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REPORT ON CITIZENSHIP LAW: COLOMBIA

Cristina Escobar

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European University Institute, Florence
Robert Schuman Centre for Advanced Studies
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Report on Citizenship Law

Colombia

Cristina Escobar

1. Introduction

Colombia's citizenship regime has been shaped by the country's history as a Spanish colony, its unsuccessful efforts to attract immigrants to its shores as other Latin American countries did, and internal conflicts that influenced migration and nationalisation policies. While the first aspect makes Colombia similar to other countries in the region, the latter two are more idiosyncratic. Colombia inherited from the first Spanish constitution of 1812 the distinction between nationality (*nacionalidad*) and citizenship (*ciudadanía*), and it still preserves this distinction. Colombia also has bilateral nationality agreements with Spain, which were defined in the late twentieth century and may be interpreted as part of the colonial heritage. The Colombian citizenship regime was also influenced by the long and arduous conflicts between Liberals and Conservatives and the difficult process of state building. These conflicts, along with the historically low rates of immigration, even during the peak of Latin American immigration at the turn of the twentieth century, helped create a citizenship regime that stands in contrast to most other states in the Americas. This regime, which today is based on the 1991 Constitution, does not attribute citizenship (*nationality*) automatically by *ius soli* at birth but imposes *ius sanguinis* and *ius domicili* conditions for persons born abroad and persons born in Colombia of foreign parents, respectively. The forced emigration, a product of internal conflict, and voluntary emigration, part of a more general Latin American and global trend, also had implications for citizenship laws, which guarantee citizenship (*nationality*) by descent (*ius sanguinis*) to the offspring of those born abroad and tolerate dual citizenship (*doble nacionalidad*).

In the 1991 Colombian Constitution, all those who possess the Colombian nationality are referred to as nationals (*nacionales*). They include those who were born in the country (*naturales*) and those who acquired nationality by naturalisation (*adopción*). Nationality is a necessary condition for becoming a citizen (*ciudadano*), to which nationals are entitled when they achieve the age of majority, at eighteen years of age. Citizenship (*ciudadanía*) entitles nationals to exercise the right to vote, to be elected and to occupy public offices [art. 98]. In contrast to nationality (*nacionalidad*), of which Colombians by birth cannot be deprived, citizenship (*ciudadanía*) can be suspended by the judiciary or by a law [art. 96 & 98].¹

¹ In order to facilitate systematic comparative analysis across other countries covered by the EUDO Observatory on CITIZENSHIP, the present report uses the term 'citizenship' and nationality interchangeably. However, in order to maintain the distinction made in the Colombian Constitution and

2. Historical Background

Territory and membership criteria at the time of independence

At the time of the foundation of the state, birth in the territory was the main criterion for the attribution of citizenship (*nacionalidad*) in Colombia, as it was in most of newly independent American states. Soon after, however, the Constitution also introduced an element of *ius sanguinis* in the law. The first Constitution after independence from Spain – in which Colombia is defined as a unified nation state, the Republic of Colombia (1821), also known as Gran Colombia (including what is today Ecuador, Colombia, Panamá and Venezuela) –, was enacted by the congress of Cúcuta in 1821.² The Cúcuta constitution, following the *ius soli* principle, defined as Colombians all free men born in the territory and their descendants, those who were already settled in Colombia, provided that they remained faithful to the cause of independence, and ‘those born abroad who were naturalised’.³ The principle of *ius sanguinis* was first introduced in the Constitution of 1830 (which was only in force for a few years as a result of the breakdown of Gran Colombia), in order to include as Colombians not only those free men born in the territory but also those born abroad of Colombian parents, provided that they resided in the Republic and formally declared to the authorities their intention to become Colombian.⁴ The 1830 Constitution already distinguished two modes of becoming Colombian: by birth or by naturalisation, a distinction that would persist until the 1991 constitution, currently in force.⁵ According to the 1830 Constitution, Colombians by birth included free men born in the territory and their children, even when born abroad, and freedmen. Colombians by naturalisation were a) those who were not born in the territory but were resident there at the time of the ‘transformation of each town of the republic where they resided’ and complied with the Constitution of 1811 (one of the initial provincial constitutions in the transition period); b) those foreigners who obtained a naturalisation card; and c) those who served with honour for the independence of the Republic.⁶

The principle of *ius sanguinis* gained even more importance in the 1832 Constitution enacted after Gran Colombia was partitioned - Venezuela and Ecuador separated in 1830 - and renamed New Granada. This emphasis on descent, in contrast to most other countries in Latin America, characterises Colombian legislation on citizenship (*nacionalidad*) until the present day, with the exception of a hiatus during the Liberal rule of the mid-nineteenth century. Besides all those born in the territory before independence, the 1832 Constitution added a descent requirement: from then on, to be considered a national by birth, it was required not only to be born in the

the law, the term citizenship is systematically followed by the corresponding term in Spanish: *nacionalidad*, or *ciudadanía*.

² The previous local constitutions enacted in various provinces after the start of the independence struggle from Spain in 1810 did not address citizenship (*nacionalidad*), Mantilla, 1995:23-25.

³ Constitution of the Republic of Colombia, 1821, art. 1, 2, and 3.

⁴ Constitution of the Republic of Colombia, 1830, art. 10 (2).

⁵ The constitution is not clear in regard to the classification of those born abroad of Colombian parents, since they are mentioned as Colombians by birth art. 9 (1), but they are mentioned again, as Colombians by naturalisation, art. 10 (2), when the conditions of residence and petition to an authority are defined.

⁶ Constitution of the Republic of Colombia, 1830, art. 10 (1, 3, 4).

territory, as in the previous constitutions, but also to be a descendant of Granadian nationals, either by birth or by naturalisation.⁷ The constitution did grant citizenship (*nacionalidad*) by birth to those born in the territory of foreign parents, but it set the condition of domicile in the territory.⁸ The *ius sanguinis* provision that extended citizenship (*nacionalidad*) to those born abroad of national parents was maintained with the residence and declaration of interest requirements. The latter conditions did not apply to those who were born abroad of parents residing outside of the territory while serving the Republic or as a result of their ‘love for independence or freedom’, whose children were to be considered as nationals by birth.⁹ Similar to the previous one, the Constitution of 1832 granted citizenship (*nacionalidad*) by naturalisation to those who, albeit born outside of New Granada, resided there at the time of independence and complied with the 1821 Constitution.¹⁰ The constitution also included various articles clarifying citizenship-related issues within the new territorial limits of the state. Hence, the 1832 Constitution considered as Granadians by naturalisation: all persons born outside the New Granada who naturalised, as well as those who had already naturalised in Colombia (before the partition), if they currently resided in the New Granada or intended to do so, and if they ‘remained faithful to the cause of independence.’¹¹ The 1832 Constitution also considered as Granadians by naturalisation all those born in ‘Colombian territory’ - referring to the previous large territory of the Gran Colombia- but outside of New Granada and who had settled or expected to settle in New Granada.¹² As explained below, this was the first constitution to grant citizenship status (*nacionalidad*) to freedmen and the children of slave women.¹³ Albeit with more pronounced authoritarian and centralist elements, the Constitution of 1843 retained the basic citizenship rules of the one that preceded it.

The principle of *ius soli* temporarily regained its place as the main criterion for the acquisition of citizenship (*nacionalidad*) during the years of liberal and federal rule of the mid-nineteenth century, that is to say the 1853, 1858 and 1863 constitutions. The Constitution of 1853 considered as Granadians ‘all individuals born in the territory of the New Granada and their descendants’, eliminating the requirement of having Granadian parents (*ius sanguinis*), which had been present in the previous two constitutions.¹⁴ The 1863 Constitution of what had then become the United States of Colombia explicitly stated that all individuals born in the territory are Colombians, even when their parents are foreigners. In this case, however, the requirement was the domicile of the parents.¹⁵ While *ius soli* became the main principle, the *ius sanguinis* provision that extended citizenship (*nacionalidad*) to those born abroad of national parents was maintained.¹⁶ The 1863 Constitution also granted citizenship (*nacionalidad*) to any person born in the Hispanic Republics, if they resided in the territory and expressed their interest in becoming Colombian to the

⁷ Constitution of the State of New Granada, 1832, art. 5 (1 & 2).

⁸ *Ibid.* art. 4(4).

⁹ *Ibid.* art. 6(2) and 5(3).

¹⁰ *Ibid.* art. 6 (1).

¹¹ *Ibid.* art. 6 (3).

¹² *Ibid.* art. 6(4).

¹³ *Ibid.* art. 5(5 & 6).

¹⁴ Political Constitution of the New Granada, 1853 art. 2(1).

¹⁵ Political Constitution of the United States of Colombia, 1863 art. 31(1).

¹⁶ *Ibid.* art. 31(2).

competent authority.¹⁷ This privilege offered to the Hispanic Republics was preserved in subsequent constitutions.¹⁸

'Regeneration' and national concerns

The regime, called 'Regeneración' ('Regeneration'), which emerged as a reaction to the federal, liberal and anti-clerical governments of the mid-nineteenth century, enacted a new centralist constitution (1886) with the purpose of reconstructing a fractured country – geographically, politically and culturally – into a unitary nation based on the Catholic religion and the Castilian language.¹⁹ While religion became central to the 'regeneration' project and Colombia signed an agreement with the Vatican in 1887, the constitution, which lasted for 105 years, ensured that no individual would be compelled to profess the national religion and permitted the exercise of other religions as long as they were not contrary to the morals of the Christian religion or to the laws of the Republic [arts 38, 39 & 40]. The 1886 Constitution reintroduced an element of descent restricting the attribution of citizenship (*nacionalidad*) to those born in the territory of what had become the Republic of Colombia. The constitution drew a distinction between three types of Colombian nationals (*nacionales Colombianos*): those by birth (*naturales*), those by origin and vicinity (*origen y vecindad*) and those by naturalisation (*adopción*). Colombians by birth included 'the naturals from Colombia of one of two kinds: either born of a Colombian parent, or offspring of foreigners who had domicile in the Republic'. Nationals by origin and vicinity included offspring of a Colombian mother or father born abroad but residents of Colombia, and Hispano-Americans who asked, in their municipalities, to be considered Colombians. The religious influence in the constitution also cast a new light on the *ius sanguinis* requirement by reserving the extension of citizenship (*nacionalidad*) to 'legitimate children' born abroad of Colombian parents later settled in Colombian territory.²⁰ Following the return to power of the Liberals, this provision was changed (1936) and all children of Colombian parents, independently of the marriage status of their parents, were granted the right to acquire Colombian citizenship (*nacionalidad*).²¹

Even though the Constitution of 1843 already established the loss of citizenship upon naturalising in a foreign country, the Constitution of 1863 was the first to explicitly provide for the loss of Colombian citizenship (*nacionalidad*) as a result of establishing domicile and acquiring citizenship (*nacionalidad*) in another country.²² This condition for loss of citizenship was retained in the 1886 Constitution²³ and persisted until the 1991 Constitution, as described below.

¹⁷ Constitution of the United States of Colombia 1963, art. 31 (4).

¹⁸ The Colombian Political Constitution of 1886, article 8 (2b), refers to Hispanoamericans and Brazilians. The 1991 constitution, article 96 (2b) changed the reference to Latin American and Caribbean individuals, in agreements with principles of reciprocity.

¹⁹ Arango 2002, Laguado 2004. The Colombian 'Regeneration' included an 'original formula' in Latin America because it 'integrated principles of economic liberalism, Bourbon interventionism, antimodernism in the style of Pius IX, and a Hispanophile cultural nationalism' (Palacios 2003: 55).

²⁰ Colombian Political Constitution 1886, art. 8(1).

²¹ Legislative Act 1 de 1936, art. 3.

²² Constitution of the United States of Colombia 1963, art. 32.

²³ Article 9.

Indigenous populations, women and slaves

In the first four constitutions after independence, that is in 1821, 1830, 1832 and 1843, the status of Colombian national – Granadian in 1843 – was reserved to men. This changed with the Liberal regimes of the mid-nineteenth century. The 1853 Constitution and all the constitutions that have followed until today eliminated the sex distinction in the definition of citizenship (*nacionalidad*). It is important to remember, however, that all these constitutions differentiate between the status of belonging to the state (*nacionalidad*), being ‘Granadian’ or ‘Colombian’, from the status that grants its holder political rights (*ciudadanía*).²⁴

The elites who were involved in the drafting of the first constitution and set the rule of allocation of citizenship (*nacionalidad*) in the newly independent state, defined the status and rights of two collectivities: the indigenous population and the slaves. Although indigenous persons were immediately considered as Colombian nationals by the new state, the rights they were granted, and those they subsequently struggled for, were often not respected.²⁵

Slaves (approx. 4.6% of the population), on the contrary, were excluded from citizenship (*nacionalidad*) and, therefore, from their political rights (*ciudadanía*) in the first constitution (1821) cited above. Abolition had gained support among some political elites influenced not only by the Enlightenment ideas that had accompanied the struggle for independence but also by the war itself, which had demanded the recruitment of slaves.²⁶ Instead of a drastic abolition of slavery, which some, such as Bolívar,²⁷ advocated, the congress of Cúcuta opted for its gradual elimination with a law of free birth - the law required the master to support the child until the age of eighteen, receiving his or her services in exchange. The law also provided for the creation of a state fund that would compensate the owners for the liberation of adult slaves.²⁸ Many aspects of the law were not enforced: in the case of the free born, because they were not properly registered or the master complained about the expenses incurred for raising them; in the case of the freed slaves, either because the taxes for the fund were not collected or the monies were misused so that few slaves were actually freed through this mechanism. Nonetheless, the status of ‘*liberto*’ (freed slave) was recognised and included in the 1830 Constitution as a Colombian national, if born in Colombian territory.²⁹ In the subsequent 1832 and 1843 Constitutions, not only were the ‘*libertos*’ born in Colombian territory considered nationals but also the

²⁴ Women did not achieve this status of citizenship (*ciudadanía*) until 1945 and it was still not enough to give them the vote. Female participation in elections was not ruled until 1954 and not exercised for the first time until 1957 (Coker 2000: 703 & 706).

²⁵ See discussion on indigenous’ rights during the initial decades of the republic in Bushnell, 1954:74-82, and examples of their struggles for rights in Sanders 2003.

²⁶ Bushnell 1954: 168-169.

²⁷ Simon Bolívar was a military leader and politician born in Caracas who led the war of independence against Spain and liberated the territories that today comprise Venezuela, Colombia, Ecuador, Panamá and Peru. For more information, see Arana, 2013.

²⁸ Law, 21 of July of 1821 ‘sobre libertad de partos, manumisión y abolición del tráfico de esclavos’ [concerning free birth, manumission and abolition of slave traffic].

²⁹ Constitution of the Republic of Colombia, 1830, art. 9 (2).

slave women's children born free, as defined by the law.³⁰ The liberal federal government finally eliminated slavery in 1852³¹, thereby rendering the distinction between slaves and the rest of the population obsolete. Hence, the Constitution of 1853, which explicitly states that there are no – and shall be no – slaves in the New Granada, considers as Granadian ‘all individuals born in the territory and their descendants.’³²

Immigration

Immigration projects, as opposed to immigration per se, have been a constant concern of the state since independence: in spite of successive discussions and legislation seeking to attract ‘suitable’ populations, successive plans largely failed to produce the expected outcome as few immigrants ever settled in Colombia. Immigration policy in Gran Colombia was based on the idea that Colombia had a wealth of resources that had not been exploited until then as a result of the hostility that Spain had maintained towards foreigners. Consequently, the delegates in Cúcuta issued a very generous law of naturalisation and invited foreigners to form ‘one family with Colombians’ (Bushnell 1954: 143). Under an initial decree law, foreigners were allowed to naturalise and enjoy the same rights and prerogatives as Colombians born in the territory, provided they renounced hereditary titles or ties to other countries and resided in the country for three consecutive years. Marrying a Colombian, buying a rural property or bringing capital reduced the minimum period of residence required. Women and children younger than 21 years were naturalised if their husband or father, respectively, was a Colombian national.³³ Frustrated by the very low response to the initial immigration law and increasingly concerned that Spanish and Haitian agents would nurture a ‘race warfare’ in the eastern plains where racial tensions had resulted in some violent outbreaks, the Colombian congress issued a new decree promoting the immigration of Europeans and North Americans, under the assumption that they would strengthen the white minority (Bushnell 1954: 144). In this decree, the state offered immigrants land on very easy terms and granted citizenship (*nacionalidad*) on arrival to those foreigners who took part in these colonizing programmes.³⁴ Once colonies were formed, they would enjoy tax-exemptions and local self-government privileges. In spite of these rather generous schemes, few persons immigrated and those who did were not interested in becoming Colombians (Bushnell 1954: 145-146).

The naturalisation law was reformed in two other occasions in the nineteenth century, in the wake of renewed efforts to stimulate immigration, which however proved equally unsuccessful. A new law in 1843 further facilitated naturalisation by giving power to the executive to offer naturalisation cards to anyone who requested them, independently of immigrants’ capital, land property, period of residence or participation in the colonizing schemes, provided for in the previous naturalisation

³⁰ Constitution of the State of New Granada, 1832, art. 5(6); Constitution of the Republic of New Granada, 1843, art. 5 (4 and 5). The 1843 constitution considers the ‘*libertos*’ and free children of slave women to be citizens by naturalisation, in contrast to the 1830 which considers them citizens by birth.

³¹ Law 2 1851.

³² Constitution of the Republic of New Granada, 1853, arts. 2 and 6.

³³ Law 3 September 1821, art 1, 3 & 4 (*Cuerpo de Leyes* 1840: 45).

³⁴ Decree 11 June 1823.

law.³⁵ This law was followed by a new immigration plan, which involved not only state land to be distributed among the incomers but also a whole set of mechanisms in support of the immigration project, from promotional campaigns and active involvement of the Colombian consulates, to welcoming teams in ports and localities.³⁶ The ideal of the European immigrant as an economic engine and civilising agent with power to ‘whiten’ the population lay at the core of the naturalisation component of the immigration plan, which was meant to assure a rapid assimilation of immigrants into society. The law also invited Asians, though Europeans remained the most coveted immigrants (Martínez 1997: 14-17). The law made naturalisation not only quick and easy but also attractive to immigrants. Immigrants who naturalised were to be exempted for twenty years from military service (except in case of war with another country), ecclesiastic and capitation taxes, and public services beyond their own parish.³⁷ Like earlier policies, this immigration plan, put forward by the Minister of Foreign Affairs (but without economic support from congress), only succeeded in attracting a very small number of immigrants.³⁸ In spite of the broad consensus regarding the benefits that (European) immigration would bring to the country, the absence of an inventory of vacant lands to be adjudicated, insufficient transportation and very challenging climatic conditions in the areas of colonisation, made its ambitious aims difficult to achieve (Martínez 1997: 13-15). Neither the efforts of private colonisation enterprises during the 1850s, nor the Liberals’ spontaneous rather than state-sponsored efforts in the 1870s – open not only to Europeans but also to immigrants from the Caribbean who were seen as already ‘adapted’ to the language and climate of the region (i.e. Cubans or Canarians) – were successful in attracting more than a few immigrants (Martínez 1997: 25-30).

In the mid-1860s the government legally defined the condition of immigrants and made the distinction between transient and domiciled foreigners. The law demanded four years of residency and the expression to the authorities of intention to remain in the country, which could also be demonstrated by acquiring real estate, having an established business, being married to a Colombian or having voluntarily served in public offices.³⁹ The status of domiciled foreigners, including the residency requirements and the expression of intention to remain in the country, has persisted to this date in the naturalisation law. However, the residency requirement has changed and the means to express the intention to remain in the country has been altered significantly, as described below.

Under the Regeneration, politicians did not abandon the ideal of immigration, though it was conceived in more restrictive terms for two main reasons: First, economic and political elites were concerned with the social agitation that had developed in Argentina that they associated mostly with Italian immigrants; second, they feared the presence of Chinese immigrants, who had recently arrived for the construction of the Panama Canal and were regarded as problematic, well beyond religious differences, and impossible to integrate (Martínez 1997: 35-39). Unifying

³⁵ Law 14, 11 April 1843 and Decree, 5 June 1843 (*Colección de Documentos* 1947: 35-38).

³⁶ Law, 2 June 1847 and Decree, 10 September 1947 (*Colección de Documentos* 1947: 1-15)

³⁷ Law, 2 June 1847 art. 5 (*Colección de Documentos* 1947: 1-2)

³⁸ The number of immigrants registered in the census of 1843 (1,160) and 1851 (1,527) represents 0.06% and 0.07% of the total national population. Calculations based on information provided by Bushnell (1993:286) and García (2006: 25 & 27).

³⁹ Law 51 of 1866 which repealed an initial Law 16 of 1865 (García 2006: 48).

the nation and protecting its religious and linguistic unity was made a priority. In official discourses, preference was now given to Spanish immigrants because of their perceived cultural, linguistic, and religious similarities. The Congress enacted a naturalisation law in 1888, which reiterated the 1866 distinction between transient and domiciled foreigners and granted the executive with the power to issue naturalisation identification cards (*cédulas de extrangería*) to those who requested them, with no restrictions in terms of race, religion or language.⁴⁰ However, in accordance with the 1886 Constitution [art. 8(2)], individuals from Hispanic-American countries had some advantages since they were only required to register as Colombians in their respective municipalities, as opposed to other immigrants who had to file a formal petition for naturalisation to the central government through the Governor of their respective Departments. The legislation also banned Asian immigration in 1887,⁴¹ although this ban was lifted in 1892.⁴²

Emigration, particularly to Ecuador, also influenced the legislation and was debated in the National Assembly in 1885. Since the dissolution of the Gran Colombia, contingents of soldiers had been recruited to fight in neighbouring countries as a result of party alliances across borders. These recruitments and alliances fed Colombian emigration to Ecuador. During the second half of the nineteenth century, there was in Ecuador a large Colombian community composed of wealthy families from the southern departments who had been displaced by the civil wars, and labourers working in the cinchona birch extraction and agricultural sector (Ochoa 2000: 38-39). In 1883, while the Liberals were still in power, Congress passed a law⁴³ that provided the children of Colombians born abroad the right to request a citizenship card whether they resided or not in Colombia – an extension of the *ius sanguinis* principle with no residence requirement. The Constitution of 1886 reiterated the right of those children born abroad to Colombian citizenship (*nacionalidad*) but re-imposed the residency restriction.⁴⁴ Emigration, as the product of internal political confrontations, and the rights of Colombians' offspring, became a topic of discussion of the constituents in 1885, who included both Conservatives and moderate Liberals, now called Nationals. Making explicit reference to the politically displaced Colombians in Ecuador, some members of Congress objected to the original constitutional draft and successfully argued in favour of the right of all children born abroad of Colombian parents (and no longer limited to the children of Colombian diplomats) to be considered Colombians by birth and, therefore, to qualify for all public offices. No objection was raised regarding the domicile requirement (Antecedentes 1913: 82-88).

The preference for Europeans on racial and cultural grounds permeated the discourse of Colombian elites, as well as immigration laws from the 1830s. However, aside from the Chinese ban in 1887, these preferences had not really been translated into explicit exclusion of specific groups or restrictive naturalisation laws. A change

⁴⁰ Law 145, 26 November of 1888.

⁴¹ Law 62, 1887 (art. 4) (*Anales* 1903: 22).

⁴² Within the context of the Panamá Canal construction and contracts with foreign companies, the Law 64 of 1892 authorized the Executive to allow the entrance of Chinese workers when considered convenient and the Law 117 of 1892 allowed the Executive to promote immigration of foreign workers (*Anales* 1903: 22-23).

⁴³ Law 1, 14 March of 1883 (*Anales* 1883: 69).

⁴⁴ Political Constitution Republic of Colombia, 1886 art. 8 (1).

occurred during the first decades of the twentieth century as Colombia followed a trend of enacting exclusive immigration policies for specific groups of immigrants; a practice that became widespread in other Latin American countries, in part as a strategic adjustment to US immigration policies (Schwartz 2012, Fitzgerald and Cook-Martin 2014: 26-27). When competences on immigration were transferred from the Ministry of Foreign Affairs to the Ministry of Public Works (1909), the emphasis was placed on the health and working qualities of immigrants whose profession or occupation, age, good morals and aptitudes were critical for their acceptance. Those with physical, mental or contagious illnesses, the elderly, vagrants, criminal fugitives or anarchists were explicitly excluded.⁴⁵ The conditions for exclusion were refined in 1920 in a normative law that established the type of documentation required by immigrants at the time of entrance and which included, aside from personal and family information, a certificate of good conduct and a medical health report.⁴⁶ The 1922 law on Immigration and Agrarian Colonies, which promoted rural immigration, was the first piece of legislation to mention race and ethnicity as a cause of exclusion of individuals whose ‘ethnic, organic or social conditions would be inconvenient for the nationality and the improvement of the race’.⁴⁷ In 1935, the government established an immigration quota system for specific nationalities⁴⁸ and by 1936, it defined the specific documentation which must be provided by immigrants of those nationalities: among other things, they were asked to produce a health certificate and a certificate of good conduct over the previous ten years, issued no more than 30 days before entry, and prohibited the immigration of Gypsies.⁴⁹ In 1937, the government also demanded an expensive financial deposit from all immigrants upon their entry into the territory.⁵⁰

These changes were also reflected in the new naturalisation law, which took a restrictive turn. The law issued by congress in 1936⁵¹ preserved the preference given to Hispano-Americans who only needed to ask to be registered as Colombians. For other nationalities, however, the law required applicants to make a formal request to the executive, as in previous legislations, and introduced a variety of additional restrictions. Immigrants needed a minimum of five continuous years of residence and had to prove that their naturalisation was beneficial for the Republic because they had arrived ‘with an occupation or industry useful for subsistence’. These qualities, as well as their good conduct and time of residence, needed to be certified by five ‘honorable’ Colombians. They were also required to produce a certificate of good conduct from their country of origin, to prove knowledge of Spanish, and to prove that they were not subject to any military duties in their country of origin at the time of the application for naturalisation.

⁴⁵ Decree 496 of 1909, cited by Gómez 2009: 11.

⁴⁶ Law 48 of 1920 ‘of immigration and foreign nationals’, cited by Gómez 2009: 11-12.

⁴⁷ Law 114 of 1922 ‘on immigration and agrarian colonies’, cited by Gómez 2009: 12.

⁴⁸ Decree 148 of 1935 cited by Gómez 2009: 13. The quotas were: five Armenians, five Bulgarians, five Chinese, five Egyptians, five Estonians, ten Greeks, five Hindus, five Latvians, ten Lebanese, five Lithuanians, five Moroccans, five Palestinians, twenty Polish, five Persians, ten Romanians, ten Russians, ten Syrians, five Turks and ten Yugoslavians [art. 1].

⁴⁹ Decree 1194 and 1667 of 1936 cited by Gómez 2009: 13.

⁵⁰ Decree 397 of 1937.

⁵¹ Law 22-Bis, 3 February 1936.

An immigrant's spouse and his children older than eighteen were now required to apply for their own naturalisation cards separately. The separate naturalisation procedure for women introduced in 1936 is no coincidence: it came in the wake of other legislative changes affecting women that were introduced by the Liberal government in response to demands by the women's movements during the 1930s (Coker González 2000: 698). This naturalisation law remained into force until the Law 43 of 1993, in accordance with the 1991 constitution, repealed it.

3. Current Citizenship Regime

The 1991 constitution and the subsequent Law 43 of 1993, or Nationality Act, form the basis of the current citizenship regime in Colombia.

Modes of acquisition of citizenship

The 1991 Constitution made significant changes in the areas of justice, administration, democratic participation, multiculturalism, etc. However, with the exception of dual citizenship (*dobles nacionalidad*), it closely reproduced citizenship norms which were established in the 1886 constitution (*nacionalidad*). The 1991 Constitution distinguishes two paths to Colombian nationality: by birth and by naturalisation (*adopción*). As in the previous constitution, Colombians by birth include the Colombian *naturales* (those born in the territory⁵²), under one of the following two conditions: 'if either the father or the mother are themselves Colombian citizens, by birth ("*naturales*") or by naturalisation "*nacionales*" or if at least one of the parents were domiciled in the Republic at the time of birth' [art. 96 1a]. The restrictions that the 1886 Constitution imposed on *ius soli* can still be found in the 1992 Constitution. Being born in Colombia does not grant by itself the right to Colombian citizenship (*nacionalidad*), as it would if Colombia strictly followed the *ius soli* principle. Instead, birth in the territory continues to be conditioned by being either a descendant of a Colombian parent (*ius sanguinis*), or the offspring of foreign parents who are domiciled (*jus domicili*) in Colombia. The category of citizenship (*nacionalidad*) by '*origen and vecindad*' was eliminated from the new constitution. Nonetheless, as explained below, both the concession of citizenship by '*origen*' to descendants of Colombians born abroad and by '*vecindad*' to members of neighbouring Latin American countries, persisted the 1991 Constitution.

According to the Colombian Civil Code,⁵³ domicile in Colombia implies both actual residence and the intention to remain in the territory. The definition of such intention has changed considerably since the 1860s, when it was first introduced and when the expression of this intention to the authorities, the acquisition of real estate, business, or marriage to a Colombian were reasons that sufficed as proof of this intention. Now, the law considers a resident visa to be the only mechanism for demonstrating intention to remain in the country and, therefore, proof of domicile. It is only when foreigners request a permanent visa that they express their intention to

⁵² Law 43 of 1993 specified that *naturales* are those who acquire citizenship by being born within the limit of the national territory, as specified in article 101 of the Constitution.

⁵³ Civil Code art. 76.

remain in the country.⁵⁴ In order to avoid children born in the territory to parents who either have a temporary visa or are undocumented to be stateless, the Colombian state, which signed the American Convention on Human Rights [art.20, on nationality] and the Convention on the Rights of the Child [art.7], grants Colombian citizenship (*nacionalidad*) to children born in Colombia of parents with no domicile in the country, provided that the parents submit proof that their state of origin does not extend citizenship by descent to those children.⁵⁵

The second path through which Colombia grants citizenship (*nacionalidad*) by birth, according to the constitution, is by being the offspring of a Colombian father or mother ‘born abroad and later domiciled in Colombian territory or registered in a consular office of the Republic’ [art. 96b]. Initially, the Constitution of 1991 did not include the latter possibility, which was included in a constitutional reform in 2002⁵⁶ to entitle the offspring of Colombians abroad to claim Colombian citizenship (*nacionalidad*) without the residency requirement. Congressmen supporting the change emphasised the need to solve the problem of statelessness created for those children of Colombians abroad born in countries where the *jus soli* principle does not apply. In their view, the articles in the 1991 Constitution closely followed those of the 1886 Constitution, which was written with immigrants, not emigrants, in mind. Colombia, so the argument goes, had to avoid being marginalised in a globalised world, given the increasing number of countries in Europe and Latin America that had eliminated the domicile requirement in order to transfer citizenship by descent.⁵⁷

Law 43 of 1993 [art. 5] defines citizenship (*nacionalidad*) by naturalisation (*adopción*) as a discretionary task of the President of the Republic that can be delegated to the Ministry of Foreign Affairs. The 1991 Constitution [art. 96(2)] distinguishes three groups with different requirements for the acquisition of Colombian citizenship (*nacionalidad*): foreigners, nationals of Latin American and Caribbean countries, and Indigenous peoples in bordering territories. In the first case, access to citizenship (*nacionalidad*) is restricted to those who can document five years of continuous residence. An additional law modifying Law 43 in 2005⁵⁸ established that if a foreigner is married to, or a partner of, a Colombian national, or if he/she has Colombian children, then the residence requirement is reduced to two years. An absence of one year or more interrupts the continuous residence requirement.⁵⁹ Latin Americans and people from Caribbean countries enjoy privileged access to citizenship (*nacionalidad*): first, according to the 1991 Constitution, they only need to request to be registered as Colombians in their respective municipality. Second, they may make this request after only one year of residence in Colombia.⁶⁰ A somewhat controversial article of the constitution states that the granting of citizenship to Latin Americans and people from the Caribbean must be in agreement with ‘the law and the principle of reciprocity’ [art. 86 2b]. The implementation laws defined the principle of reciprocity ‘through current international treaties’.⁶¹ This

⁵⁴ Law 13 of 1993, art. 2 & 5 (2).

⁵⁵ Consejo de Estado, Consult 1653 de 2005; Law 962 of 2005.

⁵⁶ Legislative Act No.1, 2002.

⁵⁷ ‘Legislative Act Project No. 15 of 2001’.

⁵⁸ Law 962 of 2005 art. 39 modified Law 43 of 1993 art. 5.

⁵⁹ Law 962 of 2005 art. 40.

⁶⁰ Law 962 of 2005 art. 39.

⁶¹ Law 43 of 1993 art. 5.

provision was subjected to legal challenges, in view of the original text of the constitution, but was subsequently settled in a final decision by the Colombian Constitutional Court. The latter found that granting citizenship (*nacionalidad*) based on ‘the principle of reciprocity through current international treaties’ was compatible with the Constitution, and that if an agreement exists between Colombia and another Latin American country, then the agreement should rule. However, the court also stated that the term ‘reciprocity’ in the Constitution should be understood in its wider sense, therefore including other forms of reciprocity, such as legislative and judicial reciprocity.⁶² The 1991 Constitution, which defined the ethnic and cultural diversity of the nation [art. 7 and 70], also included the members of indigenous groups that share bordering territories but who were born outside Colombia, as a third group who could acquire citizenship (*nacionalidad*) by naturalisation. As in the previous case, the constitution calls for the ‘application of the principle of reciprocity according to public treaties’ [art. 96 2c].

In order to naturalise, foreigners are required to 1) write a petition to the Ministry of Foreign Relations; 2) attest knowledge of Spanish, when it is not their native language⁶³; 3) demonstrate basic knowledge of the Colombian Political Constitution and Colombian history and geography;⁶⁴ 4) attest, by a competent authority, the profession, activity or trade performed in Colombia; and 5) provide documents certifying place and date of birth.⁶⁵

The Ministry of Foreign Affairs is in charge of reviewing applications and issuing the naturalisation card. The applicant must pay taxes and requests the publication of the naturalisation in the *Diario Oficial*. It is only then that he or she may take the oath of allegiance to the Constitution and the laws of the Republic of Colombia.⁶⁶

Law 43 of 1993 inherited from the laws of the 1930s two of the more cumbersome requirements for naturalisation: providing proof from competent authorities of the country of origin of having no criminal record, arrest warrants or outstanding apprehension orders during a period of five years immediately preceding the application; and proof that the applicant was released from his military duties in his/her country of origin. These requirements were waived in 2005 by a broader ‘anti-paperwork’ law (*ley anti-trámites*).⁶⁷ The 2005 law allowed the Ministry of Foreign Affairs to solicit information from the Administrative Security Department, DAS – now dismantled – or the International Police office, Interpol, when necessary. The law also states that nationalised immigrants must meet their military duties in conformity with the Colombian national legislation, unless they prove that they did so in conformity with the legislation of their countries of origin.⁶⁸

⁶² Constitutional Court C-893-09.

⁶³ Indigenous of territories in bordering areas are exempted from the linguistic requirement.

⁶⁴ Requirement 2) and 3) on the Spanish language and knowledge the Colombian Constitution, history and geography, respectively, do not apply to high school or university graduates and applicants above 65 years of age.

⁶⁵ Law 962 of 2005, art. 41.

⁶⁶ Law 43 of 1993, arts. 11, 12 & 13.

⁶⁷ Law 962 of 2005.

⁶⁸ Law 962 of 2005, art. 41, which reforms Law 43 of 1993 art. 9 & 10.

Immigration has historically been low in Colombia and naturalisation rates, even lower. Since 2000, immigration has increased in the wake of a sharp rise in foreign investment that followed the global economic crisis as investors transferred capital from more developed economies to less developed ones, including Colombia. The total number of foreign identification cards⁶⁹ issued in Colombia, which includes visitors of more than three months, temporary workers and permanent residents, increased from 6,413 in 2007 to 31,538 in 2013. The number of resident visas increased from 405 in 2007 to 6,044 in 2013 (Migración Colombia 2014: 22). However, naturalisation rates have remained remarkably low with 108 and 109 naturalised persons in 2010 and 2011, respectively (IMO 2012: 67).

Modes of loss of citizenship

Colombian nationals by birth can only lose their citizenship (*nacionalidad*) by renunciation, which they should make explicit in a letter, submitted to the Ministry of Foreign Affairs or to a consulate. Naturalised nationals (*nacionales por adopción*) may lose their citizenship status either by renunciation or by committing crimes ‘against the existence or security of the State and the constitutional regime’.⁷⁰ One of the significant changes that the 1991 Constitution brought to the citizenship regime in Colombia was dual citizenship (*doble nacionalidad*), or, more precisely, the retention of citizenship for expatriates who naturalised in another country. Colombia pioneered the introduction of dual citizenship in Latin America in the early 1990s, in response to the increased economic and political relevance of these emigrants in their countries of origin, against the background of the curtailment of the rights of non-citizens in the United States.⁷¹

Community leaders of Colombian expatriates in the United States started lobbying Colombian in the 1980s, demanding their support for dual citizenship (*doble nacionalidad*) in Colombia. The Constitutional Assembly of 1991 became a suitable opportunity for the implementation of the change. Various projects presented to the Constitutional Assembly, including the one brought to the Assembly by leaders of the Colombian community in the United States, contained a provision for dual citizenship (*doble nacionalidad*), which was finally incorporated in the new Constitution (Escobar 2007: 52-53). The 1991 Constitution states that ‘the status of Colombian national is not lost by acquiring another nationality’ [art. 96]. Foreigners who naturalised in Colombia, referred to in the Constitution as ‘nationals by naturalisation’ [*nacionales por adopción*], no longer have to renounce their nationality of origin either [art. 96]. Possible conflicts of dual citizenship (*doble nacionalidad*) in case of war are addressed by the Constitution, which considers that neither Colombians by naturalisation, nor foreigners domiciled in Colombia will be forced to bear arms against their country of origin [art. 97]. Besides, the legislation provides that a former Colombian citizen who renounced his or her citizenship (*nacionalidad*) and bore arms against Colombia would be ‘judged and convicted as a traitor’ [art. 97]. One of the

⁶⁹ Foreign Identification cards (*cédula de extranjería*) are issued to all but those foreigners who stay less than three months in the country or who have preferential visas.

⁷⁰ Law 43 of 1993, art. 23 & 24.

⁷¹ Colombia’s enactment of dual citizenship predates major curtailments of resident rights in the United States in 1996, but it served as a model for other countries responding to these changes (Escobar 2007). Three Latin American countries had adopted dual citizenship legislations prior to Colombia, although they did so for other reasons.

consequences of the enactment of dual citizenship (*dobles nacionalidad*) was the increase in the rate of naturalisation of Colombians abroad, at least in the United States (Escobar 2004: 52-53, Jones-Correa 2004).

Law 43 of 1993 [art. 25] provides the mechanism for the recovery of Colombian citizenship (*nacionalidad*) to ‘Colombian nationals by birth or naturalisation (*adopción*)’ who lost their citizenship as a result of Article 9 of the 1986 Constitution – which provided for the automatic loss of Colombian citizenship (*nacionalidad*) to nationals who acquired the citizenship of another country. In order to recover their Colombian citizenship (*nacionalidad*), applicants must submit a request to the Ministry of Foreign Affairs, to Governors or Consulates, expressing their willingness to respect and comply with the Constitution and the laws of the Republic. Those who lost their citizenship (*nacionalidad*) as a result of article 9 of the 1986 Constitution can extend the recovered citizenship to their children born abroad, who can be considered Colombians by birth [art 25(1)]. In the case of those who were Colombian by naturalisation and have renounced Colombian citizenship (*nacionalidad*), they must reside one year in the territory before submitting the request to recover it. [art. 25 (2)].

Rights of citizens by birth and by naturalisation

There are several differences between Colombian nationals by birth and by naturalisation. First, according to the 1991 Constitution ‘No Colombian by birth can be deprived of his or her nationality’ [96]. On the contrary, as mentioned above, Colombians by naturalisation could lose Colombian citizenship (*nacionalidad*) by committing crimes against the State and the Constitution.⁷² The second difference concerns the process of recovery, mentioned in the previous section, which entails a legal procedure in the case of Colombians by birth and a discretionary act of the Colombian government in the case of Colombians by naturalisation. While this distinction has been incorporated in the jurisprudence, it is not actually included in the Constitution (Gómez Villegas 2003: 150-151).

Third, once they reach the age of maturity and become citizens (*ciudadanos*), Colombian nationals by birth, have access to all public offices, whereas nationals by naturalisation are barred from the following: President and Vice-president of the Republic; Senators of the Republic; judges of the Constitutional Court, Supreme Court, and the Higher Council of the Judiciary; Attorney General; Members of the National Electoral Council and National Civil Registrar; Comptroller General; Procurator General; Minister of Foreign Relations and Minister of National Defense; Directors of Intelligence and Security organisations; and ‘others determined by law’.⁷³ A distinction can also be found in regards to dual citizenship (*dual nationality*). Unlike dual nationals by birth, dual nationals by naturalisation are excluded not only from the public offices listed above but also from any position in Congress and from the post of director of Administrative Departments (i.e. national administrative entities with specific purposes that function in parallel to the ministries).⁷⁴

⁷² Law 43 of 1993, art. 24.

⁷³ Law 43 of 1993, art. 28.

⁷⁴ Law 43 of 1993, art. 29.

The fourth and final difference between Colombian nationals by birth and those by naturalisation concerns the rights of citizenship (*nacionalidad*) of the second generation. As stated above, the Colombian citizenship regime allows the transfer of citizenship to children of Colombian nationals by birth whether they reside in the territory or abroad.⁷⁵ While the law also provides for the extension of Colombian citizenship by naturalisation (*nacionalización por adopción*) to minor children, a formal request must be made. When those minors reach the age of majority, they must actively express their willingness to continue to be Colombians by taking the loyalty oath – a requirement which applies to all candidates to naturalisation –, and provide a copy of the letter of extension of citizenship to a consul, governor or mayor. In addition, within a six-month period after reaching 18 years of age, they must produce a judicial certificate of good conduct from the country of residence.⁷⁶

Dual citizenship treaty with Spain

Colombia signed a treaty of dual citizenship (*nacionalidad*) with Spain in 1979, soon after the Spanish Constitution of 1978 included a provision allowing the State to sign reciprocity agreements with Ibero-American countries. This treaty, like those established by Spain with other former colonies, based on the existence of a common tradition, culture and language, did not allow simultaneous dual citizenship (*nacionalidad*) since only one citizenship at a time would be active while the other would be dormant (Marín Lopez 1982: 222-223). According to this treaty and the law that approved this treaty in Colombia,⁷⁷ Colombians living in Spain and Spaniards living in Colombia for at least two years could acquire the citizenship (*nacionalidad*) of the other country without losing their original citizenship (*nacionalidad*).⁷⁸ An additional protocol was signed (1998) when Colombia enacted the 1991 Constitution introducing dual citizenship (*doble nacionalidad*). This additional protocol established that ‘[n]either Colombian by birth nor Spaniard by origin, by acquiring the nationality of the other Part and establishing domicile there, will lose the power to exercise in that territory the rights derived from the nationality of origin.’⁷⁹ The protocol also made possible for those who naturalised in Colombia or Spain under the provisions of the initial 1979 Treaty to recover civil and political rights.

⁷⁵ Colombian Political Constitution, 1991, art. 96 (1).

⁷⁶ Law 43 of 1993, art. 17.

⁷⁷ This treaty was approved by Law 71 of 1979 and regulated by Decree 3541.

⁷⁸ Law 71 of 1979.

⁷⁹ Law 368 of 2001, art. 1.

4. Conclusion

The Colombian citizenship regime has been remarkably stable since the country became independent in 1822. The combination of *ius soli* with *ius sanguini* elements in the citizenship regime appeared in the first constitution of Colombia as an independent country after the breakdown of Gran Colombia and has been a constant feature of the law, except for the period of Liberal rule in the nineteenth century. According to Vonk, ‘the *ius soli* tradition in the Western Hemisphere in combination with its immigration history emphasises the importance of the national territory rather than natural belonging or ethnicity’ (2014: 19). Colombia, however, does not neatly follow this model. Two factors may have contributed to the persistence of a *ius sanguine* component, to a greater extent than in neighbouring countries: on the one hand, historically low levels of immigration have meant that few immigrants have been able to challenge the existing legislation in order to gain automatic access to citizenship (*nacionalidad*) for their children. On the other hand, the unifying national Catholic and Castilian project of the ‘Regeneration’, which developed in opposition to the federal Liberal agenda, saw *ius sanguinis* as more compatible with its broader national-building project, the main aim of which was to reunify Colombia around a common culture and religion.

The initial constitutions (1921, 1930, 1932 and 1943) included freedmen and sons of slaves as citizens. However, the Liberal constitutions of the 1850s were the first ones to count as nationals all individuals born in Colombia, including women, and the emancipated slaves following the formal abolition of slavery in 1852. Women and children were not required to file separate applications for naturalisation until the 1930s. Successive Colombian constitutions never explicitly discriminated on grounds of race or ethnicity. Nonetheless, immigration laws long reflected a historically rooted preference for European immigrants. Colombia also banned Chinese immigration in the 1880s and 1890s and, by the 1920s and 1930s, excluded specific groups based on health and mental conditions, political activities (anarchism) and race (specific nationalities).

Concerns for emigration, rather than immigration, have had an impact on citizenship laws. On two occasions, they encouraged politicians to eliminate the domicile requirement limiting the transfer of citizenship (*nacionalidad*) to children of Colombian parents born abroad: first in the 1870s, in the aftermath of the civil wars, though the residence requirement was reintroduced in the 1886 Constitution and a second time in 2002, when the reforms to the 1991 Constitution made possible the transfer of citizenship (*nacionalidad*) through a simple registration of Colombian offspring born abroad at the consulate. The lobbying of emigrants was the main reason for the inclusion of dual citizenship (*doble nacionalidad*) in the constitution. The 1991 Constitution does not require foreigners who nationalise in Colombia to renounce their citizenship (*nacionalidad*) of origin. Nevertheless, the main concern at the time of the National Constituent Assembly was to make sure that Colombian expatriates who acquired another citizenship (*nacionalidad*) could retain their Colombian citizenship (*nacionalidad*).

While permanent immigration in Colombia has remained low to this date, temporary and undocumented immigration has increased. Aside from tourism, temporary labour migration has increased since the late 2000s, together with a sharp

rise in foreign investment. This temporary migration is mostly highly skilled, one quarter female and predominantly from Venezuela and the United States (Migración Colombia 2013). Colombia is also becoming a corridor of undocumented migrants who first travel to Ecuador and then try to reach the United States by land.⁸⁰ Even though the law protects children of non-resident immigrants born in Colombia from statelessness, the bureaucratic process could be burdensome for parents who have to prove that their countries of origin do not extend nationality by descent.

While the citizenship regime in Colombia has been remarkably stable, increasing immigration could encourage the legislator to introduce some adjustments. Changes strengthening the *ius soli* principle as the principal criterion and eliminating persisting elements of *ius sanguini* would be more in accordance with the 1991 Constitution which defines Colombia as a multiethnic and multicultural nation, in contrast to the 1886 Constitution which was drafted within the framework of the 'Regeneration' project. Comparative studies with other similar cases in the Western hemisphere would help illuminate both the peculiarities of the Colombian citizenship regime, as well as its commonalities with other states in Latin America and beyond.

⁸⁰ The numbers are very low, but increased from 2013 to 2015. *El Tiempo* 28 September 2014.

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