationality to the Situation in the Oriental Republic of Uruguay

Andrew Scott Mansfield, Esq., JD, MTS, BA¹

In his 2023 article *Immigration, Naturalization, and the Purpose of Citizenship*², Daniel Sharp investigates the significance of nationality. He argues that immigrants who make a new country their permanent home are often perceived as having an ethical or human-dignity-based claim to become nationals there. In his article, Sharp scrutinizes the concept of “nationality” and explores why it is widely believed that nations should grant permanent immigrants the opportunity to become nationals. The focus of the article is not on the existing positive law or customary norms but instead on the examination of political, philosophical, and moral reasons behind this imperative.

The article does not include any specific information on the two-tiered citizenship system of Uruguay, but the framework presented can be used to review Uruguay’s denial of nationality to one of its two classes of citizens. At the most basic level, Uruguay has two types of citizens, described in its Constitution as “natural citizens” and “legal citizens.” In Uruguay today, natural citizens are the only class considered nationals. Uruguayan legal citizens are forever denied the right to Uruguayan nationality. In this short review, we will analyze the Uruguayan two-tiered citizenship system considering Sharp’s article, and apply the general theory to the specific situation of Uruguayan legal citizens.

¹ Member of the Massachusetts Bar, inactive; University of California at Berkeley School of Law, JD; Harvard Divinity School, MTS; Trinity University, BA

² Sharp, D. (2023). *Immigration, Naturalization, and the Purpose of Citizenship*. *Pacific Philosophical Quarterly*, ••, ••••. DOI: 10.1111/papq.12428. <https://t.co/9oIVmPzJE6>

Sharp begins with a puzzle by asking, “what is the purpose of nationality?” In Uruguay, we find three related puzzles. How can a modern and democratic nation forbid all naturalization and deny Uruguayan nationality to one class of citizens? Further, how can Uruguay be a state party to the statelessness conventions, which demand a pathway to nationality for stateless refugees? Finally, how has this two-tiered nationality system gone almost unnoticed and undiscussed in academic literature and by international organizations?

One answer to why this has gone largely unnoticed in the international legal community is that Uruguay has adopted a vocabulary that confuses those versed in standard international law and customary norms. The Uruguayan terminology is confusing, and a cursory review of Uruguay’s practice might miss the underlying discrimination. Let’s start with this issue and note that Uruguay has the following categories of “inhabitants”:

1. Natural citizens - those born in Uruguay or first- or second-generation children of those born in Uruguay, under certain circumstances.
 - a. A smaller group of natural citizens are referred to by some commentators as *orientales*, a word that originated because of Uruguay’s eastern location. *Orientales* are natural citizens who were born in the territory of Uruguay.
 - b. Only natural citizens can be nationals of Uruguay.
 - c. Only natural citizens, the nationals, have the right to be called Uruguayan, at least on identification documents and passports.
2. Legal citizens – those who qualify under the Uruguayan Constitution for the grant of democratic citizenship rights after a residency of three or five years, depending on marital status.

- a. While most nations would consider these to be “naturalized” citizens, the current legal dogma of Uruguay, at least since 1994, is that legal citizens are not nationals of Uruguay. They will never achieve Uruguayan nationality.
 - b. The nationality of such Uruguayan legal citizens is the “nation of birth” of the individual. When given Uruguayan identification and Uruguayan passports, legal citizens are identified as foreigners in Uruguay, and the assigned nationality is listed as the original nation of birth.³
3. Permanent residents – those who demonstrate they fulfill the statutory requirements to residency in Uruguay as foreigners.
 4. Transitory residents and tourists – those who enter Uruguay to work, remain for a stated duration, or simply arrive as tourists.

With the nomenclature used in Uruguay identified, it is easy to see how other nations might assume that Uruguay’s grant of “citizenship” to immigrants is a grant of nationality. It is not. Uruguay has benefitted from this semantic confusion and remained immune from international review simply because its use of the word “citizenship” makes it appear compliant with international law. While a considerable further investigation into the accuracy, origins, development, and application of this nationality doctrine are merited in other efforts, we now return to Sharp’s overall theory of “citizenship.” To be clear, using Uruguayan idiomatic

³ Mansfield, Andrew Scott (in press) "[The Constitutional Interpretation of Uruguayan Nationality According to the Uruguayan Constitutional Methodology](#)", ILSA Journal of International & Comparative Law: Vol. 29. This paper, pending publication, argues that this schema is not driven by the Uruguayan constitution. To arrive at this classification system, the standard Constitutional interpretative methodology used in Uruguay was not applied. The accuracy of the classification system as an item of historical and legal research is not relevant to this short review but is crucial to Uruguayan legal citizens. For purposes of the normative analysis in this review, only the current Uruguayan legal dogmatic understanding of nationality is necessary. After all, that is the regime under which Uruguayan legal citizens live daily.

vocabulary, this is a theory of “nationality,” as citizenship in Uruguay concerns only the activity of participating in the democratic polity.

Sharp posits an egalitarian theory of nationality that promotes social equality and seeks to limit social hierarchy. His article examines the rights and privileges of nationality. It considers whether individuals who settle, contribute, and wish to remain in a new nation have a moral, philosophical, political, or sociological right to become nationals. Alternatively, one might ask whether there is a reason that a modern state might wish to ensure there is such a right.

Nationality contains two complementary roles. First, nationality encompasses and protects a core set of rights equally provided to all nationals. Second, the grant of the title “national” and the acceptance of a person into a nationality has a social meaning that influences self-conception and provides a source of identity and esteem. Both aspects of nationality are vital. Considering this, there are two ways the grant of nationality can fail. One failure occurs if a group is granted all the rights of nationality without using the term. A second failure occurs if a group is granted the term when the rights are unequal.

The importance of bearing the title “national” to bolster one’s self-conception, identity, and self-confidence is highly relevant to the current nationality crisis in Uruguay. Despite allowing immigrants to obtain “legal citizenship,” Uruguay, as noted, officially maintains, through ministerial publications, legal opinions, identification manuals, and legal texts, that no immigrant may ever become a national of Uruguay. While immigrants holding legal citizenship may acquire Uruguayan passports, these documents identify such individuals as “foreigners” and arbitrarily list the nationality of the legal citizen as that of their country of birth, regardless of their prior national status. In addition, despite ratifying statelessness conventions, Uruguay has publicly

stated that refugees seeking a new life in the country will not be granted nationality and will remain stateless. These official policies and communications propagate a distinction between “nationals,” called natural citizens, and “non-national” or foreign citizens, called legal citizens. The status hierarchy is evident. This situation not only undermines the social meaning and importance of citizenship and nationality but also violates international norms and Uruguay’s treaty obligations.

It is important to note that legal citizens in Uruguay have many, but not all, of the rights and obligations that natural citizens possess. Uruguay, for most purposes, is a forward-looking democracy with a tradition of equality dating to its earliest founding documents. Legal citizens have the same legal protections as nationals and equal access to public goods, such as healthcare, housing assistance, retirement, and labor laws. Citizenship for legal citizens is granted after a waiting period and on stated conditions. After a further waiting period following the acknowledgment of legal citizenship, legal citizens can vote, run for office, and enjoy other democratic citizenship rights. The most significant difference is that the identification documents and passports of Uruguayan legal citizens indicate a “foreign” nationality based on the legal citizens’ nation of birth. Legal texts in Uruguay state that Uruguay cannot assert the rights of diplomatic protection for legal citizens who are, by definition, non-nationals of Uruguay.⁴

⁴ Because Uruguay declares the legal citizen travelling on its passport to be a foreigner and a national of the citizen’s nation of birth, it would be difficult for Uruguay to assert against a nation holding or charging the legal citizen that the “foreigner” in its custody is a “national” of Uruguay simply because Uruguay somehow issues national passports to foreigners. The controlling factual element would certainly be that the travel document in possession of the traveler assigns him or her a nationality that is not Uruguayan and that is printed on the travel document, encoded in the three digit machine-readable code on the travel document, and contained in the RFID chip on the travel document.

According to current constitutional opinions, as mentioned earlier, nationality in Uruguay is determined solely by place of birth. Nationality is allegedly innate, unchangeable, and considered an element of natural law. Nationality may not be renounced.⁵

Sharp's article requires Uruguay, and international scholars and observers, to consider the social meaning of the designation "national" in promoting social equality and preventing the formation of a social hierarchy between citizens. By analyzing various theories on the "right" to the nationality of the permanent state of residency and citizenship, Sharp argues that differences in nationality (or "citizenship") classifications create a status hierarchy that undermines social equality. He highlights the harm this can cause to democratic societies.

This argument is compelling. No democracy should promote or tolerate a social status hierarchy based on immigration status, national origin, or ethnicity among its citizens, regardless of how it is disguised, explained, or allegedly historically justified. Suppose the benefits of nationality were given to natural citizens and legal citizenship equally. In that case, creating a social hierarchy through a system that confers the title "national" on only a specific portion of the citizenry is unnecessary and destabilizing. Developing such a nomenclature of social hierarchy can only hinder a country's ability to foster a just and stable democracy. The distinction would be meaningless and yet discriminatory.

⁵ These assertions are attributed to the prominent and widely esteemed Uruguayan legal scholar Justino Jiménez de Aréchaga (1910-1983). The constitutional underpinning of these conclusions primarily draws from Jiménez de Aréchaga's seminal work, *La Constitución Nacional*, published in 1946. Examining Jiménez de Aréchaga's rationale behind these positions reveals a departure from a strict application of established Uruguayan Constitutional interpretive methodology. These doctrinal opinions are here presented as legal "fact" because they represent the current and predominant doctrinal view of most legal scholars in Uruguay. Recitation does not indicate endorsement, and, in fact, a far different constitutional interpretation is more appropriate, authentic, and just..

Uruguay's singular and misguided fixation on withholding nationality from legal citizens fosters a divisive social hierarchy. The citizenry is divided into two classes: those born in Uruguay and those born outside the country who migrate to Uruguay and seek to become naturalized. This social hierarchy is nurtured and defended with pride by many Uruguayans, who believe that natural citizens have a superior designation as nationals and that only natural citizens can call themselves "Uruguayan." The denial of nationality to legal citizens perpetuates an ethnicity-based mythology that certain citizens have inherited the soul and essence of Uruguay, while others have not and cannot ever absorb that soul.⁶ The discriminatory impacts, social instability, and potential international normative and treaty-based violations inherent in the current Uruguayan nationality doctrine should come under further scrutiny now that Uruguay, after a long period of outward migration, is once again an attractive destination for immigration.

The denial of nationality to all immigrants is perpetuated partly by legal citizens lacking a sufficient voting bloc to demand political change. In Uruguay, legal citizens lack political power due to the country's party-based national electoral system, which renders them unable to effectuate change even after passing through the waiting period to exercise the vote. Individual lawmakers in Uruguay remain insulated from constituent lobbying because party discipline is high, and there is little individual freedom for lawmakers to break from party ranks. Some party

⁶ While it may sound nonsensical and farfetched to an international audience, Uruguayan administrative legal opinions and ministerial decisions continue to defend the denial of nationality to legal citizens on these inherent, natural, or ontological grounds. Nationality is defined in Uruguayan jurisprudence as a mythical or almost sacramental element of spirit that inhabits a person from birth and may not be dislodged or replaced. It is obvious when utilizing historical, constitutional, and international sources to support critical and rigorous academic research that this situation is not only historically inaccurate but also legally unjustified. We have only begun to explore the justification and impacts of this two-tiered nationality system using the broader tools of international legal scholarship. The main question remains whether the Uruguayan constitutional interpretative methodology, as doctrinally developed within Uruguay, was correctly applied or whether the opinions of earlier legal scholars are simply opinions presented with little or no legal support.

leaders, even those who could effectuate change by implementing a top-down legislative agenda, fear that the number of voters who harbor anti-immigrant sentiments and see the expansion of nationality to all citizens as an affront might outnumber the size of the group of legal citizens. In an era of exceptionally close party elections and an approaching five-year election cycle, complex calculations are made based on party power and victory rather than fundamental human rights and international compliance. Additionally, minority rights for non-national legal citizens are not well-protected in Uruguay's Supreme Court, whose decisions have no precedential value and no compulsory impact on Parliament. Uruguay's "amparo" courts are ineffective in safeguarding human rights despite being established for this purpose.⁷ Moreover, Uruguay's legal scholarship has failed to address the fact that the current regime denying nationality was developed and perfected during the tumultuous period of the 1930s and 1940s, characterized by racial politics, nativist movements, and even eugenics. Despite this history, Uruguay has not updated its jurisprudence on the constitutional status of the denial of nationality to legal citizens since at least 1946.⁸

In line with Sharp's predictions, Uruguay's policy of denying nationality to its legal citizens has created a second-class status for a sector of society based on their country of origin. Even though legal citizens are granted almost all rights provided to nationals (subject to the withholding of national status on identification and passports), legal citizens are perpetually

⁷ Both of these topics deserve extensive further research. On the latter point, though in Spanish, Dr. Martin Risso Ferrand has published several papers on the inability of Uruguay's amparo courts to protect human rights. Risso Ferrand, M., Garat, M. P., Rainaldi, S., Guerra, M., Kazarez, M., & Pintos, E. (2020). La acción de amparo en Uruguay. Complemento de investigación. *Revista de Derecho*, (22). <https://doi.org/10.22235/rd.vi22.2246>

⁸ While it is certainly true that many democracies underwent periods of discrimination, racial politics, nativist and exclusionary movements, and even violent racial politics, most such nations no longer use, cite to, and republish the findings in textbooks from the discriminatory era as doctrinal and binding constitutional interpretative truth in memorandums, opinions, and policy positions undertaken by the government today.

stigmatized with the label of a foreigner, identified as foreigners when traveling outside of Uruguay on Uruguayan passports, and subject to treatment as foreigners even on reentry at Uruguayan airports and land borders.

Sharp states that all immigrants who meet the requirements to remain in a new nation and make it home are owed full nationality, both in rights and by the label. He explains that this right is crucial because it affirms the equal status of immigrants in a publicly accessible manner, and it provides a concrete demonstration of the state's commitment to treating immigrants as equals. The argument emphasizes the importance of nationality as a means of recognizing the social value of immigrants and promoting social equality, thus reflecting the state's values of human rights, peace, and democracy. At this moment, the Uruguayan state is perhaps the lead offender in demonstrating to the Uruguayan public that immigrants are not equals. By continuing to defend state action to deny legal citizens Uruguayan nationality, the tone is set for divisive and destructive discrimination against legal citizens as accepted forms of discourse and action.⁹

Sharp argues that achieving equality is not just about treating people equally but also about publicly acknowledging that they are being treated equally. This recognition is vital for creating valuable social equality and ensuring long-term social stability. However, Uruguay's unique and outdated policy of conferring nationality only on one class of "citizens" and labeling the other class of citizens as "foreigners" creates a status hierarchy that undermines this goal. Sharp's article provides a way to conceptualize the harm caused by Uruguay's segregation of

⁹ It is difficult to imagine more visible state action than labelling legal citizens as foreigners on the national identification card of Uruguay, the *cédula*, used routinely for identification and proof of identity in Uruguay. Furthermore, the state, through legal opinions of the Ministry of the Interior and the Ministry of Exterior Relations, has publicly defended and published state guidelines on identifying legal citizens as foreigners devoid of Uruguayan nationality on passports.

immigrants into this non-national citizenship. The harm from the denial of nationality is not to be measured solely based on the substantive denial of rights or lack thereof. The denial of the term “national” on identification documents and passports and the representation of legal citizens as non-Uruguayan foreigners is harmful. Labels matter.

The denial of nationality to some citizens creates division and resentment in Uruguay that will brew and intensify over time. Uruguay is now engaged in a policy of nationality denial that provides no benefit to the state but will allow negative feelings among immigrants to accumulate and become more entrenched. Unresolved grievances for this exclusion will linger and lead to greater dissatisfaction. Finally, immigrant hostility will deepen and potentially undermine social cohesion.

For Uruguay to uphold international norms, fulfill treaty obligations, and be a respected participant in promoting human rights, it should abandon its outdated two-tier citizenship system. The international community may need to pressure the Uruguayan government to remedy this situation once the two-tier citizenship system is understood outside of Uruguay. Sharp's article offers a valuable framework for understanding the harm caused by denying nationality to legal citizens in Uruguay.

Our investigation began with the puzzling question of how Uruguay's two-tiered citizenship system has remained largely unnoticed by the global community. To begin addressing this issue and ensure compliance with international human rights norms, we first needed to establish a clear understanding of Uruguay's unique terminology, which includes terms like “natural citizen,” “oriental,” “national,” and “legal citizen.” Through this process, we discovered that the prevailing legal doctrine in Uruguay denies legal citizens the right to nationality and even

prohibits stateless refugees from obtaining Uruguayan legal citizenship. In Uruguay, citizenship means only what other nations call the right to political participation. Nationality is a separate concept unrelated to citizenship. Immigrants to Uruguay who permanently relocate and make Uruguay home qualify for the status of “legal citizenship,” but this status simply brings with it further delayed right to vote and hold most offices. Finally, in the context of Uruguayan legal citizenship, it is noteworthy that while possessing an Uruguayan passport, the holder is identified as a non-national of Uruguay, resulting in an unusual and seemingly contradictory situation.

Some Uruguayans argue that legal citizenship is “just like” nationality to downplay the impact of the two-tiered system. Other Uruguayans rely on comparing Uruguay to other nations and seek to downplay this discrimination by arguing that Uruguay is “still better” than most nations in how it treats immigrants. Alternatively, legal citizens are accused of “coming to the party late and then complaining about the food and music.” Many Uruguayans believe immigrants should simply be grateful to be in Uruguay, where jobs are available. However, a large part of the population indicates in recent polling that those jobs should be reserved for “Uruguayans.” There is some discussion that denying nationality serves the functional purpose of excluding “the wrong type of immigrant” and should be maintained.¹⁰

Daniel Sharp’s analysis provides a framework with which to rebut these arguments. The harm is the discrimination from denying the term “national” to legal citizens and creating a two-

¹⁰ In other words, the denial of Uruguayan nationality is only a significant issue to immigrants from nations such as Cuba and Venezuela. Immigrants from Europe likely retain dual nationality and have an alternative passport on which to travel. The broken system serves a discriminatory purpose. This is often cloaked in the terminology of security and reducing crime. At times it is hidden in discussion that immigrants from those countries come to Uruguay to obtain citizenship only to then relocate, perhaps illegally, to other nations. This essay does not address the further illogical Uruguayan practice of asserting that legal citizens cannot be Uruguayan nationals because nationality is intrinsic to natural law and is an element of human personhood yet a large portion of Uruguayan nationals are dual nationals, thereby somehow allowing two nationalities to inhabit Uruguayan nationals.

tier citizenship. It matters not whether Uruguay otherwise treats its legal citizens well. Whether Uruguay has the political will before the 2024 election cycle to end this discrimination remains to be seen. In the meantime, the most that can be hoped for is that the international community will hold Uruguay accountable and publicize this denial of nationality and its effects.