How can identity assert a claim to citizenship? In search of a safeguard against statelessness

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ABSTRACT
There are currently 10 million stateless persons in the world, many of which have been rendered stateless due to the state with which they feel a bond of attachment refusing to acknowledge their claim to citizenship. The "genuine link" required for having access to citizenship is currently determined by certain principles. This article explores how identity can help assert claims to citizenship, and whether this can serve as a safeguard against statelessness.

Keywords
Nationality, citizenship, statelessness, genuine link theory

INTRODUCTION
Human beings have an inherent need to belong, to identify, and to form bonds of attachment with people and places. It cannot be denied that "everyone has genuine and effective links" (Staples, 2012) with a state; a person will always feel a connection with at least one country. This bond between an individual and a state is normally affirmed through nationality. Nationality (or citizenship) acts as a membership status (Bauböck, 2006), since it gives an individual full membership into a community (Carens, 2005). By a definition provided by the International Court of Justice, nationality is the "legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments" (Nottebohm case, 1955) between an individual and a state. Based on this definition, it could be assumed that every human being would have the nationality of at least country since every person has "a genuine connection" with at least one country. This is part of our identities as human beings. However, this is not the case, as over 10 million people worldwide (according to UNHCR figures) suffer from a legal phenomenon known as statelessness. The role that identity could potentially play in finding a solution for—or at least safeguards against—statelessness has not been discussed in academic research on statelessness.

This paper seeks to determine how identity can assert a claim to nationality and serve as a safeguard against statelessness. To achieve this, the two principles for ascribing nationality at birth, *jus soli* and *jus sanguinis*, will be explored. This will be followed by an explanation of the Genuine Link Theory, and the *jus domicili* and *jus connectionis* principles, which are two principles that encompass identity, connections, residence and can help explain a person's genuine bond a state. 3 identity theories that relate to place and group belonging will also be explored. Identity is a very complex cognitive structure

that is influenced by various aspects and these theories can provide insight into what some of these aspects can be. Finally, the theories of identity and citizenship previously discussed will be applied to 3 stateless groups (ethnic Russians in Estonia the Roma in Italy, and the Rohingya in Myanmar, formerly Burma). This paper is based on a review of literature.

KEY CONCEPTS
Statelessness
Statelessness refers to the condition of an individual who is "not considered as a national by any State under the operation of its law" (Article 1, 1954 Convention Relating to the Status of Stateless Persons). People who qualify as stateless under this definition are referred to as de *jure* stateless. Regardless of how a person becomes stateless, the negative effects of being statelessness are significant in the lives of those affected (UNHCR, 2002).

Jus soli & Jus sanguinis
International law provides that each state can determine, through domestic law, who its citizens are (art 1, Convention on Certain Questions Relating to the Conflict of Nationality Law, 1930). Most states do not apply the *jus soli* and *jus sanguinis* principles on an equal basis, but rather have a tendency towards one or the other for the ascription of nationality (Batchelor, 1998).

The *jus soli* principle follows the idea that citizenship is acquired at the time of birth by virtue of being born in a state's territory (van Waas, 2008). Since the individual is likely to grow up and live in the place where he/she was born, it is expected that throughout his/her life, this person will assimilate the culture and habits of his/her place of birth, and will eventually become merged into the community (van Waas, 2008). In turn, his surroundings will help shape this person's identity and he/she will develop a sense of belonging and become attached to this place. Therefore, place of birth, which is expected to become the place where this person lives for most of his/her life, will be the place that has the strongest influence in this person's life and identity. On the other hand, the *jus sanguinis* principle recognizes descent by as the basis for attribution of citizenship (van Waas, 2008). Citizenship is granted to an individual if at the time of birth one or both of his/her parents are citizens of the state (van Waas, 2008). In other words, citizenship is passed down through the bloodline, in the same manner as an inheritance: from one generation to the next. This is due to the fact that it is expected that the newborn child will inherit all his/her connections through his/her parents.

However, these principles, according to Gibney "ignore the other important moral claims to citizenship" (Gibney, 2009), mainly those claims based on ties formed over time with the country where the person has been residing. Indeed, it can be said that through these principles the condition of 'feeling like a citizen' is not always properly accounted for. Furthermore, there is the concern that acquisition of citizenship at birth based solely on these two principles can make the attribution of citizenship seem based on caprice or on the luck of birth, resulting in arbitrary citizenship allocation (Gibney, UNDP, 2009).

Jus Domicilii and *Jus Connectionis*
The principle of *jus domicilii* is the most common way for individuals who have lived in a country for a certain amount of time to obtain its nationality (Batchelor, 1998). This is known as naturalization. A key tenet of this principle is that "it is the persons living in the state who take part in shaping its experiences…and accordingly, they are the ones who are primarily entitled to become full members of it" (Zilberschats, 2002). Regardless of legal status, it is impossible to say that an individual who has lived in a country for a long period of time has not become a member of that society. After creating a home in a place, a person's life inevitably becomes intertwined with the environment and with the lives of others living in the same area (Carens, 2005). This applies perfectly to stateless people: they live within the borders of a state and have often lived most, if not their entire lives, in the same place. However, naturalization is not always easily accessible to them.

An interesting prospect related to identity and citizenship is the principle of *jus connectionis.* According to Hudson (1952), the principle of *jus connectionis* or the right of attachment, was "superior to those of *jus sanguinis* or *jus soli*, for it advocates the citizenship of the state to which the individual is proved to be most closely attached in his/her conditions in life." (Hudson, 1952; Batchelor, 1998) The principle of *jus connectionis* is also based on residence: by living in a place for a prolonged amount of time, the person develops connections with said place. *Jus connectionis* can also include the connection a child has with its mother (Batchelor, 1998), since through their mother, children learn about their religion, culture, language, and so on. It is reasonable to assume that the child will develop its identity influenced by his/her mother, and thus is very likely to inherit connections with his/her mother's homeland.

Genuine Link Theory
In the Nottebohm case, the International Court of Justice concluded that the existence of a "genuine link" is a requisite for a state to be entitled to exercise protection over its nationals against other states (Hailbronner, 2006; Nottebohm case, ICJ, 1955). The ICJ established that there was an absence of any bond of attachment between Mr. Nottebohm and Liechtenstein: his naturalization was not based on a *genuine* connection with Liechtenstein. This became known as the Genuine Link Theory. Therefore, this theory takes into account facts of attachment rather than only place of birth or descent in order to determine whether a true connection exists between an individual and a state.

ANALYSIS
Identity development

Identity is shaped by various factors combined: genetics, the society an individual lives in, his/her culture and the environment that surrounds him/her, among others (Lappegard Hauge, 2007). According to Twigger Ross and Uzzell (1996), all aspects of identity will—to some extent—be related to place. Thus, identity certainly derives from a person's life in close relation to a territory. Places play a key role in the achievement of biological, cultural, psychological and social needs of a person throughout his/her life (Weiner, 2003). However, it is through being inhabited that places become meaningful environments for people; this plays a role in identity formation (Weiner, 2003). In environmental psychology, three identity theories have been used in order to explain the impact place and group belonging have on identity. These theories are: the Social Identity Theory, Place-Identity Theory and the Identity-Process Theory. It should be highlighted that the stateless have limited choices, particularly in relation to movement, and consequently they often remain in one place and avoid relocation. In addition to their limited scope of choices, it should be noted that the identities of stateless people are frequently under threat. This makes the stateless particularly interesting to analyze.

The Social Identity Theory states that people create perceptions of themselves and others based on abstract social categories, and these perceptions then become part of their self-concepts. Social Identity is the "individual's knowledge of belonging to certain social groups, as well as the emotions and values this conveys on him or her." (Lappegard Hauge, 2007) People often define themselves using qualities that characterize the groups to which they belong. Therefore, social identity heavily depends on the qualities of the groups we belong to, like culture, religion, family, etc. (Lappegard Hauge, 2007). Tajfel suggested that the groups which people belong to act as a source of pride and self-esteem, since groups give us a sense of belonging in society (McLeod, 2008). According to Twigger-Ross (2003), this theory is "transferable" and can also include aspects of place.

Social Identity Theory applies to all 3 stateless groups chosen for this study, but in a different way from the other two theories which will be discussed in this section. The Social Identity Theory not only explains how people develop an identity, but also explains the dynamics between the in-group (the citizens) and the out-group (the stateless). Exclusion can influence identity development by making individuals aware of their identities: they are excluded even though they identify, and thus their identity is threatened. Since they identify with their respective homelands and they have genuine links there, being part of the citizenry is very important for them and for their identity and positive self-perceptions. Conversely, statelessness has a negative effect.

In the case of the stateless Russians from Estonia, Social Identity Theory is present in the nature of the citizenship policy in the country (Vetik, 2011). This policy was developed in order to ensure that ethnic Russians are excluded from the citizenry. In their eyes, including them

in the citizenry would probably mean accepting that Estonia is not only ethnically Estonian but also partially Russian. In the case of the Roma who live in Italy, the main pointer towards the application of this theory is the way in which the Roma are perceived. They are seen as immigrants and nomads who are just passing by who do not belong. Finally, the Social Identity Theory can also be found in the case of the Rohingya. They are frequently called "Bengali" by the local population and authorities, a way of making it clear that they are foreign immigrants from Bangladesh and are "resident foreigners" (HRW, 2012). In the eyes of the Rakhine majority, the Rohingya presence is a challenge to their own right of autonomy and their identity (Chan, 2005). Despite their differences with the majority, stateless individuals belonging to these groups identify as Estonian, Italian, and Burmese, and this contributes to their positive self-perception despite being excluded in reality.

Place-Identity Theory refers to the way in which place contributes to a person's identity "through the meanings and values symbolized by place features." (Lappegard Hauge, 2007) Aspects of identity related to place contribute to the forming of place-identity, which encompasses place-attachment as well. Place-Identity is often understood as "an individual's strong emotional attachment to particular places or settings" (Proshansky, Abbe & Kaminoff, 1983). According to Proshansky et al. (1983), individuals define who they are in terms of their ties to their homes, including neighborhood, city, and homeland. Place-identity describes the relationship between a person and the physical world, setting place-identity alongside self-identity (Weiner, 2003) rather than within it. Through personal attachment to a place, a person develops a sense of belonging and the feeling of having a purpose, giving meaning to his/her life (Proshansky, Abbe & Kaminoff, 1983).

It should also be pointed out that Place-Identity Theory shares some similarities with the *jus soli* principle, since *jus soli* presumes that a person has—or will develop—a genuine connection on the place where said person is born, since the person is most likely going to spend most of his/her life living there. Citizenship is desired by stateless people not only because citizenship would give them citizen rights and a legitimate presence in the country, but also because citizenship is an acknowledgment of their belonging to the place they call home. "Feeling like a citizen" is rarely taken into account in citizenship theories, since the focus is on the relationship of national identity with the state rather than on a person's attachment to place (Fein, 2007).

Applying this theory, there are many ethnic Russian Estonians who can obtain Russian nationality, however, many refuse on the principle that Estonia is their country (Fein, 2007). If they had no place attachment to Estonia, they would not refuse the citizenship of another country. In the case of the Roma in Italy, many of them are very attached to Italy, which is the place where they were born and/or have spent most, if not their entire lives. Many have never left their hometowns, despite living in difficult socio-economic conditions there. Italy is their home and they have place-attachment to Italy. The Rohingya live in a very unstable situation: they are constantly under threat of violence and discrimination. Many of them have been forced to flee for their lives to neighboring Bangladesh where they live in refugee camps. However, their feeling of being Burmese and their desire to live in Myanmar remains strong (Dummett, 2007). Despite accusations by the Rakhine population, the Rohingya feel Burmese and are attached to their villages and to the country.

Finally, according to the Identity Process Theory, "aspects of identity derived from places where we belong arise because places have symbols that have meaning and significance to us." (Lappegard Hauge, 2007) Places keep memories, and because places are located in the socio-historical environment, they represent social memories, making places important not only for the individual but for society as well. Breakwell's identity process model proposes 3 principles of identity: distinctiveness, continuity, and self-esteem, which guide the processes of identity development (Breakwell, 1986). Identity processes have a dynamic relationship with the place where people live, and the development and maintenance of these identity processes happens when interactions with the environment occur. Thus, the individual's environment becomes an important part of identity rather than simply a setting for identity to develop (Tigger Ross & Uzzell, 1996). Furthermore, Identity Process Theory was developed partly in order to examine threats to identity since when identity is threatened, the person becomes more aware of it (Proshansky, Abbe & Kaminoff, 1983). Stateless people's identity is constantly being threatened by, for example, governments who claim they do not belong in their country and should find a home elsewhere, which in turn makes them highly aware of their identity.

Despite Russia being their ancestral land, many stateless ethnic Russians living in Estonia feel no attachment to Russia. These individuals have lived in Estonia for long periods of time, and during this time Estonia became the place where their past memories are kept and future ones created. Obtaining Estonian citizenship would reinforce their identities, since the interactions between their environment and their identity processes keep a positive self-perception and a healthy strong sense of identity. This is true for both the Roma and the Rohingya as well. In the case of the Roma, their possibility of naturalizing as citizens of the successor states of the Former Yugoslavia would have the same consequences on their identity as the stateless ethnic Russians. Perhaps some Roma were formally citizens of the Former Yugoslavia, but the country no longer exists, and their identity had to adapt to these changes. Their identities are constantly being threatened by the amount of changes, and perhaps for them the one identity they can hold on to is the one they developed in relation to the place where they live: Italy. Finally, the Rohingya constantly face the threat to identity by having to fight back the accusations that they are actually Bengali. They identify as Muslim Myanmarese people, since they feel that their country is Myanmar and not Bangladesh, as being called Bengali suggests.

CONCLUSION
Nationality requires a connection, a social fact of attachment, to be properly attributed to an individual.

These facts of attachment are not tangible objects we can look at; they are embedded in a person's identity. The theories of identity that have been examined in this paper can give us a small glimpse into a person's identity: they can help us understand how they develop, what influences their development and what maintains them. The principles of *jus soli* and *jus sanguinis* assume that the genuine link can be proven to exist through birth and/or descent, since they assume that a person's identity is linked with one's place of birth and presumed place of long-term residence, or with one's ancestry. Identity therefore can be said to play the role of being the target of nationality policies: these policies aim at determining whether there is a genuine link between individual and state and, given that a link exist, attribute nationality to an individual. However, these principles fail at ensuring that *every* human being has a nationality.

This analysis, through the lens of identity, has shown that *jus soli* and *jus sanguinis* are not always successful in reflecting a genuine link between individual and state. If a principle like *jus connectionis,* which take into account elements of identity, could be implemented as a safeguard against statelessness for situations where *jus soli* and *jus sanguinis* are not enough to prove a genuine link, this would mean that stateless persons would be able to defend their claims to citizenship through their identity. This would encompass their connections, their bonds of attachment, their feelings of home, and their belonging to their homeland. This would mean that states would be unable to deny citizenship to those who have a genuine link with them. Therefore, it can be concluded that an alternative based on identity could serve as a safeguard against statelessness where *jus soli* and *jus sanguinis* fail to prevent people from becoming stateless. Further research, especially empirical research, is necessary in order to ascertain whether these results are generalizable to the entire global stateless population, and further research is necessary in order to establish how this could be translated into law.

ROLE OF THE STUDENT
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