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REPORT ON CITIZENSHIP LAW: URUGUAY

Ana Margheritis

May 2015



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European University Institute, Florence
Robert Schuman Centre for Advanced Studies
EUDO Citizenship Observatory

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Citizenship Law

Uruguay

Ana Margheritis

1. Introduction

A combination of demographic, political, and economic factors have shaped Uruguay's process of nation- and state-building, including the establishment of citizenship norms. The country occupies a small area of South America: 176,215 square kilometres. Squeezed between Brazil and Argentina, it has a population of over three million people, most of whom reside in urban settings along the coast. The capital city Montevideo alone is home to almost half of the total population.¹

A perceived lack of population has been a historically distinctive feature of this country, leading to concrete policies from deliberate attempts to encourage immigration and establish citizenship norms that would facilitate migrant integration in past centuries, to recent efforts to reverse emigration and encourage returnees. In that vein, the need for revision of citizenship norms and the updating of legislation became evident but has been somewhat neglected until recently. Overall, Uruguay has maintained a relatively open and stable citizenship regime that has undergone little change since the first National Constitution was drafted in 1830. The relatively homogeneous character of the population (i.e. mostly white, of European descent) also distinguishes Uruguay from other Latin American countries and explains the absence of ethnic cleavages and indigenous claims which might otherwise have prompted change.

¹ According to the 2011 census, the population is 3,286,314; 94.66% of the total population reside in cities, 1,319,108 people live in the capital city. See data from the National Institute of Statistics of Uruguay at: <http://www.ine.gub.uy/censos2011/index.html>, [accessed 03/20/15].

Demographic changes in the last few decades have progressively paved the way for innovation. As internal migration from the countryside to the main cities, encouraged by economic changes, modernization, and urbanization led to the expansion of the polity and enfranchisement in the past, new and different processes currently require political action. Low population growth, de-population of large areas of its territory and emigration became structural problems in the late twentieth century, posing obvious limits to any development and growth strategy. In particular, the intensification of political and economic problems since the 1960s rendered the balance of migration flows negative, a trend that has persisted until today and intensified in times of severe economic crises (i.e. in the early 1980s and in the 2000s). Therefore, there has been increasing awareness of, and governmental attention paid to, population and migration problems in the last decade. In that context, citizenship-related issues are slowly becoming part of the political and social debate. Thus far, slow and reluctant adaptation to new realities and ideas of the nation, membership, and entitlements underlies current debates. Resilient notions about territory and the exercise of citizens' rights, together with state bureaucratic practices and intra-state politics, preclude consensus on how to address these issues today.

This report first presents a brief historical overview of the evolution of the citizenship regime in Uruguay, including the political and policy rationale for the adoption and reform of the main norms. The third section focuses upon the characteristics of such regime, emphasising its distinctive characteristics. The fourth section asks whether there are any plans to update or modify the legislation on these matters. The conclusions summarize the main points of the report and suggest topics that deserve further investigation.

2. Historical background and evolution

Setting the basis for citizenship

A relatively constant feature of Uruguay over the course of its history has been its scarce population.² The demographic dynamics, type of development, and the politics surrounding state strategies help to explain the evolution of ideas and policies about citizenship and, in particular, the absence of dramatic changes in the norms that regulate access to (and suspension of³) citizenship. This section briefly addresses how these factors have shaped citizenship over time.

² The population at the time of independence in 1828 was estimated at 74,000 inhabitants (IOM 2011:43). Driven by immigration policy, the total population amounted to 1,042,700 at the peak of the European wave of immigration in 1908 and up to 2,538,779 in 1960. Since then, the annual rate of population growth has been between zero and one per cent (see World Bank data at <http://databank.worldbank.org/data/views/reports/tableview.aspx>, [accessed 3/16/15]).

³ As explained below, the Constitution does not refer to loss of citizenship but suspension of citizenship-related rights.

A small tribe of semi-nomadic indigenous people (the *Charrúa*) inhabited the territory before colonization. Following the arrival of the Spaniards in 1515, the *charrúas* were killed or integrated into the new colonial society. As a community, they ceased to exist following the massacres of 1831 organised by Uruguay's first president Fructuoso Rivera. The indigenous resistance to conquest and the absence of gold and silver – the key resources sought by colonisers – led to limited settlement in the area of the Viceroyalty of Rio de la Plata during the sixteenth and seventeenth centuries. The territory was then a source of contention between the Spanish and Portuguese empires, a struggle further intensified when the British invaded Montevideo and Buenos Aires in early 1806 and 1807 (Wiarda & Kline 2010). Montevideo then flourished as a commercial harbour, along with the expansion of agricultural activities and cattle-raising which became the main source of wealth. Colonial settlers formed the foundations of society, embracing a Spanish linguistic and cultural background that later merged with that of other European immigrants.

Military confrontation continued for the rest of the century, first in the struggle to become emancipated from Spain in 1811) later in resistance to invasion and annexation by the Portuguese from 1816, and around the declaration of independence in 1825. Even after officially becoming an independent country in 1828, Uruguay was involved in regional disputes for a many decades (the *Guerra Grande*, Grand War, 1839-1852). This was a drawback in the attempt to consolidate political authority and socio-political order within undisputed borders, to populate the territory, and to promote progress and development. It is only in the second half of the nineteenth century that the economy grew significantly, partly as a result of methods introduced by immigrants. They came mainly from Spain, Italy, France, Germany, Switzerland, and other European countries, thus progressively amalgamating with a majority white population of European descent. Slave trade from Africa brought around 20,000 Africans to Uruguay in the late 1700s and early 1800s. But slavery was abolished before independence in 1814, a decision reaffirmed by the 1843 treaty with Britain to suppress the slave trade. Today the population of African descent is less than 10 per cent of the total (Wiarda & Kline 2010).

In sum, this first stage of independence and nation-building was shaped by norms established in the first National Constitution of 1830. Articles 6, 7, and 8 define citizenship, establishing a distinction between natural citizens (those born in the territory) and legal citizens, that is: foreign residents who were parents of natural citizens; children of natural citizens; foreign residents who had fought for the nation, and foreigners with or without family who had capital or profession and had resided in the country for at least three years or had been recognised by the National Assembly for relevant merits.

Article 11 established the conditions for suspension of citizenship: a) physical or moral incapacity; b) being a servant, day labourer, soldier, vagabond, and a criminal under legal sentence; c) being under 21 years old except if married at eighteen; d) being illiterate (effective since 1840 onwards); e) being a debtor, and f) being a debtor to the state fiscal authorities.

Article 12 established that citizenship would be lost in case of: a) legal sentence imposing defamatory penalty; b) fraudulent bankruptcy; c) naturalisation in another country, and d) accepting appointments, distinctions or titles from other governments without the Assembly's permission. In all these circumstances, it was possible to apply for the re-establishment of citizenship.

From open door to restrictive policies and back

In the nineteenth century scarce and slow population growth was compensated for with an open door immigration policy. Until the mid twentieth century, Uruguay benefited from the flows of European immigration, mainly from Spain, Italy, and France, together with inflows from neighbouring Brazil and Argentina at the border zones. This was partly the result of the deliberate encouragement of immigration. Law 2094 of 1890, in particular, established the basis for an international campaign through consulates abroad. The state also offered support to immigrants to finance the trip and assistance upon arrival to secure a job (Sandonato de León 2007: 449). To some extent, citizenship norms were shaped by the attempt to facilitate migrant integration. However, the insertion into world markets through a model of primary commodity exports based mainly upon extensive farming until the 1930s, and a relatively successful but short-lived industrialisation process over the following decades reduced the quest for labour-intensive activities (Finch 1982) and, to some extent, eluded continuous population scarcity.

The 1918 Constitution introduced minor changes to the citizenship norms. Article 6 preserved the distinction between natural and legal citizens. Article 7 added to the category of natural citizen, previously defined as all those born in the territory, the children of an Uruguayan mother or father, regardless of their place of birth, provided that they took up residency in the country and registered in the Civil Registry. Article 8 simplified the criteria to qualify for legal citizenship: a) married foreigners with a profession, art, or industry, or capital or other form of property in the country and at least three years of residency in Uruguay; b) single foreigners who met some of the previous criteria and had at least four years of residency, and c) those recognized by the Assembly for notable services or relevant merits.

Article 12 established the criteria for the suspension of citizenship: a) physical or mental incapacity; b) being a soldier; c) being a criminal as per legal sentence; d) being under eighteen years old, and e) being sentenced to enforced exile, prison, or disqualified for exercise political rights.

Article 13 established that citizenship would be lost in case of naturalisation in another country. Taking up residency and registering in the Civic Registry would suffice to regain the status of citizen.

During the following decades, strong trade protectionism went hand- in- hand with more restrictive border controls, leading analysts to suggest that there was an 'anti-liberal and anti-democratic shift' from the 1930s as illustrated by a more selective immigration policy and more expulsions (Pérez Pérez, n.d.:8). Law 8868 of 1932, for instance, established restrictive norms for immigration, listing some 'undesirable' categories such as delinquents, physically disabled, and those who had vices, such as: '*maleantes y vagos, toxicómanos y ebrios consetudinarios*' ('criminals and vagabonds, drug addicts, and alcoholics'). Ethnic origin was a concern, as illustrated by discrimination against some groups (e.g. Africans and Asians, Jews, among others), an apprehension that some other Latin American countries shared (FitzGerald & Cook-Martin 2014). Along the same lines, Law 9604 of 1936 added to the list of undesirable newcomers those who had no profession/occupation or financial resources. Several norms followed suit in the next decade, establishing tight controls upon entry and exit at border zones (Sandonato de León 2007: 452-453). Nevertheless, these norms coexisted with tolerant and humanitarian practices and Uruguay received a good number of refugees escaping from fascist regimes and war in Europe (Facal Santiago 2002).

Consonant with social and political developments, the 1934 National Constitution devoted lengthy chapters to social matters, individuals' rights and duties, and the role of the state in guaranteeing rights. Articles 64 and 65 maintained the same distinction between natural and legal citizens as the previous Constitution. A minor additional requirement was introduced for single foreigners, that is, a minimum of five, rather than four, years residency to qualify for legal citizenship. Article 66 added that adoption of Uruguayan citizenship does not imply renunciation of the nationality of origin.

Article 67 established the right to vote for (male or female) foreign residents regardless of their possessing legal citizenship. However, they had to meet some criteria: a) being married; b) having a profession in science, art, or industry, or owning capital or other form of property, and c) being residents for at least fifteen years.

Article 70 expanded the causes of suspension of citizenship as follows: a) physical or moral incapacity; b) being a soldier of the rank of sergeant or below, except for those enrolled in military academies; c) being a criminal as per legal sentence; d) being under eighteen years old; e) being sentenced to forced exile, prison, or disqualified from exercising political rights; f) being involved in regular dishonourable activities; g) being a member of social or political organisations that seek to destroy the fundamental basis of nationality by violent means, and h) not meeting the criteria established by Article 66 to obtain legal citizenship.

Article 71 specifies that Uruguayan nationality is not lost in the event of naturalisation in another country. Taking up residency and registering in the Civic Registry suffice to regain the right to exercise citizenship-related entitlements. The same article establishes that legal citizenship may be lost due to any other subsequent form of naturalisation.

Less than a decade later, the 1942 version of the National Constitution maintained the same criteria for natural and legal citizenship, foreign residents' voting rights, as well as the same eight circumstances that led to the suspension of citizenship mentioned above, and the same Article 71 regarding loss of citizenship.

The Constitution was amended again in 1952 (approved by a plebiscite conducted in 1951). Two minor changes were introduced, that is, within the criteria listed for suspension of citizenship, number eight above is replaced by 'lack of good conduct as required in Article 75' which refers to the conditions to qualify for acquisition of legal citizenship, and a foreigner's right to vote may be suspended for the same eight reasons that are listed for the suspension of citizenship for all individuals.

The fine-tuning of contemporary citizenship

For the rest of the twentieth century, changes to the citizenship regime were minimal and mostly concerned with the regulation of existing principles. The 1967 National Constitution (amended in 1989, 1994, 1996, and 2004) is currently effective.

As we saw in Section 3, the norm maintains the principles mentioned above regarding the distinction between natural and legal citizens, the criteria for acquiring legal citizenship, and the circumstances that may lead to suspension of citizenship-related rights (except for the suspension of citizenship of soldiers which has now been lifted). As with previous versions of the Constitution, the norm does not elaborate upon the loss of citizenship. It only establishes that it would not be lost ('not even') in the case of naturalisation in another country (Article 81).

In the following decades, several regulations filled gaps in the general norm. For instance, Decree-Law 14878 tightened restrictions towards those involved in violent activities consonant with the military government's concern with subversive/terrorist groups. Law 16021 of 13 April 1989 regulates specific aspects of the constitutional norms such as the rights of children of Uruguayans born abroad, and the interpretation of the term '*avecinarsse*' ('to take up residency'), etc. Decree 441 of 13 November 2001 focuses upon length of residency to define provisional (temporary) and permanent categories. Law 18858 of 7 December 2011 modified Law 16021 and further interpreted the requirement of *avecinarsse*.

The entire set of norms had an impact upon the composition and growth of the population. From a demographic point of view, Calvo and Mieres (2007:18) argue that Uruguay differs from other Latin American countries. It is an atypical case inasmuch as it did not go through peaks of population growth and an early decline in mortality and birth rates gave it a demographic profile more similar to the advanced countries than to its developing neighbours. Such demographic evolution has contributed to the generalized perception of a lack of population problems and, consequently, to the absence of specific policies and efforts to compile systematic and reliable data. It also led to a few legislative amendments regarding citizenship. Population problems are today compounded by a low fertility rate, concentration of population in a small coastal area, an ageing population, emigration, and low immigration inflows.

As emigration intensified in the second half of the twentieth century,⁴ it exacerbated the negative effects of an ageing population upon labour markets, the pension system, and state finances, thus rendering the demographic profile particularly problematic. Interestingly, the state was silent and oblivious of the exodus for the last four decades of the century. The lack of policies in this realm shows that migration and population issues were not defined as policy problems. Moreover, the myth of being a country of immigration (i.e. of reception) was intertwined with the construction of national identity, thus precluding an action plan. Several studies indicate that, overall, these questions were minimised or forgotten (e.g. Aguiar 1982; 23-24; Coraza de los Santos 2003).

⁴ Part of the outflows relate to the crisis of the import substitution model from the 1960s. Political violence and authoritarianism in the 1970s provoked a significant wave of political exiles. Economic opening under the dictatorship brought de-industrialisation, unemployment, and deterioration of wages and working conditions in general, thus leading to a negative migration balance. The emigration trend continued after the return to democracy in 1985. While GDP grew in the last few decades, unemployment increased, reaching 17 per cent in 2002 later decreasing to 5.4 per cent in 2011 (IOM 2011b, 33-34, 46), thus reflecting broader fluctuations in the level of economic activity, employment, wages, and benefits, leading to a high rate of unemployment and/or precarious working conditions, especially among young people. The same source (p. 57) estimated Uruguayans abroad at around 600,000 people, that is, 18 per cent of the total population in 2006. The IOM still works with this figure today and estimates the net migration rate for the period 2010-2015 at -1.8 migrants/1,000 population. See <https://www.iom.int/cms/en/sites/iom/home/where-we-work/americas/south-america/uruguay.html>, [accessed 04/05/15].

As a result of the above trends, the number of foreign-born individuals taking up residency in Uruguay diminished considerably over the twentieth century: 77,003 persons or 2.4 per cent of the total population today, according to the 2011 census (Koolhaas & Nathan 2013: 19). Countries of origin for those arriving also changed. If in 1908 almost 74 per cent of immigrants came from European countries, by 2008 over 60% came from other Latin Americans countries, and more than half of that figure from Argentina only. For the last few years, and in the light of the global financial crisis and restrictive policies in the North, an incipient increase of immigration and migration return is recorded, although statistics are still provisional.⁵ If this trend is assessed by the number of residency permits awarded by the National Directorate of Migration, we observe that the average figure is 1,363 permits a year for the 1998-2007 period, peaking at 3,981 and 3,825 in 2008 and 2009 respectively (IOM 2011: 45-46). In terms of the distribution of these permits among the main European nationalities of origin, in the 2000-2010 period the allocation was as follows: 694 permits for Spanish nationals (3.3 per cent of the total), 376 for Italians (1.8 per cent), and 163 for UK citizens (0.8 per cent) (CELAC 2012:50).

However, having a residency permit does not always lead to the citizenship card. The latter only certifies that a foreign-born Uruguayan has acquired legal citizenship and this is a requirement for registering in the National Civic Registry, thus for exercising the right to vote.⁶ It is also possible that the bulk of current immigrants, being from neighbouring countries, have few incentives to acquire legal citizenship since the recent harmonization of residency norms within MERCOSUR (the Southern Cone Common Market and affiliated states) facilitates their free circulation within the bloc and entitles them to a number of social, economic, and cultural rights (Margheritis 2013). In addition, Law 19254 of 28 August 2014 facilitates access to permanent residency to nationals of MERCOSUR member states.⁷ Unfortunately, a comprehensive assessment is not available. Neither the National Institute of Statistics nor the Electoral Court of Uruguay offer access to any complete information online about numbers of those acquiring and losing citizenship.

Citizenship-related ideas and practices

In terms of the ideas inspiring citizenship policy and norms, Uruguay has followed regional trends. Independence movements in South America were led by members of the military, religious, and political elites, many of whom had been educated in Europe. They were inspired by the ideals of freedom, inalienable human rights, and equality promoted by thinkers such as Rousseau and Bartolomé de las Casas and by liberal republican ideas and national models. Hence the 1789 French Declaration of the Rights of Man and of the Citizen, the 1787 American Constitution and, to a lesser extent in the Southern Cone, the 1812 Cadiz Constitution. This led to an emphasis upon political equality, civil and political liberties, and a juridical notion of the individual (Carroza 2003).

⁵ For a summary of estimates and the profile of these groups, see Koolhaas and Nathan (2013).

⁶ To be registered, a foreign resident who has acquired legal citizenship must show his or her citizenship card, issued by the Electoral Court at least three years in advance of registration. A foreign resident who has not acquired legal citizenship must show a residency certificate, also issued by the Electoral Court. See http://www.corteelectoral.gub.uy/g_xpsites/page.aspx?3,28,278,O,S,0, [accessed 04/05/15].

⁷ See http://archivo.presidencia.gub.uy/sci/leyes/2014/08/mrree_3814.pdf, [accessed 04/06.15].

In the case of Uruguay, several writings by the national hero José Gervasio Artigas drew upon the ideas of Thomas Paine, namely Artigas' *Instructions of 1813*, the message to convey Uruguay's goals of autonomy to the 1813 Assembly of the United Provinces of the River Plate. He addressed the 'citizens' from whom sovereignty and authority emanates (Pérez Pérez, n.d.: 303-304). In short, as in other countries, citizenship was a means of achieving political legitimacy: 'political citizenship was a crucial concept in the definition of the new polities [...] political power was to find its legitimacy in the principles of the sovereignty of the people and modern representation. [...] To compete for and reach office, whether by violent or peaceful means, as well as to remain in power, the few had to resort to the many' (Sábato (2001:1311).

However, independence in Latin America was not the result of popular movements in the modern sense of the term but a manoeuvre of relatively conservative local elites and therefore did not translate into a new social, thus more egalitarian, order but an oligarchical one that preserved several features of the colonial hierarchical social structure. As Sábato (2001) explains, the introduction and evolution of the notion of citizenship did not follow a linear path but was closely intertwined with the process of nation- and state-building in complex ways. Attaining peace and social order was a concern for several decades. Thus limits to political competition and freedom were part of a generalised trend.

Regardless of its formal existence in the constitutional design, the effective exercise of citizenship too had to undergo a process of social struggle, negotiation, and compromise. Such a process entailed much more than the enlargement of citizenship through progressive enfranchising of broader sectors of society – as the typical historical narrative emphasizes. Besides electoral practices, new forms of sociability, the formation of public spheres, and the development of public opinion also contributed to nurture a modern form of citizenship. Sábato (2001:1296) also notes that, in the development of a notion of the subject of representation, it was not uncommon that the term '*vecino*' (neighbour, resident of a locality) overlapped with and subsumed that of citizen, as in the Uruguayan Constitution. Likewise, the conditions of age and residency were typical of the new male right to vote, and persisted with little or no change.

Therefore, it is not so much in the legal norms but in the modification of practices that we observe the evolution of the notion of citizenship. For instance, as political parties became important actors and electoral machines, they embodied networks of influence (relatively stable ones, as in the case of the old bipartisan scheme in Uruguay), and served as vehicles for the incorporation of newcomers to the political game such as urban workers, professionals, and immigrants in the early twentieth century. Other vehicles of change were the numerous associations that proliferated then and, together with the expansion of the press, contributed to socialising citizens (e.g. social and cultural clubs, solidarity committees, Masonic lodges, literary circles, mutual aid societies, etc.). This is the time, for instance, when Afro-Uruguayans created one of the most active black presses in the region which in the early decades of the twentieth century published around 25 newspapers and magazines in Montevideo and other cities (Andrews 2010). In addition, enlightened elites considered it necessary to teach subordinate groups the principles and values of citizenship through civic and cultural education, compulsory participation in the militia, and encouragement of associational life. Thus national education reforms between 1870 and 1930 turned Uruguay into a model in terms of education levels and civic standards. In short, even if imperfect and not entirely democratic, these were spheres in which the notion of citizenship evolved through contestation and redefinitions in practice.

But while suffrage was understood as the correct road to political representation (not surprisingly, it is addressed along with citizenship in Uruguay's Constitution), it remained an abstract notion for the people for a long time and voters had often to be recruited. Extensive incorporation and enlargement of the political system occurred in the Southern Cone in the 1930s and 1940s when, facing the disruption of the commodity export-led model by the Great Depression and the world wars, nationalist regimes embraced a state-led import-substitution strategy that encouraged, among other things, industrialisation, social mobility, unionisation of urban workers, and access to welfare benefits. Although this strategy was short-lived in Uruguay, i.e. shorter and less successful than in neighbouring countries, it created resilient notions of an inclusive society and participation and coincided with one of the most intensive periods of citizenship and electoral legislation revision of the twentieth century.

Socio-economic and democratic trends since the 1960s, as well as the breakdown of the rule of law from 1973 to 1985 in Uruguay, had an impact upon the evolution and practice of citizenship. Ending long, repressive Latin American dictatorships and resuming democratic rule was partly the result of social mobilisation and struggle. Unveiling and punishing human rights abuses led to a profound revision not only of the role the state, which had become an instrument of rights violation and perpetuated them, but also of the nation and its citizens in whose name and for whose protection the rule of law was broken. Yet as another example of institutional change occurring in a slow, piecemeal fashion, Uruguayan judges then lagged behind their peers in other Southern Cone countries in the prosecution of the military for human rights violations. Conservative views and practices, a lack of reform of the judiciary, and a low degree of independence from the executive shaped the reluctant and relatively slow revision of that dramatic legacy (Skaar 2007).

Nevertheless, in other realms democratization progressively legitimized associational life and opened new venues for claim-making. Long-neglected actors became more visible, as well as new forms of participation and representation. An example of this process in Uruguay is the upsurge of black civil and political mobilisation. Numerous Afro-Uruguayan cultural organisations actively engaged in the preservation and acknowledgement of their cultural roots, artistic contributions (e.g. the popular rhythms and dance of *candombe*), and full integration into society (Andrews 2010).

Over the last few decades, as the discussion has moved from democratic transition through consolidation to quality of democracy, it is evident that initial emphasis upon institution- building proved insufficient and the role of citizenship in democratic governance needs to be revisited. Political participation, mainly in the form of suffrage, was overestimated and specialists have made the case for expanding reflection upon at least two areas, that is, civil and socio-economic components of citizenship, and the links (and gaps) between the theory and the practice of citizenship (Tulchin & Ruthenburg 2007: 1-4). The same claim is heard among Uruguayan activists today in relation to a notion of membership and citizenship that transcends territorial borders.

3. Current citizenship regime

General norms and legal interpretation

The current citizenship regime in Uruguay draws mainly upon constitutional norms and a few laws that provide details as to how to implement general principles.

The National Constitution is quite short on this topic, not totally clear about the distinction between nationality and citizenship, and it has undergone very few changes. In fact, nationality does not receive any explicit treatment (a gap that persists since the 1830 Constitution), while citizenship is the focus of Section III of the current constitution, together with the suffrage. Therefore, the work of legal specialists has mostly focused upon the interpretation of the main norm and possible paths to its update. The relative stability of constitutional design is actually a distinctive feature of the Uruguayan case.

The regime is based upon a combination of *ius sanguinis* and *ius solis* criteria to grant citizenship. *Ius soli* is unconditional and applies to everyone born on Uruguayan territory. This allows the distinction between 'natural' citizens, those born in the territory or the children of citizens regardless of their place of birth, and 'legal' citizens, that is those who become citizens when they reach a certain age and register or voluntarily acquire it based upon the fulfilment of certain criteria, including permanent residency. This distinction introduces another peculiar feature in the Uruguayan case. In a strict sense, it would be incorrect to refer in this case to a naturalisation process for foreigners because nobody can become 'natural' if not born with that condition; at most, such a person may become a legal citizen. As Gallichio (1984: 97) indicates, citizenship in Uruguay refers to a juridical quality, while nationality is a natural bond deriving from birth.

In the case of children of Uruguayans, the Constitution uses the term '*orientales*' ('orientals') to refer to their parents. Although in colloquial language the terms 'Uruguayans' and 'Orientals' have become synonymous in references to nationality, legal use led to confusion. Hence this is one of the aspects of the norm that has deserved specialist attention and interpretation. Sardonato de León (2007) argues that the term 'Uruguayans' reflects the adoption of the *ius sanguinis* principle and 'Orientals' the *ius solis* principle. The latter refers to the previous name of the country (*Banda Oriental*, Eastern Bank) adopted in reference to the geographical position of its area (i.e. East of the Uruguay River) when it was still part of the Viceroyalty of the Rio de la Plata. This reference still persists in the current official name of the country: *República Oriental del Uruguay* (Eastern Republic of Uruguay).

Children of Uruguayans born abroad are not considered *naturales*. This point was further specified by Law 16021 of 1989 (Pérez Pérez, n.d.: 308). Their effective access to citizenship still requires action on the part of those subjects. They have to *avacinarse* in the country and register. Moreover, these individuals are not able to transmit the nationality to their children born abroad. In other words, inheriting nationality is restricted to one generation (Sardonato de León 2007:437).

Other areas in which legal doctrine has filled the gaps in the Constitution include whether the notion of territory extends beyond continental areas determined by current borders. For instance, what principle would apply in the case of an individual born at sea on a ship sailing under the national flag. The doctrine assumes that the state exercises jurisdiction there (as it does in its diplomatic offices abroad) and, consequently, such an individual would have Uruguayan nationality. Another issue that has triggered lengthy interpretation is the meaning of one of the main criteria to acquire citizenship, that is, *avecinarsse* (to come close, take residency) which the Constitution does not define. The requirement is interpreted in the context of others, such as having family, profession or occupation, and resources, and in reference to historical trends at the time the norm was established. Immigrants arriving in the late nineteenth century and early twentieth century were predominantly men with few resources, escaping poverty or other hardships in Southern Europe, and with slim chances of returning back home. Thus legislators attempted to facilitate their settlement and integration in economically productive activities and socially accepted norms. The emphasis upon family, considered the pillar of society, was functional to encourage long-term residency and assimilation. The intention to encourage integration into the political community is reflected in Article 78 of the Constitution which grants foreigners 'of good conduct' the right to vote even if they have not acquired legal citizenship but have a family in Uruguay, possess some capital or property in the country, or are engaged in some profession, craft, or industry and have habitually resided at least fifteen years in Uruguay. The laws that regulated these requirements confer to the Electoral Court the verification of an unequivocal intention to set down roots in Uruguay.

Some other provisions also date from the time of independence. For instance, according to the Constitution, citizenship can be granted in case of extraordinary service only by the National Assembly; it can be lost if there is a legal sentence that imposes '*destierro*' (enforced exile). These circumstances were relatively common at the time of independence wars and internal turmoil and authorities could impose exile. But such a punishment was abolished long ago and the award of citizenship for special service by the Assembly has been exceptional. There are only eight cases recorded (Sandonato de León 2007: 442).

Acquisition of legal citizenship

The rules applying to acquisition and loss of citizenship are also laid out in the Constitution.

Regarding acquisition, the complete list of criteria included in Article 75 is the same as for the voting rights of foreign residents, apart from the different residency condition. It consists of: a) good behaviour; b) having family in the country (either family formed by Uruguayan citizens or foreign-born family members); c) owning capital or other property; d) a scientific, artistic, or industrial activity, and e) three years of residency. Those who do not have a family have to meet at least one of the other requirements plus five years of residency. These criteria are verified by the Electoral Court where proper documentation has to be submitted.⁸ The other path of access to legal citizenship is extraordinary services or relevant merits which have to be recognised by the National Assembly.

In the case of foreign-born individuals, the rights that come with the status of legal citizen can only be exercised after three years of receiving such status.

⁸ See <http://www.corteelectoral.gub.uy/gxpsites/page.aspx?3,28,278,O,S,0>, [accessed 15 May 2015].

In practice, the Electoral Court (the national office in charge of granting citizenship cards), has added democratic values to the acquisition requirements. It states that the procedures for acquisition include, among all other requirements cited above, proof (under oath certified by witnesses) of the applicant's adherence to democratic ideas and not being a member of social and political organisations that may seek to undermine the fundamental basis of nationality by violent means.⁹

Loss of citizenship

With respect to citizenship deprivation or suspension, the criteria are also straightforward, including the following circumstances as per Article 80: a) physical or mental incapacity to act freely and reflectively; b) a legal sentence for criminal acts that might result in prison; c) not having the minimum required age (eighteen years); d) a legal sentence imposing exile, prison, or inability to exercise political rights during the time of conviction; e) regular dishonourable (morally incorrect) conduct; f) participating in social or political organisations that seek to undermine the fundamental bases of nationality by violent means, and g) lack of good behaviour. The same article specifies that the last two conditions apply only to legal citizens who would then lose their right to vote.

I note that 'loss' might be too harsh a term to apply in the case of Uruguay. The Constitution refers to suspension of citizenship. Given that nationality is irrevocable, a natural of Uruguay would never lose his or her nationality and right to claim (or regain) the status of citizen. There is no loss even in the case of adoption of another nationality. In fact, the above criteria amount to a suspension of the exercise of citizenship and related entitlements. The suspension takes the form of a sanction if any of the above reasons for deprivation apply. The exercise of rights might eventually be resumed if circumstances change.

According to Article 81, legal citizens may lose that condition if any subsequent naturalisation occurs. As explained, for natural Uruguayans, this implies mainly a loss of electoral rights. However, immigrants who can gain citizenship status but not nationality, lose their status completely if they acquire another nationality. As per Article 80, foreign residents may lose their right to vote for the same reasons listed for suspension of citizenship for all individuals. Since nationality is irrevocable, it presumably cannot be renounced either. However, the Constitution is silent about this and the current interpretation is that individuals have an implicit right to renunciation (Sandonato de León 2007: 447).

⁹ See <http://www.corteelectoral.gub.uy/gxpsites/page.aspx?3,28,278,O,S,0>, [accessed 04/05/15].

4. Current political debates and reforms

As explained elsewhere in detail (Margheritis 2015), the main current political debate concerning citizenship focuses upon voting rights for Uruguayans residing abroad. The issue is a strong demand of the diaspora (or at least of community leaders abroad) and a project of the coalition in power since 2005. The '*Frente Amplio*' ('Broad Front') governments encouraged legislative discussion, but Congress never passed the bill which faced another drawback in the 2009 referendum. In the last few years, new migrant organisations focusing upon this project mobilised and social activism has increased in Uruguay and abroad in the hope of having the reform in place by the 2014 elections. Meetings, diffusion of information through the media, specialised fora, and the social media have been the main vehicles of this discussion. A new bill was sent to Congress last October. Since the *Frente* has consistently engaged with the diaspora¹⁰ and retained office in the national elections of October 2014, it is plausible to expect an attempt at policy reform on this issue in the 2015 government session. The issue may involve complex and long negotiations, however. As previous attempts have shown, policy elites and Uruguayan society in general have a strong attachment to a territorially-based idea of the nation and consider the exercise of the political right of voting in situ necessary for maintaining healthy democratic practices. The political support of emigrants is certainly a factor in the parties' calculations too. In addition, consensus and coordination among state offices is usually elusive. This may eventually pose a challenge to the implementation and logistics of extra-territorial voting.

Another issue echoes by the media lately is the ambiguous situation of the children of Uruguayans born abroad. As we have seen, they have Uruguayan nationality and the right to become Uruguayan citizens. But the requirements for citizenship are also linked to residency and registration in Uruguay. Again, the exercise of rights is dependent upon physical presence in the country. Some parents living in Spain, for instance, have been unable to register their children as Spanish because the Spanish government denies that possibility, arguing that the child is legally Uruguayan. In fact, they cannot register the newborn in Uruguay either because they cannot travel with an undocumented child. Additionally, these stateless children would not have access to education, health coverage, and other public services. The topic has drawn criticism from families and non-governmental organisations.¹¹ It was the subject of bilateral conversations with Uruguay requesting a solution,¹² but the legal norms and/or consular procedures on the part of Uruguay have not been fully amended yet. The government sent to Congress a bill to modify Law 16021 in September 2013. The proposal aims at granting children of Uruguayan parents the status of *naturales*. However, the requirement of *avecinar* is maintained.¹³ The Chamber of Deputies passed the bill on 2 July 2014. It was then sent for consideration to the Senate.¹⁴

¹⁰ On diaspora engagement policies implemented in the last decade, see Margheritis (2014).

¹¹ See <http://patria.com.uy/2011/06/24/el-deber-de-proteccion-del-estado-a-los-uruguayos-en-el-exterior/>, accessed 04/06/15.

¹² See http://elpais.com/elpais/2011/02/23/actualidad/1298452658_850215.html, accessed 04/06/15.

¹³ See <http://www.parlamento.gub.uy/repartidos/AccesoRepartidos.asp?Url=/repartidos/camara/d2014061242-01.htm>, [accessed 4 June 2015].

¹⁴ See <http://www.montevideo.com.uy/auc.aspx?248856>, [accessed 4 June 2015]

Finally, granting nationality to children of Uruguayans abroad beyond the first generation born outside the country has also been debated. In late 2013 the *Frente* encouraged the approval of an amendment to grant nationality to grandchildren of emigrants. The bill was approved in early July 2014 by the Chamber of Deputies with objections by legislators from opposition parties.¹⁵ At the time of writing, there is no record online of the final approval and enactment of this or the bill.¹⁶

5. Conclusion

Uruguay established citizenship norms early in its history as an independent nation. Principles and policies related to this issue were closely linked to the broader objectives of attaining peace, social order, and preserving territorial borders and sovereign political authority. The state-building process and legitimation of power took priority over the actual exercise of rights by citizens for most of the nineteenth century. Yet demographic and socio-economic trends, together with relatively strong democratic practices, pushed the boundaries of the polity and prompted legislative changes in the following century.

Overall, Uruguay maintained a relatively stable and open citizenship regime. Restrictions of access to citizenship and/or sanctions leading to its suspension have mainly been based upon concerns with the stability of the social order and concerns with the ethnic and moral impact of immigration. Legislative reform has been minor and slow. Only in the last decade have governments paid consistent attention to population and migration issues. This may well trigger a new cycle of policy innovation in the next few years.

In the light of the evidence presented in this report, I suggest that relevant topics for further research include: a) the political and legislative debate on emigrants' and children of emigrants' rights regarding nationality and citizenship-related entitlements, such as the right to vote abroad; b) the monitoring of cultural, demographic, and social changes that may affect the composition and attitudes of the population and, consequently, might require further legislative reform; c) the tensions and gaps between citizenship norms and the actual practice of citizenship, and d) broader discussions about constitutional reform. Complementing the analysis of texts with oral testimonies from policymakers, social activists, and ordinary citizens would enrich the analysis of the specificities and nuances of this fascinating case.

¹⁵ See <http://www.elpais.com.uy/informacion/ley-hara-ciudadanos-nietos-emigrantes.html>, [accessed 04/06/15].

¹⁶ See <http://www.presidencia.gub.uy/normativa/inicio-marco-normativo#le>, accessed 4 June 2015.

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