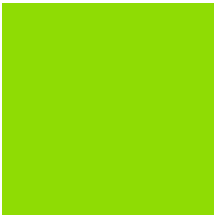
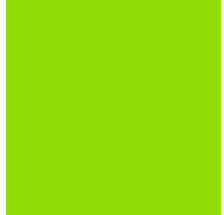
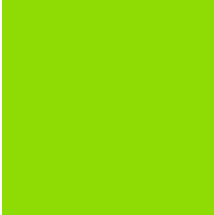
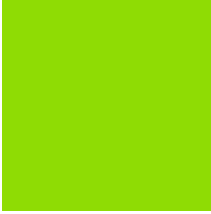




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REGIONAL REPORT ON CITIZENSHIP: THE SOUTH AMERICAN AND MEXICAN CASES



AUTHORED BY DIEGO ACOSTA



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Regional Report on Citizenship

The South American and Mexican Cases

*Diego Acosta*¹

1. Introduction

In the early nineteenth century, all the previous Spanish possessions in South America achieved independence. This was also the case for Brazil, which became independent from Portugal in 1822, but not for the remaining French, Dutch and British exclaves.² Similarly, Mexico became independent in 1821, the same year as the old Vice-Royalty of Guatemala, which comprised parts of present day Mexico (Chiapas), as well as what it is today Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica.

This report will discuss citizenship and nationality in the context of emerging regional integration regimes in Mexico and all countries in South America, except for Guyana and Suriname. These two have been excluded due to their different colonial history, having become independent only in 1966 and 1975 respectively, which strongly affects their legislative choices on this matter. Central America, as well as the Caribbean states, have also been excluded from this report. Whilst some of these countries have a similar colonial history, recent developments distinguish them from South America, notably when it comes to an on-going process towards free movement of people and eventual establishment of a South American citizenship.³ Mexico, while not being part of free movement in South America either, except in relation to its membership in the Pacific alliance,⁴ will offer an interesting addition and counter-perspective to the South American case and, thus, has been included in this report.

¹ Senior Lecturer in European and Migration Law, University of Bristol. Researcher ERC Funded MIGPROSP Project.

² We are referring to present Suriname, Guyana and French Guyana.

³ Central America has its own integration system known as SICA which has also been debating for a number of years aspects such as visa exemption, border controls and free movement of certain categories of people.

⁴ The Pacific Alliance (*Alianza del Pacífico*) is a Latin American trade bloc. It was created by the Declaration of Lima on 28 April 2011. Its current members are Colombia, Mexico, Peru and Chile. Panama and Costa Rica are also in the process of joining. One of its main objectives is to progressively move toward the free circulation of goods, services, capital and people. Some progress has taken place to facilitate short-term visits for business purposes through visa exemption agreements. Other discussions relate to certain aspects of reciprocal consular protection and, more recently, free movement of labour.

The report will be divided into five sections including this introduction. The second section will offer some thoughts about regional dynamics in the history of nationality and citizenship, paying particular attention to the strong influence of colonial history. Sections three and four will offer a comparative overview of current laws regulating access to and exercise of citizenship covering its main modes of acquisition and loss included in the EUDO Citizenship comparative databases. A final section will provide some preliminary conclusions, highlight certain inconsistencies as well as offer some thoughts on current debates on the eventual adoption of a South American citizenship.

This report will often make reference and rely on the national reports available at the EUDO citizenship website (Habib 2016; Jerónimo 2016; Echeverría 2016; Escobar 2015; Hoyo 2015; Brey 2016; Pazo Pineda 2015; Margheritis 2015; Álvarez 2016).⁵

2. Regional Dynamics in the History of Citizenship

After gaining freedom in the early nineteenth century the ten new countries in South America, as well as Mexico, turned their attention to asserting their statehood through the delineation of the three constitutive elements that were already recognized as necessary at the time: government, territory and population. With regard to the latter, the new states had to define who would be considered as nationals, citizens and foreigners, and the rights that pertained to each of these categories. For our purposes, at least three central elements were at stake: original acquisition of nationality; the conditions under which nationals could become citizens in the sense of exercising full rights, including political ones; and the requirements which foreigners needed to fulfil in order to obtain nationality, as well as their status once naturalised.

As will be seen, the first Latin American Constitutions were deeply influenced by the 1812 Spanish one, a fact highlighted in many of the national reports (Echeverría 2016: 1; Escobar 2015:1; Pazo Pineda 2015: 3). This constitution had already been in force in large parts of the pre-independent American territories and was also well adapted to the peculiarities of the new states (Gargarella 2013: 17). The constitution had indeed been drafted by elected representatives from both the European and the American part of Spain. In fact, 63 Americans participated in the *Cortes* (representative body) in its 1810 to 1813 legislative term (Berruezo 1986: 3). It is thus obvious that the text was the most readily available, well-known and also prestigious document when the new independent countries drafted their own constitutions (Mirow 2015). Aspects such as *ius soli*, the distinction between nationals and citizens, the requirements for naturalisation, the rights of new nationals or loss of citizenship upon acquisition of a different one, all derived from the 1812 Cádiz Constitution.

⁵ By the time of writing this document, the reports for Bolivia and Ecuador had not been finished and thus are not referred to here.

First, after independence, all the constitutions of the new republics, as well as Brazil, adopted *ius soli* as the automatic route to nationality upon birth in the territory.⁶ As will be seen below, this choice has proven resilient. The Cádiz constitution clearly set out in its first three articles that the Spanish nation was the reunion of all Spaniards from both hemispheres. The nation was free and independent, and sovereignty resided in it. This constitutional *overture* was imitated in all the ten new countries in South America, but not in Mexico. However, in the American cases, *ius soli* was not simply the consequence of equality between the Spaniards from both hemispheres that had been advocated by the American representatives in Cádiz. Rather, it was the best means to create ‘citizens out of colonial subjects’ and to forge ‘national communities from colonial societies marked by stark social divisions’ (Appelbaum, Macpherson & Roseblatt 2003: 4). It was a principle well suited for newly born and still politically fragile countries in a process of national construction and assertion over their territories and populations. Moreover, *ius soli* was not only an inclusive enterprise but also served the important purpose of excluding those who had been born in the Peninsula and who could be seen as less prone to independence (Schwarz 2012: 41). Interestingly, *ius sanguinis* was not completely neglected. In fact, access to nationality for those born outside the territory to nationals was included in all the first constitutions of the eleven new countries. In order to become a national though, the individual obtaining it through *ius sanguinis* often needed to legally manifest his willingness to reside in the country. Nationality was passed on in most cases by either of both parents. This is a remarkably early form of gender neutrality at a time when many nationality laws only applied *ius sanguinis ex patre*, including the Cadiz constitution itself,⁷ and anticipates a provision for this purpose in the 1979 UN Convention on the Elimination of all Forms of Discrimination against Women by more than a century.⁸

Second, a distinction between national and citizen was also adopted. This allowed for a gradual transformation of society rather than a radical rupture with the established order. Civil rights and obligations were granted to all male nationals, to the full body of the nation. Per contra, the status of citizen, understood as the holder of all political rights, remained confined to a smaller category of nationals, ergo not entirely challenging customary power relations (Sabato 2001). In several countries the distinction between national and citizens remains, the latter being those who in addition to being nationals fulfil other requirements, notably having a certain age, in order to be able to exercise political rights.⁹ At times, their use has been conflated.¹⁰ For the sake of simplicity, both terms (nationality/citizenship) will be used interchangeably.

⁶ In the Mexican case, the 1814 *Apatzingán* Constitution included *ius soli* in its art. 13. However, this Constitution was adopted seven years before effectively attaining independence. Later in the nineteenth century *ius sanguinis* was favoured at times, with *ius soli* also being adopted in some constitutional texts such as that of 1843 (Hoyo 2015: 1-3).

⁷ This was the case for all the countries in their first constitutions except in the cases of Venezuela and Colombia which included *ius sanguinis* as deriving also from the mother’s line only in their second ones in 1830. Argentina included this provision in its first 1857 Citizenship Law (Law 145, Buenos Aires, 7 October 1857). Mexico included *ius sanguinis* in its 1836 Constitution but only as deriving from the father’s line. In Europe, by contrast, ‘[e]qual treatment between men and women with regard to the transmission of citizenship to their children was also not completed before the mid-1980s. By the mid-1970s, 19 of our 33 European countries still had to make arrangements for the equal transmission of citizenship via the mother and the father.’ (Vink & de Groot 2010: 6-7).

⁸ Art. 9 (2) of the 1979 UN Convention reads: ‘States Parties shall grant women equal rights with men with respect to the nationality of their children.’

⁹ For example in Brazil, Chile, Colombia or Mexico (Jerónimo 2016: 2; Echeverría 2016: 1; Escobar 2015: 1; Hoyo 2015: 2).

Third, the requirements to naturalise also followed the model adopted in the 1812 Cádiz Constitution. South American countries looked for the virtuous foreigner. In the elite's narrative virtuousness related to family and independence of means. Literacy was also necessary. Marriage, reflecting the importance of the Catholic Church and religion, was always understood as an element which, when not a *sine qua non* condition,¹¹ reduced the period of residence needed before accessing nationality.¹² In turn, economic independence referred to a utilitarian approach according to which only four paths, corresponding to the ones in the 1812 Cádiz Constitution, could be generally followed to become a national: property, capital invested in trade or commerce, performance of an industry or outstanding services performed in favour of the state.¹³

Fourth, and also following the Cádiz's model, foreigners, even when quickly incorporated into the nation through naturalisation, were not considered worthy of exercising the highest mandates in the three branches of government. This was the result of the dichotomy between open doors policies and concerns over the loyalty of new subjects during a period where the threat of invasions by European powers was present (Zahler 2013). This is what Hoyo calls 'defensive nationalism' in his Mexican report (Hoyo 2015: 3). The ruling elites' willingness to avoid direct competition for representative positions possibly played its part too. Indeed, it was not uncommon to refer during legislative debates to the new nationals, as 'naturalised foreigners', a term contradictory in itself (Vetancourt Aristeguieta 1957: 64). Traditionally, the highest positions in the executive, legislative and judiciary powers were reserved for citizens by birth.¹⁴ In other cases newly naturalised individuals had to wait for a number of years after accessing nationality before they could perform any of these functions.¹⁵

Fifth and finally, according to the 1812 Cádiz Constitution, Spanish citizenship was lost when naturalising in another state. This was also replicated in most Hispano-American constitutions and in Brazil and has only changed broadly during the last 25 years, as will be seen below.

Thus, the Spanish 1812 Constitution was the crucial model from which the national and the foreigner were carved. Nevertheless, two central features were thoroughly rethought in the Americas: the adoption of an open borders policy and shorter residence periods for naturalisation. The rationales for these were clear in the

¹⁰ See for example 1884 Ecuador's Constitution.

¹¹ That was the case in the 1823 Chilean Constitution (art. 6) and in the 1819 Venezuelan Constitution (art. 6).

¹² Peru, art. 20, 1823 Constitution.

¹³ Chile, arts. 4-5, 1822 Constitution; Brazil, art. 5, Naturalisation Law 23 October 1832; Ecuador, art. 6, 1835 Constitution. Sometimes these requirements were relaxed when the country was not being successful in attracting sufficient migrants. For example, in 1843, Colombia adopted a Decree by which the executive could naturalise foreigners even if they did not have property or capital and with no residence period required. See Colombia, Law 14, 11 April 1843 and Decree 5 June 1843.

¹⁴ This was for example the case to become President in Venezuela (Title VII, Section I, art. 2, 1819 Constitution), Colombia (art. 106, 1821 Constitution), Peru (art. 75, 1823 Constitution), Argentina (art. 69, 1826 Constitution), Chile (art. 82, 1822 Constitution), Bolivia (art. 79, 1826 Constitution), Ecuador (art. 33, 1830 Constitution), Uruguay (art. 74, 1830 Constitution) and Paraguay (art. 35, 1870 Constitution). Exclusions for other positions such as Minister or Member of Parliament were also present in Paraguay and in many of the constitutions that followed the first ones in various countries. In Brazil they could not be deputies or Ministers (arts. 95, 135, 1824 Brazilian Constitution).

¹⁵ For example 12 years in Colombia to become Senator (art. 96, 1821 Constitution); 9 in Argentina to become Senator, Governor or Magistrate of the Supreme Court (arts. 24, 112 and 131, 1826 Constitution); 10 in Uruguay to become Minister and 14 for Senator (arts. 30 and 87, 1830 Constitution); 6 years in Bolivia for Senator (art. 46, 1826 Constitution);

minds of early thinkers and independence leaders: migration by Europeans would advance civilisation, which would increase manufacturing and production through the intensive farming and exploitation of vast territories and lead to economic growth as a result of freely trading with Europe. Let us not forget that the continent was scarcely populated,¹⁶ with only an estimated 9 million residing in the whole of Spanish South America (Burke 1807: 47). Beyond open borders, foreigners were to be granted equal civil rights but also naturalisation after a few years, at least for those who were considered to be the right type of foreigners, mainly those with capital, industry or property.

Free movement and open borders provisions rapidly made their way into the first laws and Constitutions adopted by South American governments. The 1811 Venezuelan Constitution introduced for the first time a clause that would later be replicated at some point by all countries in the region: ‘All foreigners of any nation will be admitted into the State.’¹⁷ The same article provided for equal treatment with regard to their properties and security of person. Naturalisation was possible after seven years of residence.¹⁸ Hence, the previous Spanish possessions in the Americas and Brazil entered a race to attract European permanent settlers early on (Schwarz 2012: 42-43). *Ius soli* ensured that their children would automatically become nationals, whereas short residence periods eased their naturalisation. The seven years of the first Venezuelan model were progressively reduced. Indeed, naturalisation could be even automatic upon arrival¹⁹ or after only one year.²⁰ In some countries, foreign residents were spontaneously declared nationals if they were residing in the territory since before independence or the adoption of the Constitution,²¹ and registered as citizens.²²

For our purposes, it is central to understand that many of the legislative choices that were adopted immediately after independence remain valid today in a clear process of path dependence during a period of almost 200 years, as highlighted in many of the national reports (Habib 2016: 1; Jerónimo 2016:1; Echeverría 2016: 2; Escobar 2015:16; Álvarez 2016: 4). The most obvious example would be *ius soli*, but there are many others, as will be seen. It is to the present day regulation of citizenship in the eleven countries under analysis that we now turn our attention, starting our discussion with original acquisition of citizenship.

¹⁶ For example in Uruguay, there were only 74.000 residents in 1828 (IOM 2011: 43).

¹⁷ Art. 169, 1811 Venezuelan Constitution, Valencia 21 December 1811. This was the first Constitution of the region and was repealed on 21 July 1812 when Francisco de Miranda capitulated against the Spanish army. This clause had already been introduced in 1811 by the 1st of July Law which declared the right of the individuals (*Derechos del Pueblo*). Art. 25 laid down that all foreigners of any nation will be welcomed in the province of Caracas.

¹⁸ Venezuela, art. 222, 1811 Constitution.

¹⁹ Peru, art. 19, 1823 Constitution; Colombia, Law 14, 11 April 1843.

²⁰ Venezuela, art. 6, 1819 Constitution.

²¹ Ecuador, art. 9 (4), 1830 Constitution; Colombia, art. 4, 1821 Constitution; Uruguay, art. 8, 1830 Constitution.

²² Argentina, art. 4, 1826 Constitution.

3. Comparative Overview of Current Laws on Acquisition of Citizenship

This section will assess the main modes of acquisition and loss of citizenship in Mexico and the ten countries in South America under analysis. This will include the following aspects: *ius sanguinis*, *ius soli* and naturalisation through various routes using the EUDO CITIZENSHIP typology of [modes of acquisition](#) and [loss](#).

3.1. Mode A01b: Descent (born abroad) *ius sanguinis*

None of the eleven countries applies *ius sanguinis* to children born in the territory (A01a), but nationality by descent can be acquired abroad in all of them. This is irrespective of whether the mother or the father possesses citizenship. However, *ius sanguinis* is often not automatic and demands certain acts by the individual such as residence in the country, declarations or registration in consulates. This derives to a large extent from a historical tradition where *ius soli* was always privileged.

Several scenarios must be distinguished. First, automatic access to citizenship for those born abroad is only recognised in Venezuela (only if both parents are nationals by birth), Paraguay and Brazil (only if one of the parents is providing services for the country), Mexico (only for those born to Mexican parents who did not themselves obtain nationality by descent), Ecuador (also including descendants up to the third degree of those who were born in Ecuador) and Chile (provided at least one parent or grandparent has obtained citizenship by birth in Chile, by ordinary naturalisation or by special naturalisation). Second, in various countries nationality may only be obtained after a declaration or registration is made at the respective consulate (e.g. Argentina, Brazil (if the parents are not providing services for the country), Bolivia, Colombia and Peru (if the individual is a minor)). Third, in some cases there is the need to establish residence in the particular Latin American country in order to be considered a national. This is the case in Paraguay (for those born to parents not providing a service for the country), Peru (when the individual has reached the age of majority), Uruguay, and Venezuela (if the person is born to only one citizen parent). Finally, as will be seen below in section 5, naturalised citizens are discriminated by some countries when transmitting nationality, and their children need to fulfil further requirements.

3.2. Mode A02a Birth in Country (second generation): *ius soli*

Automatic *ius soli* for individuals born in the territory of a state represents a peculiarity in the Americas with 30 out of the 35 countries providing for such route to nationality (Vonk 2014: 10). This is indeed also the case for all the eleven countries under analysis here except for Colombia. *Ius soli* is automatic in the sense that there are no further requirements other than birth in the territory. There are two minor exceptions to this rule. First, four countries (Argentina, Bolivia, Brazil and Chile) do not grant nationality to those born to parents who are foreign diplomats. Second, Chile does not apply *ius soli* if the parents are in transit.

Colombia thus represents the peculiar case where *ius soli* is not automatic. Persons born in the country to foreign nationals can only become Colombians if their parents are domiciled in the country at the time of birth, domicile being interpreted as legal residence. This has its historical origins in the particular circumstances surrounding the 1886 Constitution when this restriction was incorporated (Escobar 2015).

By and large, automatic *ius soli* has not historically been under discussion in our eleven case studies, except for Colombia, and we can observe a very strong continuity in its regulation. Notable exceptions include the 1947 Venezuelan Constitution where foreign parents had to be domiciled or resident in order for *ius soli* to apply, requirement which only lasted for 6 years until the new 1953 Constitution (Álvarez 2016: 7). Also, various legislative debates took place in Mexico at least until the 1917 Constitution (Hoyo 2015).

3.3. Naturalisation

Here we will look at the most important routes to naturalise in the eleven countries under analysis. Modes of naturalisation present in the EUDO Citizenship database and not included here are considered to be less relevant in terms of number of countries where they are applicable.

Mode A06: Ordinary Naturalisation

Ordinary naturalisation in Mexico and the ten countries under investigation in South America has some peculiar characteristics in comparative perspective. To begin with, residence periods are relatively short, except in Venezuela where ten years are needed. They range from two years in Argentina and Peru, three in Bolivia, Ecuador, Paraguay and four in Brazil to five in Chile, Colombia, Mexico and Uruguay. This has its origins, as explained in the second section, in the years following independence where periods before naturalisation were considerably shorter. Nowadays, it is often explicitly mentioned that possession of a residence permit is needed in order for it to count towards the total period.²³ However, in Argentina, the Supreme Court has clearly established that residency does not refer to any particular category of legal residency and thus migrants in an irregular situation may also apply for nationality after proving two years of dwelling in the territory.²⁴ This might be proved by a variety of means (Habib 2016: 13).

However, one should not rush into concluding that naturalisation in these countries is regulated in a completely liberal fashion. There are indeed several obstacles that may account for the low numbers of individuals who obtain citizenship in each of the countries, something to which I will refer at the end of this section 3. First, naturalisation does not constitute an entitlement except in three countries: Argentina, Chile and Uruguay. In all the rest, it represents a discretionary power exercised by different authorities including for example the executive (e.g. Bolivia, Ecuador, Peru) or the Ministry of Foreign Affairs (e.g. Colombia). Moreover, in countries such as Brazil, the procedure is full of administrative obstacles and requirements (Jerónimo 2016: 26).

²³ See for example art. 142, 2009 Bolivian Constitution.

²⁴ Argentina, Supreme Court of the Nation, Ni, I Hsing s/carta de ciudadanía, 23 June 2009.

Second, in Brazil²⁵ and Chile the type of residence permit must be a permanent one for those who are willing to naturalise. In turn, in Bolivia, the naturalised individual must reside for five years in the country after obtaining nationality. Moreover, in Chile and in Mexico the individual needs to renounce the previous nationality.

Finally, these legislations often include requirements which are also common in other jurisdictions, such as the need for a source of income or occupation (e.g. in Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay), lack of criminal convictions or of those carrying particular prison sentences (e.g. in Argentina, Bolivia, Brazil, Chile, Ecuador, Mexico, Peru) an oath of loyalty (e.g. in Argentina, Colombia, Mexico); civic knowledge of aspects such as history, geography or constitutional law (e.g. in Bolivia, Colombia, Ecuador, Mexico, Paraguay); language knowledge (e.g. in Brazil, Colombia, Ecuador, Mexico, Paraguay); good behaviour or morals (e.g. in Brazil, Chile, Ecuador, Paraguay, Peru, Uruguay); not posing a danger to public interests and security (e.g. in Chile, Ecuador); or good health (e.g. in Brazil, Ecuador).

Mode A08: Spousal Transfer

It was common during the nineteenth century for marriage to play a central role in nationality law. This reflected the importance of the Catholic Church and religion, since civil marriages only became a reality in the 1880s, and then only in some countries such as Chile, Argentina or Uruguay. Marriage was always understood as an element which, if not a *sine qua non* condition,²⁶ in any case reduced the period of residence needed before accessing nationality.²⁷ Marriage contracted with a national was further rewarded with shorter residence requirements.²⁸ This always referred to marriage of a foreign man with a woman, national or not, which differs from gendered citizenship rules in other countries in which foreign women automatically acquired their husbands nationality.

Nowadays, marriage with a national continues to shorten the residence period demanded before applying for nationality. Of course, this now applies without any gender discrimination. In Argentina the period is reduced from two years to any time of residence; in Bolivia from three to two years; in Brazil from four to one; in Colombia from five to two; in Mexico from five to two; and in Venezuela from ten to five. Chile, Paraguay and Uruguay do not reduce the residence period. Peru does not reduce it either, and maintains it at two years, but waives some of the other requirements for ordinary naturalisation. Finally, Ecuador discriminates between foreign women who marry an Ecuadorian male, who see their ordinary three years residence requirement waived, and foreign males who marry an Ecuadorian female citizen whose residence requirement is reduced from three to two years.

²⁵ In Brazil, only certain categories obtain permanent residence according to Brazil's migration laws. The residence period required is 15 years for those who have not obtained permanent residence. The only other requirement for those who have resided for 15 years is to have a clean criminal record. In these cases there is a subjective right to naturalisation (Jerónimo 2016: 23).

²⁶ That was for example the case in the 1823 Chilean Constitution (art. 6) and in the 1819 Venezuelan one (art. 6).

²⁷ See for example: Peru, art. 20, 1823 Constitution.

²⁸ See for example: Chile, art. 6, 1828 Constitution; Uruguay, art. 8, 1830 Constitution; Ecuador, art. 6(3), 1835 Constitution; Paraguay, art. 36, 1870 Constitution.

Mode A16: Reacquisition

All countries except for Paraguay and Uruguay provide for a reacquisition procedure. In only one case (Argentina) reacquisition is automatic. This is however restricted to those who lost citizenship due to laws enacted during the dictatorship. On the other side of the spectrum reacquisition is discretionary in Brazil and Chile. In the former it applies to those who lost it by judicial decision cancelling naturalisation due to activities violating the national interest or by obtaining citizenship in another country in cases where dual citizenship is not possible. In the latter it includes those whose naturalisation was revoked or simply those who renounced to it. In the remaining countries a declaration is needed and affects various categories including those who renounced citizenship (e.g. Bolivia) or those who lost it due to previous rules not accepting dual nationality (e.g. Colombia, Mexico). In Ecuador, Peru and Venezuela the process is only available for former citizens by birth.

Mode A18: Citizenship of a Specific Country

Historically, nationals of other Hispano-American countries were privileged with regard to naturalisation (Acosta 2015). In the Brazilian case, those who were often privileged were Portuguese nationals (Jerónimo 2016).

Presently, four out of the eleven countries still provide for accelerated access. Mexico demands two years of residence, rather than five, for nationals of any Latin American country, including Belize but excluding Haiti (Hoyo 2015: 18). Spain and Portugal are also privileged with the same reduced period. In Venezuela the period is five years, rather than ten, and, apart from Latin Americans, Spaniards and Portuguese, nationals from Caribbean countries as well as Italians are also included. In Colombia, it is one year for Latin American and Caribbean nationals by birth, thus to the exclusion of those naturalised in such countries. Finally, in Brazil, it is also one year for nationals of a Portuguese-speaking country.

Mode A24: Special Achievements

As explained in the second section of this report, one of the four paths that could be pursued to naturalise under the Spanish 1812 constitution was to perform outstanding services in favour of the state. This impacted Latin American Constitutions that generally included such route from its early practice. This continues to be the norm in all countries except in Colombia. Special services or achievements are understood in different manners so as to include aspects such as science, arts and culture, industry or sports. In eight cases, naturalisation is discretionary. Only in Argentina and Uruguay it represents an entitlement. Statistics on this are scarce but when available they show a limited number of individuals benefitting from this route.²⁹

Mode A26: Financial Assets

Citizenship by investment constitutes a recent trend that is slowly attracting attention in academic circles. Importantly, no country in the eleven under analysis includes such path to citizenship. Only three countries provide a certain reduction of conditions to

²⁹ For example, in Chile, around 80 persons have obtained citizenship in this manner throughout history (Echeverría 2016: 11).

investors. In Argentina, in what represents a historical legacy, those who introduce an invention or industry do not need to fulfil any residence requirements but still need to comply with all other conditions applicable in a normal naturalisation procedure. In Brazil, those who own real estate or who invest a certain amount in companies, mainly in the agricultural and industrial sectors, may see their residence requirement reduced to three years, rather than four. This is however not a constraint on the government but merely a possibility (Jerónimo 2016: 25). Finally, in Mexico, those who perform certain entrepreneurial activities in the country might have their residence requirement reduced to two years, rather than five, or completely waived.

Conclusions and Statistics

There are two elements with regard to acquisition of citizenship which must be highlighted again. To begin with, the prevalence of *ius soli* shows a historical continuity and distinguishes the region from other countries in Europe and elsewhere. Second, also as a consequence of history, residence periods before applying for naturalisation are short in comparative perspective.

Nevertheless, the number of naturalisations per year, although having increased in the past few years, is strikingly low. Mexico is perhaps the only exception and indeed the country with the largest number of naturalisations. There were 57,808 from 2000 to 2013 with an average number of slightly above 4,000 per year (Hoyo 2015: 7). In the other countries, when data is available, the numbers are truly low. In Colombia the statistics show 108 and 109 naturalisations in 2010 and 2011 respectively (Escobar 2015: 13). In Peru, the number has increased from 589 in 2001 to 1,118 in 2012 (Pazo Pineda 2015: 14). In Chile, the numbers in the period 2005-2014 have oscillated between a maximum of 1,225 in 2012 and a minimum of 502 in 2006, a very small percentage of the estimated 410,988 non-nationals present in Chile by 2014 (Echeverría 2016: 15). In Paraguay only 777 foreign nationals obtained citizenship from 1996 to 2013 (Brey 2016: 16).

Some reasons might be anticipated for these low numbers that some authors have depicted as a historical reticence to naturalise (Courtis & Penchaszadeh 2015). In some cases such as Chile, Mexico or Paraguay, the need to renounce the previous nationality except in certain cases (e.g. when holding Spanish citizenship) may act as a powerful deterrent. Other explanations point in the direction of the prevalence of regional flows and the fact that the MERCOSUR Residence Agreement, as will be seen in section 5, provides important rights to regional migrants, which are comparable in certain aspects to nationals, thus limiting the incentives to naturalise. Finally, lack of information or government campaigns, and difficult administrative procedures to collect all documentation can also provide some answers to this conundrum (Courtis & Penchaszadeh 2015; Blanchette 2015). Further research is however crucial on this vital aspect since it may lead to important policy conclusions.

4. Comparative Overview of Current Laws on Loss of Citizenship

This section will analyse loss of citizenship following the most relevant modes for these eleven countries as enumerated in the EUDO Citizenship database. A first important element to highlight is that there often exists a distinction between nationals by birth and those by naturalisation. In some cases, the latter may more easily lose their nationality, even without any declaration, by for example simply residing abroad for a number of years. When this leads to statelessness, it raises a number of crucial points with regard to the right to a nationality as enshrined in Article 20 of the American Convention on Human Rights and the jurisprudence of the Inter-American Court on Human Rights (Dembour 2015). This goes beyond the scope of this report and will not be discussed further.

4.1. Mode L01: Renunciation of Citizenship

This mode is valid in all eleven countries except for Argentina and Uruguay. In Brazil, Chile and Venezuela renunciation is only possible if the individual obtains another citizenship. By contrast, in Bolivia, Colombia, Paraguay and Peru, there are no conditions and loss may result in statelessness. In Ecuador, only naturalised citizens may renounce their nationality. This is the same in Mexico with the difference that the individual must have another citizenship.

4.2. Mode L02: Residence Abroad

In none of the eleven countries can residence abroad lead to citizenship deprivation for citizens by birth. In three countries (Ecuador, Mexico and Paraguay), however, this general rule does not apply when it comes to naturalised citizens. Both in Ecuador and Paraguay the maximum period of stay abroad is three years. In the former, this period will not result in loss if the individual has had his absence accepted by the Ministry of Foreign Affairs. In the latter, the individual needs a valid reason to justify his absence. In Mexico, the period is five years but there are no exceptions. In all three cases, loss can result in statelessness.

4.3. Modes L03, L04, L07 and L08: Service in a Foreign Army, other Services for a Foreign Country, Disloyalty or Treason and other Offences

These four modes may be considered together since they largely refer to unfriendly acts towards the country of which the individual is a national. From a historical perspective, serving in a foreign army, disloyalty, treason or accepting employment for the government of a different country generally led to loss of nationality. For example, already the 1812 Spanish Constitution included employment by another government as a reason for citizenship loss. This was then replicated in most early Latin American

Constitutions.³⁰ This mode of loss has diminished in importance to the point where it only remains valid in two countries: Chile and Mexico. In the former, citizenship might only be lost in the quite narrow scenario where an individual renders services in the context of an international armed conflict to a Chilean enemy or its allies. In the latter, this possibility only applies to naturalised citizens who might be deprived of citizenship if they accept or use nobility titles which imply submission to a foreign country, once again quite an unlikely situation.

Disloyalty or treason remains a possibility in three countries: Brazil, Colombia and Venezuela. In all three, this is only applicable to naturalised citizens and loss may result in statelessness.

It is also important to mention that four countries retain citizenship loss for offences other than disloyalty or treason. These are Colombia, Ecuador, Mexico and Venezuela. In all four countries this is only applicable to naturalised citizens and may result in statelessness.

Finally, in the Argentinean case, those who render services to or receive honours from a foreign country without authorisation by Congress, while not losing nationality, might have their political rights suspended (Habib 2016: 19).

4.4. Mode L05: Acquisition of Foreign Citizenship

Dual citizenship will be dealt with below but it can be anticipated here that historically acquisition of a foreign nationality often led to losing the original one. Nowadays, dual citizenship is largely accepted in the region. Thus, only three countries still retain rules resulting in deprivation: Brazil, Mexico and Paraguay. In the latter two countries, this is only applicable to citizens by naturalisation who voluntarily obtain another citizenship. In Brazil the regulation is more complicated and applies to all those who obtain a different citizenship unless it was acquired under the other country's laws other than by naturalisation, or if this was necessary as a condition for permanent residence in such country or to exercise civil rights.

4.5. Mode L09: Fraudulent Acquisition

Most of the countries under analysis have specific provisions dealing with deprivation of citizenship in cases of fraudulent acquisition, notably when the individual has provided false information or documents. This is the case in Argentina, Brazil, Colombia, Ecuador, Mexico and Venezuela.

³⁰ See among others: 1821 Colombia, Art. 16; 1822 Chile, Art. 15; 1824 Brazil, Art. 7; 1826 Bolivia, Art. 19; 1830 Uruguay, Art. 12; and 1830 Venezuela, Art. 15.

5. The Future of Citizenship in South America and Mexico: Dual Nationals, Discriminated Naturalised Individuals and Regional Citizens

This section will conclude this report by looking at three crucial aspects with potential policy implications for the region. These are dual citizenship, the status of naturalised individuals vis-à-vis nationals by birth, and debates on a possible future supranational regional South American citizenship.

5.1. Dual Citizenship

Historically, dual citizenship was by and large not recognised in the countries under analysis. Several exceptions to this general rule might be mentioned. First, as early as in the 1864 Venezuelan constitution, dual citizenship was accepted for those Venezuelans domiciling and obtaining nationality in a different country (Álvarez 2016: 6). This regulation remained in force until the 1947 Constitution where it was decided that nationality would be lost except if acquiring that of a Latin American country or Spain. This provision disappeared in the next two Constitutions and it was only with the present one, which was adopted in 1999, that dual citizenship was generally accepted regardless of the second country involved. In other countries we can also find early examples of dual citizenship acceptance. This is the case in Chile where, since 1957, Chileans who obtained another citizenship did not lose their original one if this was a condition for permanent residence in the host state.³¹ Other countries also introduced dual citizenship agreements during the twentieth century with specific countries, mainly with Spain. This includes for example the 1958 Chile-Spain,³² the 1959 Paraguay-Spain,³³ the 1964 Ecuador-Spain,³⁴ or the 1979 Colombia-Spain³⁵ agreements. As far as foreigners naturalising in the eleven countries under discussion are concerned, there have always been provisions to force them to renounce their nationality of origin or, when this was not explicitly enshrined in the law, it resulted from administrative practice (Courtis & Penchaszadeh 2015). The first country in which this was waived is Uruguay since 1934.

Nowadays, all eleven countries accept dual nationality, except for Paraguay.³⁶ This is largely a very recent trend of the last 25 years in the case of Brazil (1994), Bolivia (2004),³⁷ Chile (2005),³⁸ Colombia (1991), Ecuador (1996),³⁹ Mexico (1998)

³¹ Chile, Law No. 12548 of 1957 (Echeverría 2016: 5).

³² Decree No. 569 of 1958. Bilateral Treaty on Double Nationality between Chile and Spain.

³³ Bilateral Treaty on Double Nationality between Paraguay and Spain, 25 June 1959.

³⁴ Bilateral Treaty on Double Nationality between Ecuador and Spain, subscribed on 4 March 1964. Published in the Official Registry No. 463, 23 March 1965.

³⁵ This treaty was approved in Colombia by Law 71 of 1979 and regulated by Decree 3541 (Escobar 2015: 15).

³⁶ Paraguay, Art. 149, 1992 Constitution. In Paraguay however Paraguayan citizens who naturalise abroad often retain their Paraguayan citizenship due to the lack of governmental mechanisms for control and identification. As mentioned before, Paraguay also has a bilateral agreement on dual nationality with Spain since 1959 (Brey 2016: 11).

³⁷ Bolivia, art. 39, Law 2650 13 April 2004 amending the constitution; Art. 11 Supreme Decree 27.698/2004.

(Hoyo 2015), Peru (1993)⁴⁰ and Venezuela (1999).⁴¹ Argentina does not explicitly provide for dual citizenship or for any renunciation requirement. That has led the Supreme Court in 2007 to accept both the possibility for Argentines to obtain a different citizenship as well as for newly naturalised individuals not to have to renounce the previous one (Courtis & Penchaszadeh 2015: 385). Finally, Uruguay has accepted dual nationality since 1934.⁴²

A final important element to highlight here refers to restrictions suffered by dual nationals. They mainly relate to access to certain public offices that are only available for those who, being nationals by birth, only possess one nationality. This is the case for example in Argentina,⁴³ Venezuela,⁴⁴ Chile⁴⁵ or Mexico (Hoyo 2015: 4).

5.2. Differences between Citizens by Birth and by Naturalisation

As discussed above in section 2, naturalised citizens have historically been discriminated against compared to nationals by birth. Access to the highest positions (mainly in the executive, legislative and judiciary branches) has been denied to naturalised individuals by constitutional law. This regional peculiarity continues to exist today in all eleven countries.⁴⁶ Several types of discrimination can be highlighted.

First, the executive power and the position of president is where most limitations are imposed, but they usually also apply to the judiciary and legislative branches. Venezuela represents the most extreme example of this historical continuity since naturalised citizens are plainly excluded from several of the highest positions in all three powers or, on other occasions, require 15 years of residence.⁴⁷ All the remaining countries, except for Bolivia,⁴⁸ also exclude access to the presidency.⁴⁹ Access to parliamentary representation and to the position of judges or magistrates in the highest

³⁸ Chile, Law No. 20.050/2005, constitutional reform amending the 1980 Constitution.

³⁹ Ecuador, art. 9, Codification of the 1978 Republic's Political Constitution, 29 May 1996.

⁴⁰ Peru, 1993 Constitution; and Nationality Law 26.574, 21 December 1995.

⁴¹ Venezuela, 1999 Constitution.

⁴² Uruguay, arts 66 and 71, 1934 Constitution.

⁴³ Excludes the possibility to become President and Vice-President, art. 89, Argentina 1994 Constitution.

⁴⁴ Excludes the possibility to become President as well as a large number of other positions including President or Vice-President of the National Assembly, Magistrates of the Supreme Court or Ombudsman, art. 41, Venezuela 1999 Constitution.

⁴⁵ Excludes the possibility to become President, art. 25, Chile 1980 Constitution.

⁴⁶ In Europe, the European Convention on Nationality, in particular its art. 5, provides that 'Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently.' Council of Europe, ETS 166 – European Convention on Nationality, 6.XI.1997.

⁴⁷ Venezuela, art. 41, 1999 Constitution. It completely excludes among others taking up office as President, Vice-President, President of the National Assembly, Magistrate at the Supreme Tribunal, General Prosecutor, Ombudsman or in certain ministries. It demands 15 years of naturalised citizenship for all ministers, members of parliament, governors and mayors.

⁴⁸ The 2009 Bolivian Constitution removes for the first time in history the requirement to be citizen by birth for the presidency. However, in order to perform several important positions in the police forces, the army or to be Vice-minister of Defense, it is necessary to be Bolivian by birth. See arts. 247 and 253, 2009 Bolivian Constitution.

⁴⁹ Argentina, Art. 89, 1994 Constitution; Colombia, art. 191, 1991 Constitution; Chile, art. 25, 1980 Constitution; Ecuador, art. 142, 2008 Constitution; Mexico, art. 82, 1917 Constitution as amended; Paraguay, art. 228, 1992 Constitution; Uruguay, art. 151, 1997 Constitution; Brazil, art. 12, 1988 Constitution; Peru, art. 110, 1993 Constitution.

tribunals (Supreme or Constitutional Courts) is also restricted to citizens by birth in five countries,⁵⁰ while in three others a number of years since naturalisation are needed before they can be elected,⁵¹ or even vote.⁵² In several countries other restrictions apply for various other positions including those of mayor, governor or ombudsman.

Second, and on a different note, naturalised individuals are discriminated against when it comes to transmitting citizenship to their offspring. In several cases, when the individual is born outside the territory of the particular American state to a naturalised parent, he or she needs to fulfil further conditions in order to obtain nationality himself or herself. In Ecuador, those born to a citizen abroad automatically obtain nationality and are considered as nationals by birth. Yet, if such citizen is a naturalised one, the offspring will not be considered as nationals by birth but rather by naturalisation. In Peru, only children of citizens by birth may register their offspring born abroad as nationals in a consulate. Children of naturalised citizens can only become nationals if they make a declaration upon reaching the age of majority and are resident in Peru. In Venezuela, residence conditions coupled with a declaration of willingness to become a Venezuelan before a certain age is reached are imposed on those born abroad to naturalised citizens (Álvarez 2016: 2).

Third, in the Mexican case, naturalised citizens are also discriminated in the sense that they cannot legally obtain a further nationality, unlike nationals by birth who have been able to do so since 1998 (Hoyo 2015: 12).

Finally, naturalised citizens might lose their citizenship under certain scenarios by a court order in Brazil (Jerónimo 2016: 28) or Venezuela (Álvarez 2016: 12). This is obviously not the case for nationals by birth. Also in Brazil, naturalised nationals might be extradited while this is not possible for Brazilians by birth (Jerónimo 2016: 23).⁵³

5.3. Towards a South American Citizenship?

During the last fifteen years South America has taken important steps towards establishing a free movement regime of people in the region. Two regional organisations have taken the lead in this effort. First, the Andean Community (CAN) (which includes Bolivia, Colombia, Ecuador and Peru) has adopted several legally binding decisions. The most important is Decision 545 that relates to mobility rights and equal treatment for certain categories of workers. In turn, MERCOSUR (which comprises Argentina, Bolivia, Brazil, Paraguay, Uruguay and Venezuela) adopted in 2002 the most important agreement on mobility to date. This is the MERCOSUR Residence Agreement that entered into force in 2009 and which has the characteristics of an international agreement. All twelve countries in South America are either full or associate members of MERCOSUR and thus can implement the agreement. As a result,

⁵⁰ In Colombia, arts. 172 and 232, 1991 Constitution; In Paraguay, arts. 162, 221, 223 and 258, 1992 Constitution; In Brazil, art. 12, 1988 Constitution; In Peru, arts. 90, 124 and 147, 1993 Constitution. In Mexico arts. 55 and 95, 1917 Constitution.

⁵¹ Six years for Senator and eight for Judge at the Supreme Court in Argentina, arts. 55 and 110, 1994 Constitution; In Chile naturalised citizens have the option to run for public office or as candidate in popular election only after five years (art. 10(4), 1980 Constitution); seven years are required to become Senator and ten for Judge at the Supreme Court in Uruguay, arts. 98 and 235, 1997 Constitution.

⁵² In Uruguay three years in order to exercise citizenship rights (art. 75 1997 Constitution). In Paraguay two years in order to become citizen and thus obtain political rights (art. 152, 1992 Constitution).

⁵³ Brazil, art. 5-LI, 1988 Constitution.

nine out of the twelve (all except for Guyana, Suriname and Venezuela) have transposed it into their national legal orders.

The MERCOSUR Residence Agreement's main objective is dealing with the situation of intra-regional migrants and it has transformed the migration regime for South Americans. It provides that any national of a MERCOSUR or Associate Member State may reside and work for a period of two years in a host state, subject to certain restrictions. After two years, the temporary residence permit may be transformed into a permanent one if the person can demonstrate legitimate means of living for himself or herself and any family members. It also lays down a number of rights including the right to work and equal treatment in working conditions, family reunion, and access to education for children (Acosta 2015). Analyses on the effects of the agreement remain scarce and incomplete. Between 2004 and 2013, almost two million South Americans obtained a temporary residence permit in one of the nine countries implementing the agreement (IOM 2014). Argentina, Chile and Brazil have seen the largest increase in permits granted each year. However, this does not necessarily indicate an increase in regional flows due to the agreement, considering that a large number of those who have obtained permits under the agreement already resided in the host country when it came into force. More research would be necessary to support any such conclusions.

It is also unclear to what extent the agreement has impacted on the number of regional migrants naturalising in another state. Whereas it is true that the agreement provides equal treatment in certain areas, it is also true that the administrative practice does not always respect this, notably when it comes to socio-economic rights (IOM 2014). More research will be also necessary to validate this aspect.

Beyond the MERCOSUR Residence Agreement, various regional organisations have been recently debating the construction of a South American citizenship. The Andean Community has put the item in the agenda already since 2008. By the time of the Fourth Andean Migration Forum in 2013, Member States proposed to strengthen a South American area of circulation and residence, via the convergence of CAN and MERCOSUR, within the framework of a new regional organisation: UNASUR. This would serve to consolidate and Andean and South American citizenship. The Forum also decided to codify in a single instrument all Andean communitarian acquis, scattered through various Decisions and Regulations, with the adoption of an Andean Migration Statute.⁵⁴ This Statute has been under discussion since 2013 at the level of the Secretariat and the Andean Committee of Migration Authorities.

In turn, MERCOSUR's Common Market Council, its highest decision-making body, adopted Decision 64/10 on citizenship on 16 December 2010.⁵⁵ Its aim was to establish an action plan to progressively conform a MERCOSUR citizenship statute to be adopted by 2021, coinciding with the organisation's 30th anniversary. In a parallel process, the MERCOSUR Migration Forum has been working on a new improved instrument going beyond the current Residence Agreement.

UNASUR introduced the aim of establishing a regional citizenship already in its founding treaty.⁵⁶ Article 3(i) provides as one of the objectives of the organisation the

⁵⁴ Bogota Declaration, IV Andean Forum on Migration, Bogota 9-10 May 2013.

⁵⁵ MERCOSUR/CMC/DEC. N° 64/10.

⁵⁶ UNASUR, Union of South American Nations, is a regional organisation comprising all twelve countries in South America. It aims at constructing a cultural, economic, social and political space in the region. The Brasilia founding treaty was signed on 23 May 2008 and entered into force on 11 March 2011.

consolidation of a South American identity through the progressive recognition of rights to those nationals of one Member State residing in the territory of another Member State, with the aim of achieving a South American citizenship. Within this framework, a working group on South American citizenship was created. It adopted a conceptual report on a common citizenship in 2014 and some voices have proposed the adoption of an UNASUR Residence agreement as a way to merge both regional processes (Ramírez Gallegos 2016).

Finally, the South American Conference on Migration (SCM) has dealt with the issue since 2001, when it started discussing free movement of people as part of a plan to address regional integration and globalization.⁵⁷ Since then, the need to promote free movement of people in the region has been a favourite of the Conference's final declarations, particularly in the last five years, and most notably in the 2011 final declaration in Brasilia, which was eloquently entitled 'towards a South American citizenship'.

Mexico, not being a South American state, has been by and large excluded from these debates. However, yet another new regional organisation, the Pacific Alliance, counts Mexico amongst its Member States together with Chile, Colombia and Peru. The Pacific Alliance has as its objective the progressive movement toward the free circulation of goods, services, capital and also people.⁵⁸ Even though its main goal seems to be facilitating business travel through visa exemption agreements, it has also worked on reciprocal consular protection and even the establishment of common embassies, such as the one in Ghana. It has also started in 2016 to debate aspects of free movement of workers.

The picture emerging from all these initiatives is far from clear. It is not obvious which regional organisation will take the lead in moving forward by adopting some sort of supranational citizenship. Moreover, it is precisely the lack of supranational institutions, except in the case of the Andean Community, which makes the adoption of a South American citizenship uncertain. In other words, it is not evident that the correct national implementation and application of a supranational status could be controlled through largely intergovernmental methods, peer-pressure or diplomatic assurances enunciated in regional meetings of national civil servants. The move towards supranationalism via the adoption of a Court or some sort of regional institution with control powers seems unlikely in South America. Beyond that, there is the obvious question of the personal and material scope of any new citizenship. Who would be considered as a South American citizen and what would be her rights? Several proposals aim at including within such status not only nationals of a Member State but also non-regional migrants regularly residing in one of the twelve countries. This would constitute a tremendous breakthrough, especially if one considers that similar proposals to include third-country nationals as EU citizens in Europe never came to fruition. Such an inclusive supranational citizenship would also resonate well with the very open discourse on migration and migrants (and not only regional ones) that has developed in the region during the last fifteen years (Acosta Arcarazo & Freier 2015). Nonetheless,

⁵⁷ The South American Conference on Migration is a regional consultative process in which all twelve countries in South America participate. It adopts final declarations that are not legally binding. Second South American Conference on Migration, 'Acta de la Comisión. Libre Movilidad de Personas,' Santiago de Chile, 2-3 April 2001.

⁵⁸ The Pacific Alliance (*Alianza del Pacífico*) is a Latin American trade bloc. It was created by the Declaration of Lima on 28 April 2011. Its current members are Colombia, Mexico, Peru, and Chile. Panama and Costa Rica are also in the process of joining.

and in a parallel process with any inclusion of extra-continental migrants, there would be the need to end the discrimination against naturalised citizens which also extends to free movement rights under the MERCOSUR agreement. Indeed, the MERCOSUR agreement excludes from its scope naturalised citizens during the first five years after having obtained nationality. Stronger exclusions are also present for naturalised citizens when it comes to voting rights for the regional Parliaments at MERCOSUR and CAN level.

6. Conclusion

South America (not including Guyana and Suriname) as well as Mexico have a different regulation of acquisition and loss of citizenship when compared with other regions in the world. This is largely influenced by the peculiar circumstances that surrounded their independence in the early nineteenth century. Many of the policy choices that were made during the first years as independent states, remain valid today or, at least, largely affect the current regime. *Ius soli* is of course the most characteristic element but others, such as the discrimination suffered by naturalised citizens or the recent acceptance of dual nationality, are also paramount. Interestingly, the regulation of acquisition and loss of citizenship in these countries has not only been quite stable but also their policy choices are similar which may point in the direction of legal transplants and policy diffusion.

During the last fifteen years, and especially in South America but also to a certain extent in Mexico, the discourse on migration has become more open and liberal. This has mainly related to concerns about the rights of nationals abroad, notably in Europe and the USA, but has also affected immigration policies and law at regional level. It is within these debates that we can frame the current dialogue on the establishment of a supranational South American Citizenship as well as the free movement legislative architecture already in place. These proposals are not without contradictions. Not only is there little debate about the lesser status of naturalised nationals, but certain administrative practices also run contrary to the alleged openness that states are aiming to achieve. The recent speedy expulsions of undocumented Cuban migrants from Ecuador and Colombia are merely one example of this. The adoption of new migration laws in Brazil and Chile and current policy proposals discussed in the Ecuadorian Parliament, but also in Paraguay where a new draft law was presented in 2016, as well as the deepening of the regional mobility agreements already in place, are crucial in order for reality to catch up with the rhetoric of openness. More debate is also needed on the discrimination against naturalised citizens. Such discrimination could have its valid reasons within a nineteenth century context but seems out of place nowadays, especially within a framework of an open discourse on mobility and the willingness to adopt a supranational citizenship.

Due to their importance in terms of population, migration history and new initiatives on mobility and citizenship, more research needs to be conducted on South American states and Mexico. This will enrich our understanding of migration and citizenship regulation at comparative and global level and will allow academics and

policymakers to nuance generalisations that have usually been extrapolated from the analysis of only a handful of cases in Europe and North America.

References

- Acosta, D. & L. F. Freier (2015), 'Turning the immigration policy paradox up-side down? Populist liberalism and discursive gaps in South America', *International Migration Review* 49 (3): 659-697.
- Acosta, D. (2015), '200 years of a South American Citizenship: Continuity and Change on Migration and Mobility in the Region', paper presented at the Migration Policy Centre Lunchtime Seminars Series, Florence, EUI, 3 December 2015.
- Álvarez, A.E. (2016), *Report on Citizenship Law: Venezuela*. Florence: European University Institute.
- Appelbaum, N.P., A. S. Macpherson & K. A. Roseblatt (2003), 'Introduction. Racial Nations', in N. P. Appelbaum, A. S. Macpherson & K. A. Roseblatt (eds.), *Race and Nation in Modern Latin America*, 1-31. Chapel Hill and London: University of North Carolina Press.
- Berruezo, M.T. (1986), *La Participación Americana en las Cortes de Cádiz. 1810-1814*. Madrid: Centro de Estudios Constitucionales.
- Blanchette, T.G. (2015), "'Almost a Brazilian" Gringos, Immigration, and Irregularity in Brazil', in D. Acosta & A. Wiesbrock (eds.), *Global Migration: Old Assumptions, New Dynamics*, 167-194. Santa Barbara: Praeger.
- Brey, E. (2016), *Report on Citizenship Law: Paraguay*. Florence: European University Institute.
- Burke, W. (1807), *South American Independence: or, the Emancipation of South America, the Glory and Interest of England*. London: J. Ridgway.
- Courtis, C. & A.P. Penchaszadeh (2015), 'El (im)posible ciudadano extranjero. Ciudadanía y nacionalidad en Argentina', *Revista SAAP* 9 (2): 375-394.
- Dembour, M.B. (2015), *When Humans Become Migrants. Study of the European Court of Human Rights with an Inter-American Counterpoint*. Oxford: Oxford University Press.
- Echeverría, G. (2016), *Report on Citizenship Law: Chile*. Florence: European University Institute.
- Escobar, C. (2015), *Report on Citizenship Law: Colombia*. Florence: European University Institute.
- Gargarella, R. (2013), *Latin American Constitutionalism, 1810-2010: The Engine Room of the Constitution*. Oxford: Oxford University Press.

- Habib, J. (2016), *Report on Citizenship Law: Argentina*. Florence: European University Institute.
- Hoyo, H. (2015), *Report on Citizenship Law: Mexico*. Florence: European University Institute.
- IOM. (2011), *Perfil Migratorio de Uruguay 2011*. Buenos Aires: IOM.
- IOM. (2014), *Estudio sobre Experiencias en la Implementación del Acuerdo de Residencia del MERCOSUR y Asociados. Documento de Referencia*, Presented at the XIV Meeting of the South American Conference on Migration, Lima 16-17 October 2014.
- Jerónimo, P. (2016), *Report on Citizenship Law: Brazil*. Florence: European University Institute.
- Margheritis, A. (2015), *Report on Citizenship Law: Uruguay*. Florence: European University Institute.
- Mirow, M.C. (2015). *Latin American Constitutions. The Constitution of Cádiz and its Legacy in Spanish America*. Cambridge: Cambridge University Press.
- Pazo Pineda, O.A. (2015), *Informe sobre la Ciudadanía: Perú*. Florence: European University Institute.
- Ramírez Gallegos, J. (2016), *Hacia el Sur. La Construcción de la Ciudadanía Suramericana y la Movilidad Intrarregional*. Quito: CELAG.
- Sabato, H. (2001), 'On Political Citizenship in Nineteenth-Century Latin America', *American Historical Review* 106 (4): 1290-1315.
- Schwarz, T. (2012), 'Políticas de Inmigración en América Latina: El Extranjero Indeseable en las Normas Nacionales, de la Independencia hasta los Años de 1930', *Procesos Revista Ecuatoriana de Historia* 36: 39-72.
- Vetancourt Aristeguieta, F. (1957), *Nacionalidad, Naturalización y Ciudadanía en Hispano-América*. Caracas: El Cojo.
- Vink, M.P. & G-R. de Groot. (2010), *Birthright Citizenship: Trends and Regulations in Europe*. Florence: European University Institute.
- Vonk, O. (2014), *Nationality Law in the Western Hemisphere: A Study of Grounds for Acquisition and Loss of Citizenship in the Americas and the Caribbean*. Leiden: Martinus Nijhoff.
- Zahler, R. (2013), 'Heretics, Cadavers, and Capitalists. European Foreigners in Venezuela during the 1820s', in M. Brown & G. Paquette (eds.), *Connections after Colonialism. Europe and Latin America in the 1820s*, 191-206. Tuscaloosa: University of Alabama Press.

