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## ***CITIZENSHIP POLICY MAKING IN MEDITERRANEAN EU STATES: SPAIN***

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# Citizenship Policy Making in Spain

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This paper analyses the evolution of nationality legislation in Spain, specifically focusing on the political processes that account for both continuity and change in this area of legislation. This analysis is placed within the larger context defined by radical institutional changes (from an authoritarian regime to a liberal democracy), as well as the shifting position in the world migration system experienced by Spain in the last two decades. We argue that while the high degree of continuity of Spanish nationality law can be explained within an institutionalist logic (path-dependency derived from the long history of Spain as a country of emigration), policy reforms in this area must be accounted for by focusing on the strategies and actions of socio-political actors (mostly political parties, but in some cases also other social actors) intervening in the policy-making process that defines this legislation.

The paper is divided into three parts. The first section presents the theoretical framework which guides our analysis, as well as the main characteristics of Spanish nationality law, describing its key features and latest developments. We also review the evolution of naturalisations in Spain pointing at the increasing number of immigrants acquiring Spanish citizenship by residence, and the administrative challenges this situation poses.

In the second section we study how Spanish nationality legislation reflects the position of a traditional country of emigration (influenced as well by its colonialist past), mainly focused on maintaining its links with Spanish communities abroad. After linking the elements of policy stability to the historical processes that contributed to shape them, we review the most recent developments in this area of legislation, analysing the processes of agenda-setting, parliamentary discussion and media coverage of these reforms, by focusing in the role played by social and political actors. In so doing we aim to show the structure of incentives for Spanish political parties to intervene (or not) in this area of policy, and the way in which this has conditioned the evolution of Spanish nationality law.

We finish the paper synthesising the conclusions of our analysis of the continuity and change of nationality law in Spain, as well as pointing out potential avenues for future reform in this area of policy.

## **1 Accounting for contemporary Spanish nationality Law**

For over a century, legislation regulating Spanish nationality has been driven by the will to keep close links with Spanish communities settled abroad. The mechanisms by which Spanish nationality could be passed on, retained and recovered (the main issues affecting these communities of Spanish origin abroad), centered most of the attention of the legislator when reforms of the legislation on nationality took place.

While this policy made perfect sense in the context of a history marked by a colonialist past and significant emigration flows, it appears poorly adjusted to a reality

characterised by the settlement of large communities of immigrant origin in the Spanish territory. The purpose of this paper is to explain both the continuity of a nationality legislation strongly oriented towards protecting Spanish citizens settled abroad (and their descendants), and the discussion (or lack thereof) of policy reforms in this domain.

In this section we will present the main theoretical tools which should guide our analysis of continuity and reform in Spanish nationality law, as well as the main characteristics and consequences of the current state of affairs in this policy domain.

### **1.1 Theoretical considerations to account for stability and change of nationality law**

Nation-states have markedly different and deeply rooted conceptions about what constitutes the 'national community'. Both the establishment of the boundaries of the political community, and the way to cope with the diversity existing within it constitute 'policy paradigms' that, although open to changes, represent a normative substrate that strongly influence the patterns that must be followed by the different populations of immigrant origin into the host society in order to fit in (Favell 1998).

Nationality law is strongly linked to these conceptions, since it establishes the normative framework that defines the boundaries of the inner-group (nationals), as well as the different paths by which aliens may become members of the national community (Brubaker 1992). In this respect we can expect nationality law to show a significant degree of continuity despite the gradual transformation of the socio-political conditions in which they are deemed to operate. The idea of a clear 'path-dependency' in the normative arrangements that regulate nationality helps account for the crucial role played by the concern for the situation of Spanish nationals living abroad in the definition of contemporary Spanish nationality law. Crucial to this concern would be the colonialist past of Spain, notably in Latin America, and the role historically played by Spain in the world migration system over the last century. In this respect the Spanish case may resemble that of other European countries marked by similar experiences, such as Portugal, France or even Belgium in the case of its colonialist history, or Italy in the case of its past as a country of emigration.

The institutionalist approach contributes to explain stability in nationality law, but does not explain change in this area of policy. In order to account for reforms in nationality legislation Joppke developed a model structured around two main driving factors: shifts in the position in the world migration system, and the political orientation of the party or coalition in government (Joppke 2003). According to this model, the reception of large numbers of immigrants may involve changes to the nationality law of the receiving country. The direction of that policy change would be related to the ideology of the political party in power, so that left-wing governments will tend towards a liberalisation of the conditions for acquiring the nationality of the receiving country, and right-wing political parties in government would be more likely to reform in the sense of restricting access to nationality. Joppke also linked those processes of policy reform to the ethnic conception of national societies, so that progressive reforms would point in the direction of de-ethnification (liberalisation of the naturalisation of immigrants), while conservative reforms would imply a trend towards a re-ethnification of nationality law (strengthening the ties with the national community abroad) (Joppke 2005). In this respect Joppke was following Bauböck (1994) when he stressed the importance of the shape of societal membership in different national societies when explaining the main characteristics of nationality legislation by opposing ethnic nationalism (more related to the

ius sanguinis principle), to liberal democracy (more inclusive, and focused on the prevalence of ius soli).

The dynamics of nationality law linked to migration has been accounted by Howard (2006) when developing the idea of ‘potential for change’ when studying individual cases in a cross-national perspective. Money (2009) has recently developed this model, by stressing the importance of politicians’ incentive structures to the reform of nationality law. According to her proposal, change in this area of policy can to a large extent be explained by looking at the politicians’ costs and benefits evaluations before introducing such reforms. She takes up Joppke’s idea that growing immigration may involve changes to nationality law, and proposes to concentrate on the distance between citizens and foreigners in terms of rights and duties. Following this argument, we should expect to observe liberalising changes in nationality legislation in places where non-citizens have rights similar to those of citizens but fewer responsibilities, and restrictive reforms where non-citizens have responsibilities similar to those of citizens, but fewer rights. Following this line of argument, where rights and responsibilities are ‘matched’ (few differences in both rights and responsibilities, or large differences in both rights and responsibilities) politicians have few incentives for introducing changes in citizenship law. This line of thought seems particularly promising for our analysis because, after concentrating on the role of politicians as central actors in the policy-making process, it leaves room for the consideration of other socio-political actors (from the courts to bureaucrats) which may play an important role in this area of policy, as has been recently shown in the cases of Germany, Austria and Switzerland (Hofhansel 2008).

Building on this body of literature, our main arguments in order to explain Spain’s specific combination of stability and reform of its nationality legislation can be summarised along the following lines:

- 1) The ‘path-dependency’ of Spain’s heritage in nationality legislation, historically focused on the protection of Spanish communities abroad, and on maintaining links with the former colonies, accounts for the stability of its specific combination of ius sanguinis (the strongest principle in this policy domain), ius soli (relatively liberal, but not designed to facilitate the incorporation of populations of immigrant origin into Spanish society), and residence criteria for naturalisation (with a very strict general requirement combined with very generous treatment for nationals of certain countries). As we will show along the paper, this conception of nationality law remains a very powerful substrate in the processes of reform in this area of legislation initiated during the last two decades.
- 2) The changing position of Spain within the system of international migrations (from country of emigration to a net receiver of migrants) has not being matched by an equivalent shift in the objectives to be achieved by citizenship legislation. The fact that nationality issues are actually hardly visible in the Spanish public and political agendas, and that policies on the incorporation of immigrants have not been included in the debates on citizenship law yet, can be explained by the lack of incentives for politicians to introduce reforms in this area of policy. Following Money, in the case of Spain we would be in a situation in which the ‘matching’ of rights and responsibilities between immigrants and citizens (more or less similar rights and responsibilities, excluding the right to vote) would involve few incentives for politicians to introduce this topic in the political agenda. Since the condition of ‘denizen’ (Hammar 1990) is relatively easy to obtain (a fairly comprehensive set of civil and social rights are granted to immigrants, regardless of their legal status), and the rights and obligations attached to it are not too distant from those of citizens, there is little room for mobilisation along these lines.
- 3) The low profile of the political debate on the role of nationality law in the integration of immigrants into Spanish society can also be explained by focusing on the positions taken by different political forces over the last years. While the conservative forces may feel relatively comfortable with the current legislation (strong ius sanguinis principle, and focus of this area

of policy on the protection of the Spanish diaspora), and the centre-left may consider the status quo relatively liberal (double *ius soli*, *ius soli* for second generations after one year of residence, and a short residence requirement for naturalisation for some significant groups of immigrant origin), left-wing parties estimate that further liberalisation is necessary, but they lack the strength to introduce reforms in this direction and are also hesitant to introduce this issue too strongly into the public agenda for fear of a potential backlash of anti-immigrant feelings.

This situation does not, of course, exclude the possibility of future changes in nationality law (possibly in the direction of reducing the general residence requirement for naturalisation in the direction taken by many European countries), but the lack of a clear structure of incentives for political forces to introduce this topic in the public and political agendas, and the non-existence of significant social forces asking for the reform of this area of policy do not point at any development in this domain any time soon.

## 1.2 Current nationality law in Spain

Spain belongs to the small group of countries that up to this day continue to regulate their nationality law (including the residency requirements for the naturalisation of foreigners, the right of the children born of foreign parents to acquire Spanish nationality, or the regulation of dual nationality) through articles of the civil code. The absence of a law specifically devoted to regulating this potentially sensitive issue reflects the relatively low profile that this area of policy has traditionally had in the Spanish political arena. A schematic overview of the evolution of this area of legislation illustrates this particular point.

Since 1889, nationality law in Spain has been regulated by articles 17 to 28 of the Civil Code. These articles distinguish between two types of citizenship: ‘by origin’ and ‘derivative’. The main difference, determined by the Spanish Constitution, is that Spaniards ‘by origin’ cannot be deprived of their nationality.

There are four possibilities for being considered a Spanish-born national: 1) those born to a Spanish parent, with one of them being a full citizen being sufficient (*ius sanguinis*); 2) those born in Spain to foreign parents if at least one of them was also born in Spain (*double ius soli*); 3) those born in Spain to parents who do not have any nationality, or in the case that they would remain stateless (if the legislation of the parents’ country of origin do not attribute a nationality to children born abroad) (*ius soli at birth*); 4) those born in Spain to unknown parents (*ius soli at birth*). Thus, the system remains strongly shaped by *ius sanguinis*, with *ius soli* attributing Spanish citizenship to third-generation immigrants and, only in some particular situations, to the second generation.

The procedures for naturalisation, in order to gain ‘derivative’ citizenship, distinguish between different countries of origin and personal situations. The general period of residence required (ten years) remains a quite long one when compared with other European countries. However, there are several exceptions to the general principle that, in practice, characterise the Spanish system as more liberal than it might seem at first sight. The first exception involves recognised refugees, who only need five years of legal residence before applying for citizenship. The second, and as we will see the most frequent case of naturalisation, is the exception for citizens of some countries with historical links with Spain, and whose residence requirement to qualify for naturalisation is reduced to two years. These countries are those of the ‘Ibero-American’ community (including Brazil), Andorra, the Philippines, Equatorial

Guinea, Portugal, and a specific group, the Sephardic Jews (the descendants of the Jews expelled from Spain in 1492) who can apply for this exception regardless of their nationality of origin (although they represent very few applications every year). In addition, there are other situations that allow candidates to Spanish citizenship to apply after only one year of residence: 1) foreign residents married to a Spanish national (*spousal transfer*); 2) those born abroad to a Spanish parent or grandparent who originally was a Spanish-born citizen (this reinforces some kind of ‘*ius sanguinis* after birth’); 3) those born in Spain to foreign parents. In this case, second-generation immigrants do not need to reach their age of majority at 18 before applying for citizenship since their parents can apply on their behalf only one year after birth. This latest regulation allows second-generation immigrants to become Spanish citizens fairly easily, and therefore strengthens some sort of *ius soli after birth* which, in comparative terms, is one of the most positive exceptions to the general rules of naturalisation.

According to the present legislation, residence must be ‘legal’, continued and immediately prior to the application. In addition, in order to be candidates for naturalisation applicants must prove ‘good civic conduct and sufficient integration in Spanish society’ (article 22.4). The interpretation of these vague requirements remains controversial, as it allows discretionary practices in its implementation (although these practices are not always detrimental). Nevertheless, up to this moment a practical interpretation commands: this requirement usually means not to have a clear criminal record in Spain or the country of origin (an objective requirement), and to prove sufficient knowledge of Spanish or any other regional language (this requirement is, in fact, quite discretionarily applied).

There is additionally an exceptional procedure to gain Spanish citizenship called *carta de naturaleza*. This mechanism constitutes a discretionary process of naturalisation that can be used by the government in specific circumstances to grant a Spanish passport to certain persons or groups. This was used, for instance, in 1996 when granting Spanish citizenship to those who fought in the International Brigades during the Spanish Civil War (1936-1939). In 2004, the same scheme was used to grant Spanish citizenship to the foreign victims of 11 March terrorist attack in Madrid. In more peaceful situations, this procedure is used to quickly grant Spanish citizenship to foreign artists, athletes or intellectuals, but it involves very few cases every year.

The regulation of dual nationality also distinguishes between different countries of origin and personal situations. In this respect, the Civil Code only establishes the possibility for dual nationality in the case of the countries with historical links with Spain whose citizens can apply for Spanish citizenship after only two years of legal residence. These applicants do not need to renounce their previous status and, reciprocally, Spanish citizens can maintain Spanish nationality when naturalising in one of these countries. No more cases of dual citizenship are anticipated by the law, but article 24 establishes the possibility of keeping two nationalities in the case of Spanish nationals gaining citizenship in another country if they declare their will to do so within three years of naturalising in that country (this provision does not exclude naturalised immigrants from enjoying this exception after having gained Spanish citizenship, but this path through various nationalities is a very rare exception). What is important is that there is no reciprocity in this provision: in the case of foreigners who acquire Spanish nationality, with the abovementioned exceptions, the candidate must renounce his or her previous nationality. However, the actual application of this principle depends on the provisions on citizenship of the country of origin (if the country recognises this renunciation or not) and could also be influenced by discretionary practices of verification in each of the countries involved. Through these principles it becomes easier to maintain Spanish nationality (reinforcing again a system shaped by *ius sanguinis*), at the same

time that the naturalisation of those who do not want to renounce their nationality of origin is made more difficult.

Looking at the previous elements we can argue that the current regulation of Spanish nationality tries to strike a balance between its strong *ius sanguinis* character, and some important elements of *ius soli*, somehow facilitating the incorporation of second- and third-generation immigrants into the Spanish community. Simultaneously, it applies a dual treatment to different immigrant groups in relation to the requirements for obtaining Spanish nationality by residence, with clearly preferential treatment to certain communities (notably Latin American migrants), and a very demanding requirement of legal residence for the rest (with particularly important effects on the African, Asian and Eastern European communities settled in Spain).

### 1.3 Latest developments in nationality legislation

In recent years, and with the logical reluctance of conservative forces, Spanish left-wing parties grew increasingly concerned with the fate of those who experienced political exile due to the Civil War and its aftermaths (the economic, political and social crises that followed).<sup>1</sup> The 2007 *Ley de Memoria Histórica* (Law of Historical Memory), and its implications for nationality law (in the form of the so-called *Ley de Nietos*, ‘Grandchildren’s Law’), constitute the most recent reform of the regulation of Spanish nationality driven by the concern for those communities of Spanish origin settled abroad. Beyond the well-intended concern for the descendants of those who had to leave Spain after the Civil War, two alternative (and to some extent complementary) hypotheses have been put forward to account for the passing of this latest reform of Spanish nationality law.

The first one has to do with the possible political opportunism of a measure aimed at creating fidelities within the Spanish ‘diaspora’ in Latin America by granting Spanish passports (and with them, full political rights) to a relatively large group which could then vote for those who responded to their demands. This accusation, directed against the socialist government by the Popular Party (PP, *Partido Popular*) in opposition, claims that by passing the *Ley de Nietos* the socialists (PSOE, *Partido Socialista Obrero Español*) were just trying to exchange citizenship rights for the votes of the emigrants (particularly important in regions like Galicia or the Canary Islands with large communities of emigrants abroad). In this respect, the two biggest parties (as well as the main Catalan and Basque nationalist parties, CIU and PNV) have spent significant energy in recent years in trying to establish links with those communities, particularly during the periods of electoral campaigns. Over the last decade Spanish administrations (under the control of both main political parties) also deployed a basic net of social rights for those Spanish communities abroad (including healthcare and minimum non-contributory pensions now framed under the 2006 ‘Statute of Spanish Citizenship Abroad’), which could also be interpreted as having political clientelistic rationales.

The second hypothesis to explain the passing of the *Ley de Nietos* at this specific moment in time has to do with the possible interpretation of that regulation as a step towards the development of an implicit policy of ‘chosen immigration’. According to this interpretation of the reform, the arrival of flows of immigrants of Spanish origin would be preferred due to their ethnic (cultural, linguistic and phenotypical) characteristics. The debate

<sup>1</sup> As a consequence of the Spanish Civil War, the GDP of 1936, when the War started, was not reached again until 1951 (*Prados de la Escosura*, 2004).

on the convenience of selecting the main traits of the migrants arriving into the country (in terms of level of education, but also along some other socio-demographic characteristics) strongly emerged in recent times in the public agenda of other countries, but has never been explicitly addressed by politicians or public officials in Spain. Nevertheless, some informal statements by key political figures recognised the effect of passing this Law on the nature of the migratory flows arriving to Spain, facilitating the arrival of people who might more easily 'integrate' within Spanish society.

The figures reflecting the outcomes of this Law remain provisional since the process of submitting the applications to benefit from this scheme, the evaluation of those files, and the decisions on who is to obtain Spanish nationality according to this regulation remain open as we write this country report. As a mere indication we can say that up to December 2009, 161,777 applications for obtaining Spanish nationality through this mechanism had been already channeled at Spanish consulates and embassies (more than 154,000 of those in Latin American countries: of them around 58,000 in Cuba, nearly 38,000 in Argentina, and more than 16,000 in Mexico). To that date the number of those who had already obtained a Spanish passport was 81,791, while just 6,704 applications had been rejected (Izquierdo Escribano 2010). The remaining files are still being evaluated by the Ministry of Justice charged with the responsibility of managing the bureaucratic process of granting Spanish nationality. This process has in any case a limited duration (two years since the passing of the Law, plus one additional, optional year included in the text of the Law, which the government has already granted). The expectation of Spanish authorities is that most of those who obtain Spanish nationality through the *Ley de Nietos* will not settle in Spain, since in many cases obtaining that passport constitutes a possibility to easily travel in and out of the other country of which they are a national (as in the case of Cuba), or a guarantee against any possible social, political or economic instability in those other countries (as for example in Argentina).

#### **1.4 The implementation of naturalisation by residence in Spain**

In recent years naturalisations have gone up quite considerably, with a peak of more than 84,000 in 2008. This tendency will no doubt continue to increase in the coming years, as more cohorts of migrants reach their minimum required period of legal residency in Spain and apply for naturalisation.

Among new Spanish nationals, those coming from Latin America represent by far the biggest group. The large numbers of people from Spanish-speaking countries who gain Spanish citizenship by residence reflect the preferential treatment granted to citizens of the former colonies by Spanish nationality legislation. This preferential treatment, both in terms of shorter residency requirements for naturalisation, and dual nationality arrangements, constitutes one of the most generous treatments of citizens of former colonies among the former European imperial powers (Waldrauch 2006).

**Table 1. Naturalisations by continent of origin**

Years	Total	AMERICA		EUROPE		AFRICA	ASIA	OTHER
		Latin	North*	EU**	Non-EU			
1960-1964	767	74	12	327	134	49	34	65
1965-1969	1,162	256	17	539	146	96	65	43
1970-1974	2,204	674	37	949	94	192	147	121
1975-1979	12,052	5,059	138	4,101	278	968	1,019	179
1980-1984	27,310	13,184	335	8,855	596	1,319	2,633	284
1985-1989	31,971	10,450	518	5,130	568	12,498	2,567	251
1990-1994	32,282	18,718	685	4,940	806	5,745	4,303	256
1995	6,750	4,053	111	616	53	1,059	818	40
1996	8,411	5,410	119	688	59	1,029	1,080	26
1997	10,293	6,204	176	846	81	1,471	1,486	29
1998	13,165	8,024	223	1,137	103	2,149	1,480	49
1999	16,373	10,063	302	1,168	150	2,880	1,756	54
2000	11,996	6,893	254	828	122	2,575	1,283	41
2001	16,735	9,447	395	1,043	192	3,824	1,787	47
2002	21,805	13,382	496	1,226	191	4,325	2,131	54
2003	26,556	13,954	457	1,252	193	8,522	2,122	56
2004	38,335	23,813	573	1,426	295	9,991	2,198	39
2005	42,829	31,290	540	1,146	307	7,346	2,164	36
2006	62,339	50,254	692	1,037	397	7,618	2,303	38
2007	71,810	56,741	725	1,135	445	10,312	2,418	34
2008	84,170	67,443	912	1,404	490	11,201	2,684	36

\* *Except Mexico, included within the Latin American category*

\*\**EU figures calculated with the member states of each period (therefore including Romania and Bulgaria after 2008)*

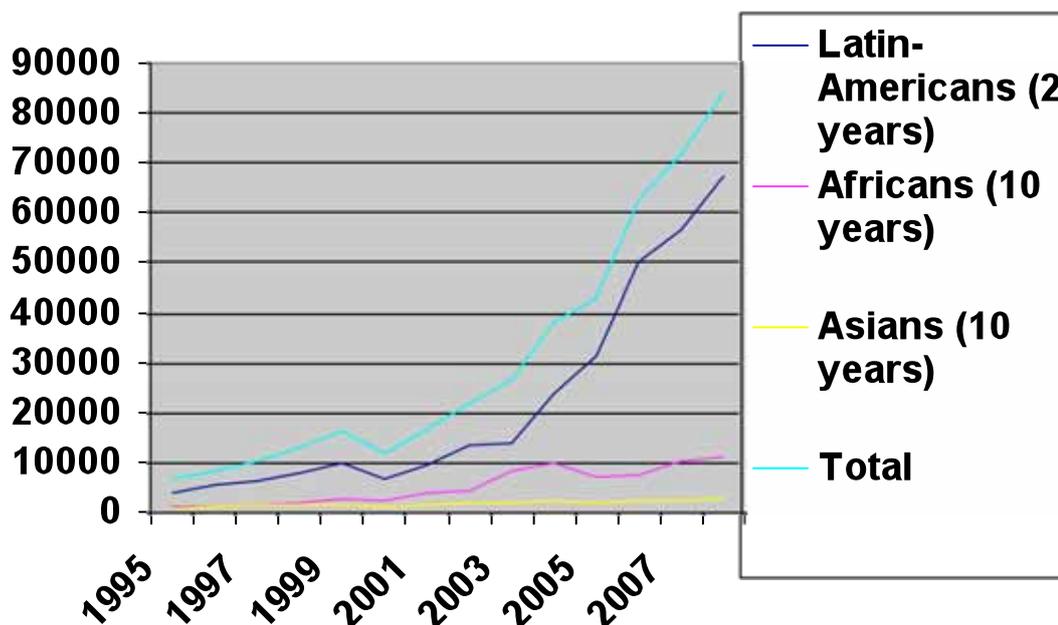
*Source: Authors' elaboration of data from the Dirección General de Registros y Notariado, Ministerio de Justicia*

In practical terms, to the two-year period of legal residence required for Latin American migrants to be able to apply for Spanish citizenship we must add the delay introduced by the administrative procedures to grant the new citizenship status. All these factors considered, we should expect a considerable increase in the naturalisation of Latin American migrants in the coming years given the evolution of the numbers of migrants from this region (see Table 3).

Despite the predominance of Latin American migrants in the process of naturalisations, migrants from Africa and Asia have also been gaining importance in this procedure in recent years. We must take into consideration that the period of legal residence required of these groups is ten years so the 'maturation' of the process in the case of migrants from these regions will obviously prove to be longer but will eventually arrive. Signs of this delayed arrival into the naturalisation process can already be observed in the growing number of African migrants (most of them Moroccans) who have obtained Spanish citizenship since the mid 2000s. Due to the ample set of rights enjoyed by nationals of other EU Member States in Spain (granted through the concept of European citizenship), they have relatively fewer incentives to apply for Spanish nationality, and that reflects quite clearly in the data shown in Table 1.

Graph 1 provides us with a visual representation of the evolution of naturalisations in Spain. We can observe how Latin American migrants are responsible for the largest share of the increase in the number of naturalisations taking place in Spain over the last five years.

**Graph 1. Naturalisations by continent (years of residency required) (1995-2008)**



The growing numbers of naturalisations taking place in Spain during the last years show that while the debate on legislation has maintained a relatively low profile in the public and political arenas, the increasing number of applicants is becoming a considerable challenge to the bureaucratic agencies responsible for these tasks. In fact, the steady increase in the number of applications for naturalisation is saturating the traditionally busy administration of the Ministry of Justice, as well as that of the local and provincial civil registries in charge of initiating those procedures (the Ministry of Justice estimates that around 155,000 new naturalisation processes were initiated in 2009 alone). As an indication of this, and despite the legally-binding responsibility of the administration to resolve the naturalisation procedure in one year once the file has reached the central services of the Ministry of Justice, the average period for a decision to be made is estimated to be at least two years these days. In addition, there is extreme variation in the delay for the initial administrative steps taken by the civil registries. While some of them manage to send the applications in around three months, most of them are taking more than one year.

In 2009 the Spanish government undertook a new program for the modernisation of the judicial system, which also included the functioning of the civil registries and the procedures for naturalisation. More specifically, the authorities have stated that the objective will be to respect the one-year deadline for the decisions on naturalisation by mid-2010. However, this well-intentioned purpose could be contested by the increasing demand for naturalisation: whereas the purpose is to be resolving around 150,000 application files per year in 2010 (this corresponds approximately to the number of files received in 2009), many cases will continue accumulating delays if the trend towards an increase in the number of

applications continues at its current pace. In this respect, the authorities charged with this procedure raise two opposite hypotheses on the effects of the current economic crisis over the pattern of naturalisation demands. On the one hand, immigrants eligible for Spanish citizenship may be leaving the country in the coming years without applying for citizenship, and therefore reducing the figures of citizenship applicants. But, on the other hand, before making a decision on the return to their home countries, or on the move to a new immigration country, unemployed foreigners eligible for citizenship could be interested in applying for Spanish nationality not to risk falling into illegality when their working permits expire (this may especially concern Latin American migrants who do not need to be permanent residents before applying for citizenship). The demand for naturalisation would thus become a strategy to obtain free movement between the country of origin in Latin America and Spain (and by extension the whole EU) as a consequence of dual citizenship. This hypothesis could apply as well to immigrants of other nationalities who could be more interested at this moment in obtaining Spanish nationality in order to move more freely within the EU. However, as the authorities point out, these hypotheses have to be tested with the evolution of the data over the next five years.

## **2 The foundations of Spanish nationality law**

As presented in the introductory section of this paper, the high degree of stability in Spanish nationality legislation can be explained by the path-dependencies derived from the will to maintain links with the communities of Spanish origin settled abroad and derived from the large history of Spain as a country of emigration. In order to account for the more recent political discussions that have shaped the evolution of this area of policy we need to pay a closer look to the different social and political actors involved (in one form or another).

In this section we aim to provide a brief historical overview of the evolution of Spanish nationality legislation, focusing both on what has remained constant and what has changed as the position of Spain within the international migration system has shifted.

### **2.1 Spain as a country of emigration (1889-1990)**

Since the sixteenth century, Spain was strongly affected by the experience of emigration of its citizens to the American colonies. After the independence of most of those territories, and the emergence of the new republics, the issue of the nationality status of the first generation of Spanish settlers and their descendants in those countries constituted one of the key issues to be negotiated in the peace treaties between the former metropolis and the newly independent countries (signed in the 1850s and 1860s). Those bilateral agreements stated the preferential treatment to be given to Spanish migrants in those countries in terms of facilities to settle, as well as the possibility of gaining the nationality of the host country without losing their Spanish nationality of origin. These agreements aimed at reconciling the demographic needs of the new states with the interest of the Spanish authorities in guaranteeing some protection for its emigrants and their descendants, allowing the development of a regulatory framework of situations of dual nationality that lasts until our days. Only the colonies separated from Spain at the end of the 1898 Spanish-American War (Cuba, Puerto Rico and the Philippines) did not sign treaties allowing first-generation Spanish settlers and their descendants to keep Spanish nationality.

*Early developments*

Spanish nationality regulation established early on among its main objectives that of maintaining links with the communities of Spaniards settled abroad, as well as that of providing protection to those groups by making sure that they could not easily lose their Spanish nationality. The Civil Code of 1889 was the first legal text to address the task of defining the main traits of Spanish nationality law and while doing so it already emphasised that goal. Thus, the twelve articles of that Code devoted to this issue were characterised by a logic combining a strong *ius sanguinis* with a relatively generous *ius soli*.

According to that piece of legislation, all those born to a Spanish parent held Spanish nationality (regardless of where they were born). One of the consequences of this rule was the appearance of a large number of cases of dual nationality, especially in Latin American countries where large communities of Spanish migrants had settled, and whose governments had dual nationality agreements with Spain. In order to deal with these situations, article 26 of the Civil Code required Spanish emigrants who wanted to maintain their Spanish nationality to register at the Spanish embassy or consulate in their host country. This particular combination of *ius sanguinis* with certain administrative restrictions was the result of a conflict of interests: while the Spanish authorities wanted to maintain links with the communities of émigrés, the experience of the participation of the descendants of emigrants in the struggles for independence of the American colonies generated a serious concern about the perpetuation of generations of Spanish nationals living abroad without any real connection to their mother country.

The principle of *ius soli* was applied by granting Spanish nationality to children born in Spanish territory to foreign parents, requiring a declaration of the parents at the birth of the child, or of the migrant himself after reaching eighteen, as well as the obligation to renounce the nationality of origin of the parents.

The regulation of naturalisation by residence was drafted in a pretty succinct and ambiguous manner, for it stated that Spanish nationals were all those who had become residents of ‘any locality of the Monarchy’. The questions of how to understand ‘residence’, the necessary length of that residence, and who had to certify it, remained undefined. Neither of these issues was perceived as a politically salient topic, and therefore received little attention from the legislator.

Following the spirit of the 1889 Civil Code, a reform of the requirements for naturalisation by residence was passed in 1916 with the objective of establishing more precise conditions to make it effective. This new procedure specified the requirement of ten years of residence in Spanish territory before qualifying for naturalisation. That period was to be reduced to five years if the man had married a Spanish woman (foreign women became automatically naturalised when marrying a Spanish man), introduced or developed an industry or invention in Spain, owned an industry or business, or rendered a special service to the country. With the exception of the period of the Second Republic<sup>2</sup> (1931-1939), the 1889 Civil Code remained the backbone of Spanish nationality legislation until today.

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<sup>2</sup> The proclamation of the Second Republic, in April 1931, represented a radical transformation of the Spanish political and legal structure, including the nationality legislation. The Constitution of 1931 aimed at increasing the protection of Spanish nationals abroad by making the application of *ius sanguinis* more flexible, and by explicitly regulating dual nationality. The new Law also clarified the procedures for naturalisation by residence (while maintaining the general requirement of ten years of residence, it reduced that period to two

**Table 2. Spanish emigration by continent, 1885-1995**

Years	Total Emigration	America	Europe	Africa	Rest of the World
1886-1895	770,562	545,171	21,263	185,282	18,846
1896-1905	745,093	513,749	15,859	181,427	34,058
1906-1915	1,531,541	1,236,637	44,948	243,082	6,435
1916-1925	937,993	817,577	19,665	98,059	2,692
1926-1935	588,938	411,289	19,584	156,163	1,902
1936-1945	99,341	34,556	5,870	58,780	135
1946-1955	570,164	408,269	14,351	147,118	425
1956-1965	788,823	351,783	414,764	12,988	9,288
1966-1975	812,319	69,954	732,675	169	9,521
1976-1985	196,246	17,900	147,718	29,796	10,952
1986-1995	101,129	7,409	88,790	3,465	1,465

*Source:* Anuario de migraciones, 1997

The political turmoil of the 1930s with the proclamation of the Second Republic and the 1936-1939 Spanish Civil War represented a halt in the migration of Spanish workers, but sent into exile a large number of people.<sup>3</sup> Although the Francoist regime did not automatically deprive of their Spanish nationality all those who sought exile by fleeing his repressive regime, the long-term consequence of their settling abroad was that many of them (and certainly their descendants), ended up losing their Spanish citizenship once they acquired the nationality of the country where they settled and they could not (or did not want to) remain in contact with the bureaucracy of an illegitimate authoritarian regime in order to maintain their Spanish passport.

Despite the limitations of the official statistics (they only reflect those who left the country by Spanish harbours or through official emigration schemes, and do not account for those who had to flee because of the Civil War and its aftermaths of political repression), they can be helpful to provide a rough estimation of the importance of the migratory movements of Spanish nationals over the century of more intense outflows.

### *The Franco years*

As we can observe in Table 2, Spanish nationals continued to migrate to Latin America well into the early 1960s, when the flows towards that area of the world were substituted by flows of Spanish workers towards other European countries (mainly to France, Germany and

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years for nationals of the 'Ibero-American community of nations' and the Spanish protectorate in Morocco). The brevity of the republican period, marked by the Civil War and finished by the victory of the nationalist rebels, implied the re-establishment of the Civil Code of 1889 as the main legislative framework governing nationality.

<sup>3</sup> The commonly accepted estimation of the total number of exiles at the end of the Spanish Civil War is about 500,000 (Lagarde 1991). The fate of these exiles was very diverse. Whereas many managed to travel to Latin America (mainly Mexico), others remained in France during World War Two, fought in the French Resistance or worked in French factories. Some exiles went back safely to Spain, but the less fortunate ended up in Nazi concentration camps, or were handed over to the Francoist regime by the authorities of occupied France.

Switzerland). The traditional migrant flows to Latin America (families with a project of long-term settlement) were gradually replaced by a trend of male workers towards other European countries. The development of an international migration system that provided relatively cheap labour to the rapidly-growing Western economies placed Spain on the supply side of that system. Between 1960 and 1979 nearly two million Spanish nationals settled in other European countries, and in 1973, some 920,000 Spanish nationals were still living there (Rubio 1974). Those flows were abruptly interrupted by the 1973 oil crisis which seriously shackled Western European economies. After that a flow of return migration, incentivised by the receiving countries, started to gain momentum, to a large extent founded on the expectations for democratisation of Spain and its accession to the European Communities (EC).

Spanish nationality legislation reflected these evolutions in the position of Spain in the world migration system. Thus, in 1954, the Franco regime introduced some reforms to the Civil Code with the objective of adapting it to the particular socio-political environment of the time. A clear connection can be identified between the changes introduced in the regulation of nationality and the evolution of the migration patterns of Spanish nationals at that time. While the migration flows towards Latin America have had a more permanent character, most of the Spanish emigrants to other European countries that were developing at the time thought of their migration as a strictly temporary experience. The legislator worked with the same assumption, and did not expect the new migratory trends to have further implications for nationality. The migratory trend towards Latin America was ending, and soon it would just be a process of maturation of the Spanish communities in those countries. The main question was then for how many generations should Spanish nationality be passed on to the descendants of Spaniards living abroad. The 1954 regulation came much closer to the spirit of the old Civil Code, by introducing the need for the third generation of emigrants to register at the Spanish embassy or consulate if they wanted to retain their Spanish nationality, exempting the first and second generations of that requirement. As had been the case during the debates leading to the enactment of the old Civil Code, the legislator showed real concern with the perpetuation of generations of Spanish nationals living abroad without any real linkage to Spain.

One of the most interesting aspects introduced in this reform was the possibility of establishing dual nationality agreements with the countries of the 'Ibero-American community of nations'.<sup>4</sup> This measure, already introduced by the Constitution of the Second Republic (abolished at the end of the Spanish Civil War), was paradoxically rescued by Franco's political regime because it fitted well within its ideological framework. According to the new article 22 of the Civil Code, those Spanish nationals who voluntarily acquired the nationality of another country would automatically lose their Spanish nationality, with exceptions made for the countries belonging to the Ibero-American community of nations or the Philippines, which had signed bilateral agreements with Spain. During the 1950s and 60s, 12 bilateral agreements were signed with Latin American countries regulating dual nationality.<sup>5</sup>

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<sup>4</sup> Community of countries formed by Portugal, Spain, and their former colonies in Latin America, sharing a common history, languages and sets of traditions. Despite the differences between these concepts, and the institutional frameworks that give them support, certain parallels can be drawn between the idea of an Ibero-American community of nations, the French *Francophonie*, and the British Commonwealth.

<sup>5</sup> Given that the assimilationist policies of the Latin American Republics had coexisted for many years with the attribution of Spanish nationality by a strict *ius sanguinis*, the *de facto* existence of dual nationals had been a reality for a long time. These bilateral agreements came to explicitly recognise the existence of situations of dual nationality, and to provide a legal framework for regulating them. The countries included were: Chile,

The 1954 reform maintained the principle that all members of the family had to hold the same nationality. As a result, foreign women marrying Spanish men would automatically become Spanish nationals, while Spanish women would lose their nationality when marrying a foreigner (even if the country of their husband did not attribute them their nationality, at the risk of transforming these women into stateless people). In a move to avoid statelessness, the 1954 reform allowed Spanish women to retain their Spanish nationality (and pass it on to their children) when marrying a foreign man.

In a parallel move to the establishment of administrative constraints to retaining Spanish nationality beyond the third generation born abroad, the legislator slightly loosened the application of *ius soli* in order to automatically grant Spanish nationality to the third generation of foreigners living in Spain (double *ius soli*). Those born in Spain to foreign parents would be automatically considered Spanish nationals if both of their parents were also born in Spain, and if they were living in Spain at the time the child was born. Whereas in the case of the third generation of Spanish emigrants the objective of the rule was to prevent the perpetuation of generations of Spanish nationals abroad without real connections to Spain, the liberalisation of *ius soli* was intended to prevent the perpetuation of generations of foreigners within Spanish territory.

Some changes were also introduced to the requirements for naturalisation by residence. While it maintained the general requirement of ten years of residence, it reduced that period to two years for a foreign man married to a Spanish woman. Again borrowing from the legislation of the Second Republic, the legislator established preferential treatment for nationals of the Ibero-American community and the Philippines, who were required only two years of residence in order to qualify for naturalisation.

The priorities determined by the political agenda of the Francoist regime, together with the evolution of the migratory patterns of the Spanish population, defined the boundaries of a nationality law that remained unchanged until the last months of the dictatorship. Before the widespread perception of the need for social and political reforms, the government tried to relieve tensions by introducing some degree of flexibility in areas of policy perceived to be more neutral, while holding tight on issues of public order. Thus, a partial reform of the Civil Code was introduced in 1975 with the objective of taming those aspects of nationality legislation that more openly discriminated against women. According to the new wording of the Civil Code, marriage was not a sufficient condition for losing or acquiring Spanish nationality. This breaking of the principle of the legal unity of the family represented a reinforcement of the principle of individual will, and a recognition of the right of Spanish women to maintain their nationality, but it did not grant them the right to pass their nationality to their children (which they could pass only when their children did not follow the nationality of the father). These changes must be understood in the context of an authoritarian regime aiming at softening its profile in issues that did not question the core of its values, in order to adjust to a rapidly modernising society, and in search of the legitimacy that would allow it to survive even after the death of the dictator – which was to take place just a few months later.

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Peru, Paraguay, Guatemala, Nicaragua, Bolivia, Ecuador, Costa Rica, Honduras, the Dominican Republic, Argentina, and Colombia (Alvarez Rodriguez 1990: 132).

*Transition to democracy and accession to the EC*

After the death of Franco in November 1975, the transition towards a liberal parliamentary democracy implied the gradual adaptation of the whole Spanish legal corpus. The enactment of the democratic Constitution in 1978 marked the emergence of a liberal democratic regime, and was therefore followed by the transformation of the entire political and institutional organisation of the country. Nationality law did not appear as a top priority, and even when the issue was put on the political agenda, in 1981, it received little attention by public opinion and political parties, more concerned with other legislative measures that were being discussed at that time.

That period was also characterised by a reversion of the direction of the migratory patterns of Spanish citizens. During the period between 1974 and 1977, nearly 300,000 Spanish emigrants returned to Spain. In this context, the return of the emigrants had a high political profile and was taken into account in the drafting of the new Constitution (thus, article 42 defines the protection of emigrants living abroad as a responsibility of the Spanish State, while calling upon it to facilitate their return to Spain).

The reforms finally introduced in the Civil Code in 1982 retained the basic traits of the traditional way of regulating nationality in Spain, adapting them to the new framework defined by the 1978 Constitution. Thus, it maintained *ius sanguinis* as the main mechanism for the attribution of Spanish nationality, while granting full gender equality in this respect (according to the new article 17 of the Civil Code, Spanish nationality was attributed to the children of every Spanish national, man or woman). The new wording of the Civil Code also made a slightly more liberal application of *ius soli* by attributing Spanish nationality to those born in Spain if at least one of the foreign parents (as opposed to both of them as in the previous regulation) was also born in Spain. The new regulation also removed the condition of residence in Spanish territory at the time the child was born. Despite this small opening of Spanish nationality to *ius soli*, the arguments behind this move were still phrased with the purpose of preventing the perpetuation of generations of foreigners within Spanish territory, rather than intending to incorporate foreigners into the Spanish society. The reason for this lay in the fact that, by the time this reform was passed, the number of foreigners living in Spain was still very small, and Spain was not perceived by any means as a country of immigration.

According to the 1978 Constitution, and reverting to the traditional framing of nationality legislation in this respect, Spanish nationality could only be lost as an act of individual will. This move synchronised Spanish regulation on nationality with the general trend towards the recognition of individual rights that inspired the transition towards a liberal democratic regime. As a direct consequence of this, all the requirements previously imposed on Spanish nationals to retain their nationality (registration at the Spanish embassy or consulate in the host country) were removed. The new law still stated that the voluntary acquisition of the nationality of another country would imply the loss of Spanish nationality, but several exceptions to this rule made it virtually inapplicable. On the one hand, the acquisition of the nationality of one of the countries of the Ibero-American community of nations, Andorra, the Philippines, Equatorial Guinea, or any other with which Spain were to sign a bilateral agreement of dual nationality, would not imply the loss of Spanish nationality. On the other hand, Spanish nationals who voluntarily acquired the nationality of a country not included in the former list would not lose their nationality if they stated that the acquisition was the result of their emigration to that country. These measures represented a *de iure* recognition of the existence of dual nationals with the countries with which Spain has, or has had links of a special nature, and a *de facto* acceptance of dual nationality with the rest of the

countries. The driving force behind that extension of the boundaries of dual citizenship beyond the countries of the Ibero-American community of nations was the desire to protect the rights of the large communities of Spanish emigrants living in countries with which Spain had not signed dual nationality agreements. The Constitution had set the parameters for this move by legally strengthening nationality status by stating that Spanish nationality could only be lost by an act of will on the part of the individual, and by considering the protection of the Spanish communities living abroad as a direct responsibility of the Spanish State.

Some changes were also introduced in the requirements for naturalisation by residence. It maintained the general requirement of ten years, the exception of two years in the case of nationals of the Ibero-American community of nations and the Philippines, and it enlarged this preferential treatment to Andorra and Equatorial Guinea. With a similar argument (the existence of special links with Spain), and as a form of recognition of the historic debt towards the Sephardic Jewish community whose ancestors were expelled from the Spanish kingdoms in 1492, the legislator granted as well a preferential treatment to this group, by requiring only two years of residence within the Spanish territory in order to qualify for naturalisation.<sup>6</sup> This move aimed at reconciling Spain with the Jewish community before the official recognition of the State of Israel by the Spanish government (which took place in January 1986, just two weeks after the accession of Spain to the EC).

This reform also reduced to one year the residency requirement for those married to a Spanish national, born to a Spanish parent who had lost Spanish nationality, or born on Spanish territory. This last category is of special interest for the naturalisation of the second generation of foreigners living in Spain. While *ius soli* does not automatically attribute them Spanish citizenship, the requirement of only one year of residence in order to qualify for nationality equates to naturalisation by option for the second generation (*facultas soli*).

## **2.2 Shift of position of Spain in the World Migration System and recent developments in nationality law (1990-2007)**

During the 1980s, the Spanish economy faced a series of important transformations (an emerging service sector, a crisis of labour-intensive sectors) due to its opening to international markets. Despite the very high unemployment resulting from these processes (an average unemployment rate of 20% during the 1980s), the Spanish economy generated jobs partly occupied by foreign workers both at the bottom and the top of the occupational scale. The internationalisation of the Spanish economy, linked to accession to the EC in 1986, encouraged the opening of the country to foreign capital and investments, and resulted in the arrival of a considerable number of highly qualified professionals occupying top managerial positions. Growing numbers of retired Northern and Central Europeans also selected Spain to spend part of the year due to its benign climate and prospects for political stability and economic growth, thus constituting large communities, particularly in the archipelagos and the coastal villages of South and South-Eastern Spain. Gradually, large number of unskilled workers from Eastern Europe, North Africa and Latin America were also attracted to fill the niches of the labour market abandoned by Spanish workers due to their low salaries and poor working conditions (Cornelius 2004).

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<sup>6</sup> The application of this rule was very problematic due to the difficulty of determining who is to be considered a Sephardic Jew (language, cultural traditions, list of family names, certificate of the Jewish community, etc.).

**Table 3. Foreign residents in Spain, 1975-2009**

Years	Total	America		Europe		Africa	Asia
		Latin	North*	EU**	Non-EU		
1975	165,289	37,781	12,361	92,917	9,785	3,232	9,393
1980	182,045	34,338	12,363	106,738	11,634	4,067	11,419
1985	241,971	38,671	15,406	142,346	15,780	8,529	19,451
1990	407,647	59,372	21,186	-	-	25,854	29,116
1995	499,773	88,940	19,992	235,858	19,844	95,718	38,352
2000	895,720	184,720	15,244	306,203	55,234	261,385	71,015
2001	1,109,060	283,778	15,020	331,352	81,170	304,149	91,552
2004	1,977,291	648,931	16,936	497,673	168,867	498,029	142,667
2005	2,738,932	986,178	17,052	569,284	337,177	649,251	177,423
2008	3,979,814	1,215,351	19,256	1,546,309	114,936	841,211	238,770
2009	4,791,232	1,458,442	20,572	1,872,505	135,128	994,696	299,743

\* Except Mexico, included within the Latin American category

\*\*EU figures calculated with the member states of each period (therefore including Romania and Bulgaria after 2008)

Source: Anuario de migraciones (<http://extranjeros.mtin.es>)

Up to 1985, Spanish legislation on immigration was characterised by a lack of regulation of all issues related to the settlement of foreign nationals in Spain. In July 1985, just a few months before the accession of Spain to the EC, the government passed the first Law aimed at regulating immigration. The urgency in the drafting and discussion of the bill was facilitated by the extremely low profile of this area of policies in the Spanish political agenda, and by the understanding by all political forces of the need to regulate immigration before entering the EC. The new legislation had a very restrictive character, with a strong emphasis placed on issues of border control. This Law did not recognise the immigrants' right to family reunification, and did not expand on the issue of the immigrants' rights to access the social protection schemes, leaving this issue unregulated. This Law clearly placed Spain in the role of gatekeeper of the EC's southern border. In the following years Spanish authorities introduced visa requirements for a growing number of countries and invested considerable resources in trying to build an effective system of border control.

The number of foreign residents in Spain increased quite significantly over the last years through the combined effect of regularisations, family reunification processes initiated by those migrants already settled in the country, and the relatively small flows of migrant workers entering the country with a working permit. The relatively rapid annual growth in the number of foreign residents of the late 1990s accelerated after 2000, with average annual increases of over 40 per cent. Thus, while foreigners represented roughly 2 per cent of the Spanish population in 1999, they constituted more than 10 per cent of the Census by the beginning of 2010. The composition of these stocks had also experienced a radical transformation. While most foreigners settled in Spain up to the mid-1990s came from other Western European countries, the growing flows of immigrants coming from Latin America, Eastern Europe, Africa and Asia radically changed the profile of the foreign communities settled in Spain (Moreno Fuentes 2005).

The toughening of border policies with Latin America was particularly difficult to implement due to the historical connections that link Spain to those countries, to the perception of the existence of an historical debt towards those countries for the role they

played as receivers of Spanish emigrants up to the 1950s, and because of the increasing economic interests of Spanish multinational corporations in that area. Without minimising the difficulties of enforcing the strict policies of border control officially in place, we should also consider the possibility that Spanish authorities may have tried to combine compliance with strict border control policies for some migratory flows (particularly from Africa), with a relatively more lax attitude in relation to other groups (specifically from Latin America and Eastern Europe), in order to cater for the perceived needs of certain sectors of the Spanish economy, and introducing into the authorities' practices some kind of ethnic preference. Thus, the number of Latin American migrants legally living in Spain multiplied roughly by fourteen between 1995 and 2008, and that of Eastern Europeans by more than twenty, while the number of immigrants coming from the African continent over the same period increased a little bit less than five times.

In this context, and despite the fast increase in stocks of foreign residents in such a short period of time, it is safe to say that the issue of immigration has barely made it onto the Spanish political agenda. Beyond the mobilisation of a small number of anti-immigrant political entrepreneurs operating in certain municipalities, and the opportunistic use of the issue by the PP, the main conservative party (specially in opposition), the issue of immigration has maintained a relatively low profile in the political debates in Spain. The media has covered quite extensively the issue of the migratory pressures experienced by Spanish borders from migratory flows in different areas of the world, as well as the situation of undocumented immigrants living in Spain. Simultaneously, virtually no attention has been paid in either the public or political spheres to the role that nationality law may play in the process of incorporation of the foreign communities settled in Spain into their receiving society.

In the following pages we will briefly review the evolution of the different legislative initiatives affecting nationality legislation discussed in Parliament during the last few years, pointing out the role that considerations on the incorporation of immigrants may have played in them.

### *The 1990 reform*

Eight years after the changes introduced to the Civil Code in 1982, the socialist government of the PSOE promoted a new reform of the regulation of nationality. This reform had a very technical nature, and it only introduced minor modifications aimed at simplifying procedures, as well as eliminating certain interpretation and applicability problems experienced by the previous regulation.

The discussion of this reform constituted the first occasion in which the potential effects of nationality legislation in the incorporation of immigrant populations were debated in Parliament. Several parties expressed their concern about the need to enact a law on nationality outside of the framework of the Civil Code, although their proposals were finally rejected. The main novelties in this new regulation were a more favourable treatment for political refugees in residence-based naturalisation, the efforts to avoid marriages of convenience, and the opening of a period of amnesty to reacquire Spanish nationality for all those emigrants who had lost it without expressing their will to do so by acquiring the nationality of their receiving country.

Recycling a proposal put forward by the Communist Party during the 1982 reform, the socialist party in government included a clause reducing the residency requirements for the

naturalisation of recognised refugees. This reduction (from ten to five years) was justified with the argument of favouring the integration of these groups into their host society, by facilitating their access to Spanish nationality, as recommended by the Geneva Convention of 1951 (ratified by Spain in 1978). Also within the sphere of naturalisation by residence, both Basque nationalists (PNV), and the coalition of left wing parties *Izquierda Unida* (IU, 'United Left', which subsumed the Communist Party), presented an amendment to reduce to two years the requirement for nationals of other countries of the European Communities to obtain Spanish nationality. The proposal was studied by the commission in charge of drafting the new Civil Code, and was finally rejected after not finding precedents of such preferential treatment in the legislation of other European countries.<sup>7</sup>

The use of the comparative study of nationality law in different countries of the EC was the main argument used by IU in its original proposal to reduce the general requirement of ten years of residence in Spain in order to qualify for naturalisation. According to this group, a five-year period was common in European legislation, and they argued that this shorter period was enough to prove the integration of foreigners in the host society. This proposal was also rejected, and the general requirement of ten years of residence remained unchanged.

In the first steps of this reform, IU proposed to give the right to opt for Spanish nationality to all those foreigners born in Spain when they come of age, in order to facilitate the integration of the second generation in the Spanish society. This proposal would have introduced a *facultas soli* (or *ius soli after birth*), similar to that in place before the reform of the Civil Code in 1954. This amendment was also rejected with the argument that the period of one year of residence required to those born in Spain of foreign parents was a relatively generous mechanism that achieves the same objective, while excluding those who may have been born in Spain accidentally and did not have any real contact with the country.

An interesting aspect of this reform was the modification of the conditions governing the acquisition of Spanish nationality by residence. Up to then, the period had to be legal and continuous (without long interruptions), immediately after the application for naturalisation by residence. After the reform, the continuity condition was dropped, and only the legality of the residence was maintained. The legislator was also concerned with marriages of convenience, by which foreigners married Spanish nationals in order to acquire their nationality with a preferential period of one year of residence. After the changes introduced by this reform the marriage should have been effective for at least one year, without a separation either *de iure* or *de facto*.

Some changes were also introduced to the mechanisms to maintain and regain Spanish nationality by Spaniards living abroad. The 1982 reform had eliminated the need to express the will to maintain Spanish nationality after acquiring the nationality of another country by simply declaring that the acquisition was the result of emigration to that country. That clause proved quite difficult to apply in practice, and the new text aimed at correcting these problems. The new rule guaranteed the right to maintain Spanish nationality when acquiring the nationality of another country, but reintroduced the need to express the will to do so within three years of the acquisition of the new nationality.

In order to solve some of the problems derived from the changes in legislation, and the lack of precision of some of the previous regulations, the new text introduced a three year transitional period within which all those who had lost Spanish nationality without expressing

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<sup>7</sup> Preferential treatment was later introduced in other European countries, such as Italy which did so in 1992 (Zincone 2010).

their will to do so could regain it. In 1993, that amnesty was extended for two more years, to make sure that all those that wanted to benefit from it could do so. When granting that extension, the legislator expressed its intention of ‘... solving the last negative consequences of a historic process – the massive migration of Spanish nationals – difficult to repeat today.’

### *The proposals for the reform of 1996*

In November 1996, a few months after the conservative PP got into power, IU and PSOE presented two proposals for the reform of Spanish nationality legislation. Although both projects were rejected in the same parliamentary session, and therefore did not affect legislation on nationality, their interest resides in the fact that they intended to change the traditional framework of Spanish nationality law from its traditional concern towards Spanish communities living abroad to the purpose of becoming a tool for the incorporation of immigrant populations into Spanish society.

Both texts proposed a bigger role for *ius soli* in the attribution of Spanish nationality, while maintaining the *ius sanguinis* principle. The transformation of Spain into a country of immigration was used to justify the need for the liberalisation of the principle of *ius soli* as a mechanism to facilitate the incorporation of the second generation of migrants into their host society with the full set of civil, political and social rights granted by full citizenship. The socialist proposal aimed at automatically attributing Spanish nationality to foreigners born in Spain if at least one of the parents was also born in Spain, or was a legal resident in the country. The proposal of IU only asked for one of the parents to live in Spain, eliminating the requirement of ‘legal’ residence (therefore, undocumented migrants could also apply for the naturalisation of their children).

In the criteria for residence-based naturalisation, both proposals differed considerably, although they agreed in the objective of reducing the length of the periods required. In the socialists’ proposal the main changes were the reduction to five years of the general requirement of ten years residence, with only two years for recognised refugees. The proposal of IU presented a few more challenges to the existing regulation, by establishing a general requirement of ten years without any further requirement, and five years if the residence had been legal and continued. It also proposed a reduced period of two years for political refugees, for the descendants of the populations expelled from the Spanish kingdoms between the fifteenth and the seventeenth centuries (including therefore not only the Sephardic Jews already recognised by the existing law, but also the *Moriscos*<sup>8</sup>), and those coming from territories where the different languages of the Spanish state (Castilian, Catalan, Galician/Portuguese, and Basque) are spoken.<sup>9</sup>

In 1998 (IU) and 1999 (PSOE) both parties presented their proposals for the reform of nationality legislation again, but the composition of the Parliament at that time (with the PP as

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<sup>8</sup> Muslim populations of the territories conquered by the Christian kingdoms in the fifteenth century, first forced to convert to Christianity, and finally expelled from the Spanish kingdoms in 1609. The proposal for granting a preferential treatment to the *Moriscos* would have had a very difficult implementation. In the case of the Sephardic Jews the measure had already created a series of problems of applicability, but the existence of cultural traits (language, traditions), and historical records (lists of those families expelled from the different Spanish kingdoms), had helped to trace the origins of the applicants. In the case of the *Moriscos*, neither of these sources could be used to identify the potential beneficiaries.

<sup>9</sup> This may have involved Portugal, regarding Galician, France, regarding Basque and Catalan, and even Italy in the latter case, if considering the Sardinian city of Alghero where an old Catalan dialect is spoken.

the biggest party, ruling through informal coalitions with the regional nationalist centre-right parties), implied the automatic rejection of the proposals.

### *The 2002 reform*

In 2002 a new reform of the Spanish nationality law was enacted. The conservative party in government (now with an absolute majority in parliament since the 2000 general elections) brought about a new initiative for the reform of nationality law limited to small changes (once again in the direction of protecting Spanish communities abroad). The new regulation basically aimed at including facilities for the descendants of Spanish nationals living abroad to maintain the nationality of their ancestors by reinforcing *ius sanguinis*. Thus, every restriction of age when opting for Spanish citizenship for descendants of Spanish citizens born in Spain was removed, as well as the obligation of renouncing their previous nationality. This reform also strengthened Spanish nationality 'by origin', by removing every possibility of losing it as a punishment (this particular aspect had already been removed from the Penal Code in 1995).

These changes were approved with the absolute majority of the PP, and the abstention of most of the opposition, due to the fact that all of the amendments introduced by the latter were rejected during the parliamentary discussion of the new regulation. No changes were made in the direction proposed by the opposition parties, and the general requirements for naturalisation by residence remained unchanged. No public debate developed at the time of this parliamentary discussion, showing once again that the question of the access of immigrants to Spanish citizenship did not occupy much space in the public and political agendas.

### *The 2006 'Estatuto de la ciudadanía española en el exterior' (Statute of Spanish Citizenship Abroad)*

In 2006 a Law on the Statute of Spanish Citizenship Abroad was passed by the PSOE government (in power since 2004). This legal text aimed at defining the specific set of rights that the Spanish administration ought to grant to the estimated 1,500,000 Spanish nationals settled abroad as a result of the emigration flows that marked Spanish society during most of the twentieth century. These rights included social protection measures (in the form of healthcare, pensions, etc.), political entitlements (right to vote in national elections in Spain for candidates of the constituency of origin, and at the regional level for the parliament of the Autonomous Community from which they come from, by being able to choose a constituency if their ancestors come from different regions), as well as facilities to return to Spain (to the emigrants themselves, as well as to the two next generations of their descendants).

Although one of the issues raised during the parliamentary debate of this legal initiative was the reform of nationality law (with the objective of reinforcing *ius sanguinis*), the final text of the Statute only introduced an additional clause compelling the government to draft a proposal for the reform of nationality legislation in the direction indicated by this text within six months of the passing of this Law.

The specific purpose of this initiative was in fact to expand the protection granted to the Spanish nationals living abroad, showing once again the concern of Spanish policy-

makers for these groups. This regulation responded in fact to the request of the *Consejo General de la Emigración* (General Council for Emigration, an advisory body created in 1985 to represent and articulate the interests of the Spanish emigrant communities settled abroad), which had traditionally pleaded for the recognition of those rights, as well as for the extension of Spanish nationality to the children and grandchildren of Spanish emigrants.

This Law did not alter the articles of the Civil Code regarding nationality law, so no effective implications derived from it regarding the regulation of Spanish nationality. Nevertheless, and as previously mentioned, it compelled the government to draft a reform of that legislation in the six months following the passing of this text. The government did not strictly comply with that requirement, but the previously discussed *Ley de Memoria Histórica*, which initiated its parliamentary procedure shortly after, ended up including a reform of nationality legislation extending the rights of the descendants of Spanish migrants to regain the nationality of their ancestors (causing them to be considered as Spanish-born citizens and not as naturalised citizens as was the case with the previous regulation included in the Civil Code).

### *The nationality implications of the 2007 Ley de Memoria Histórica (Law of Historical Memory)*

More than three decades after the beginning of the process of transition towards a democratic regime in Spain, an urge to revisit the conditions under which that process took place has been experienced in recent times. Thus, the re-evaluation of the decisions taken during these times (prioritising stability over reparation and justice), and the growing focus on the need to honour the victims of the repression of the Francoist regime (including those of the Civil War 1936-1939, and the long decades of authoritarian rule that followed until the death of the dictator), have characterised the political agenda over the last years.

In September 2006, much to the dislike of the main opposition conservative party, the socialist government presented in Parliament a proposal for a Law of Historical Memory (*Ley de Memoria Histórica*) inspired by those concerns and considerations. Among other objectives, linked to the notion of the need for reparation for the wrongdoings of the Franco period and the elimination of the symbols of his regime, this text made an initial reference to the need to compensate to all those who had 'lost their fatherland' due to political prosecution and exile. Despite this declaration of intentions (and the request of the Statute of Spanish Citizenship Abroad mentioned in the previous section), the first draft of this law only included a reference to the granting of Spanish nationality to those volunteers that fought with the International Brigades to defend the legitimate republican regime during the Civil War.

During the discussion of that first proposal, left wing parties, including IU and *Esquerra Republicana de Catalunya* (ERC, Catalan Republican Left, left-wing Catalan nationalists), were the only political forces which supported the extension of nationality 'by origin' to those Spaniards who had to go into exile (as well as to their children and grandchildren) due to the Civil War and the Francoist regime. This amendment to the text originally drafted by the government was accepted by PSOE in the Parliamentary debates, and therefore it was included in the final text passed in October 2007.

In addition to the impact of this Law in Spain, this regulation had a large echo in some Latin American countries where it was euphemistically called *Ley de Nietos* (Grandchildren's Law), due to the possibilities it opened to 'recover' Spanish nationality of origin (through option) for all those who could prove that their parents or grandparents had fled Spain due to

political reasons between 18 July 1936 (the day of the fascist insurrection against the Republic), and 31 December 1955. The time window to apply for this recognition of Spanish nationality was limited to a two-year period (with a possible extension of one additional year which was granted by the Spanish government in early 2010). As we previously mentioned, and as a consequence of the passing of this Law, more than 160,000 applications to obtain a Spanish passport (which would allow the recipients to settle in the EU) had been presented to Spanish embassies and consulates by January 2010, most of them in a limited group of Latin American countries (Cuba, Argentina and Mexico together account for more than two-thirds of the total number of applications).

The political implications of the debate on the passing of the *Ley de Nietos* contrast with the low interest of political and social actors in associating the debates on the arrival and integration of immigrants with the reform of nationality law over the last twenty years. As we have seen, only during the period 1996-2002 the left tried to pass new legislation which would have implied a radical change of this pattern, by proposing to use nationality law as a means for the integration of growing flows of immigrants settling in Spain by reinforcing *ius soli*. During that period a series of proposals for the reform of nationality law were discussed, but they all failed to be approved due to the strong resistance of the right, and the relative passivity of the centre-left, to liberalise the regulation of acquisition of Spanish nationality by residence. Those proposals had also been made in a context of lack of public discussion on the importance of the issue of nationality law within the more general issue of the integration of populations of immigrant origin into Spanish society.

### *Analysing policy change*

As we have presented throughout the paper, Spanish nationality law has remained strongly focused on protecting and maintaining links with Spanish communities abroad. During the Francoist dictatorship, the rationale behind that behavior was twofold. On the one hand, it constituted a central element of the regime's foreign policy, based on the building of the 'Ibero-American community of nations', keystone of the projection of Spain as epicenter of 'Hispanicity' after years of international isolation, and particularly at a time when the emigration flows to Latin America were losing ground substituted by the growing flows of Spanish workers towards other European countries. On the other hand, maintaining connections with the communities of Spanish migrants settled abroad contributed to assure the continuation of the flows of remittances which greatly helped in financing the economic development of Spain with foreign currency, aiding the Spanish balance of payments. These links also helped the regime to monitor the political mobilisation of those communities abroad, preventing the emergence of initiatives that could question the continuation of its authoritarian rule.

After the establishment of a democratic regime, and well until our days, the status of the Spanish communities abroad remained the main political concern regarding nationality law. This approach has been widely shared by all political forces, although with quite different motivations. While for the political right the issue was the protection of fellow-nationals living abroad (focusing therefore on the nationalistic argument), for the left the protection of Spanish workers and their families who had been forced to emigrate due to the structural under-development of Spain during the Franco regime, as well as those who had to leave the country because of the repression and lack of liberties of that regime, remained the priority. Thus, the 1978 Constitution made explicit the obligation of Spanish authorities to protect Spanish communities abroad and to facilitate their return to Spain if they would like to

do so. In this respect, the stability of the logic underlying Spanish nationality law can be partly attributed to shared gratitude towards emigrants, and the flexibility this characteristic of Spanish nationality law introduces in its political use and interpretation (as in other emigration countries (Zincone 2010), oriented to the ethnic and nationalistic argument in the case of right-wing parties, and towards the protection of migrant workers and exiles in the case of left-wing parties).

The use of the concept of ‘path-dependency’ helps account for continuity in Spanish nationality law. Explaining change requires a more complex combination of analytical tools. In addition to the arguments on the role of the processes of democratisation and Europeanisation, which no doubt account for part of the explanation of the reforms introduced in Spanish nationality legislation over the last decades (relatively minor as they may have been), Money’s approach on the importance of the structure of incentives for political actors, as well as Joppke’s hypothesis about political parties’ orientations on nationality legislation reform, should prove helpful in our explanation of reform in this policy domain.

In addition to the tendency towards re-ethnicisation of the process of acquiring Spanish nationality (by reinforcing the orientation towards the protection of Spanish communities abroad), the evolution of legislation on nationality in Spain during the last decades shows a very mild liberalising trend along four basic dimensions: elimination of gender discrimination, slight opening in the application of *ius soli after birth* for the second generation (through option), reduction of the period required for naturalisation by residence of certain groups (recognised refugees), and the increasing acceptance of dual nationality (both *de iure* and *de facto*). One of the main factors to be considered when explaining these trends is the democratisation process started after Franco’s death, which implied the adoption of the main values of a liberal democracy (respect for basic human rights, gender equality, etc.).

The developments in nationality legislation taking place in other European countries also influenced such reforms. Although Spain has often been absent from the international agreements regulating the basic traits of nationality law, it incorporated into its legislation most of the measures proposed in those treaties even during the Franco years. Thus, the Francoist legislator was ready to implement a relative opening of the principle of the legal unity of the family in the 1954 reform of the Civil Code in order to avoid statelessness (even if Spain had not signed any of the international treaties which addressed this specific issue). In 1982, after Spain had already joined the club of democratic states, Spanish legislation granted the right for Spanish women to retain and pass on their nationality, even if Spain had not officially signed the international convention regulating this particular issue.

The policy-learning processes in the more recent discussions on the reform of Spanish nationality law have become more visible, as developments taking place in other European Union member states have become a constant reference during the policy-making process. For instance, as we have already seen, the argument of the need to approximate Spanish nationality law to the general trends in this policy domain in other European countries was unsuccessfully used by IU in 1990. In the period between 1996 and 2002 the comparative argument was again used, this time by the PP in order to reject left-wing parties’ proposals to shift from a *ius sanguinis* to a *ius soli* logic in nationality law:

(...) If you want to see what happens in other countries in order to verify that Spain has different legislation, I must tell you that Germany, Austria, Denmark, Greece, Ireland, Luxemburg, Sweden, and Finland only grant citizenship ‘by origin’ to the descendants of their nationals. It is true that our Civil Code has *ius sanguinis* as its principle, the same as other countries like Italy, Portugal, or Greece... (PP spokeswoman, 5 February 2002).

Right-wing political forces had a largely passive role in proposing reforms in this area of policy, and when they did intervene it was clearly in the direction predicted by Joppke (re-ethnicisation of Spanish nationality). In this respect we could argue that the political right has little incentive to introduce any additional reform to nationality law, since the status quo reflects quite directly their views on the matter.

All parliamentary proposals intended to liberalise nationality law, or to adapt it to the emerging phenomenon of immigration, have been in fact led by left-wing political parties, also confirming Joppke's hypothesis on the inclination of political forces to reform nationality law in very specific directions.

Nevertheless, it is important to recall that the first time IU and PSOE raised an initiative in this direction was in 1996, shortly after the PP got into power. In doing this, IU was following a pattern which fitted well with its ideological profile (they had already mentioned the need to taking into consideration immigration during the discussion of the reform of nationality law passed in 1990), but the PSOE seemed to be paying lip service to a progressive cause by trying to introduce to the political agenda a reform that it had not considered convenient during their thirteen years in government (and did not bring back onto the political agenda after winning the elections in 2004 and again in 2008).

Following Money's analytical framework we could in fact argue that, with the current balance of rights and responsibilities between citizens and non-nationals in Spain, left-wing political parties have few incentives for trying to introduce liberalising changes to nationality legislation. This is the case because while the responsibilities of immigrants in Spain are pretty much the same as those of nationals (with some exceptions linked to participation in popular juries and polling stations, and being drafted into the army – although immigrants of certain Latin American nationalities can join the Spanish armed forces as volunteers), rights have also largely converged with those of nationals in at least two key citizenship dimensions (civil and social rights), remaining only political rights as the main arena for differentiation.

In this context, the issue of making nationality law an instrument for the integration of immigrants by further strengthening *ius soli* and by reducing the requirements for naturalisation has not constituted an articulated social demand in Spain. With very few exceptions, practically no civil society organisation has ever introduced this question to the Spanish public or political agenda, as these organisations preferred to focus on other issues (demands for regularisation of undocumented migrants, or even the extension of the right to vote in local elections to permanent foreign residents).

Some initiatives for the use of nationality law to favour the incorporation of immigrant populations have been made public. The most remarkable was promoted during the civic debate in the Forum for the Integration of Immigrants of the *Plan Estratégico de Ciudadanía e Inmigración* (PECI, 'Strategic Plan for Citizenship and Immigration') passed by the socialist government in 2007. The civic organisations represented in this Forum unanimously suggested that the Plan should include a reduction of the general requirement for naturalisation (from ten to five years). A similar initiative was also included in the 2008 'Catalan National Agreement on Immigration', approved by the regional parliament of Catalonia. Neither of those requests was taken into consideration by the PSOE government, which did not consider a liberalising reform of nationality law a policy priority.

The idea that the current regulation of nationality in Spain has already converged with the legislation of its EU partners in most respects, and that all in all it constitutes relatively

liberal legislation, emerges as a recurrent argument among policy-makers when the issue is raised:

In Germany, the socialists and the Greens have a project that says: those born in Germany to foreign parents are German if at least one of the parents was also born in Germany. You know, Mr. X, that this concept is already in our Civil Code. (...) That is what they are currently discussing in the German Parliament. They require eight years of residence, us 10 years, but with all the exceptions of five years for refugees and two years... (PP spokeswoman, 5 February 2002).

The low profile of this topic may also be linked to the left-wing political parties' objective of not placing immigration-related issues in the centre of the political arena with the goal of preventing the development of anti-immigrant feelings among the Spanish population, particularly in a context of acute economic crisis.

### 3 Conclusions

We began this paper by arguing that nation-states have markedly different and deeply-rooted conceptions as to what constitutes the national community, which bear directly on the modes of control and incorporation of immigrants, including their nationality legislation. The notion of 'policy paradigms' conveys precisely this idea of the strong links between national definitions of 'who belongs' or 'who does not belong' to the national community.

It can be said that the Spanish immigration policy paradigm, undefined as it is, specifically in its integration dimension, has been gradually moving towards a 'hard on the outside – soft in the inside' combination (Money 1999) reflecting Spain's position between the EU supranational pressures towards border closure, and the pull of the important role played by its informal economy. In the migratory context which has emerged since the 1980s, the strategy followed by the Spanish authorities could thus be described as a toughening in the control of the borders, and the beginning of a policy of integration for those communities of immigrants already settled in the country. Since the mid-1990s, the role that the legislation on nationality plays in the incorporation of those foreigners has substantially increased (via preferential treatment in the naturalisation process for Latin American migrants), but to a large extent this could be considered a by-product of traditional Spanish foreign policy more than the result of an active and conscious choice of policy.

Although the administrative skills of the Spanish state in relation to immigration issues were nil some fifteen years ago, the handling of a growing multifaceted phenomenon has considerably increased its capacities. Irregularity remains a very important characteristic of the stock of migrants living in Spain, but mechanisms have been embedded into Spanish immigration policies to handle that phenomenon by opening automatic, time-related paths towards legality. Integration policies have remained to a large extent on paper, but a network of agencies, research bodies and forums have developed the capabilities to implement a more sophisticated set of policies to facilitate the incorporation of immigrant populations into Spanish society. Third-sector organisations have played a significant role in that direction, by fulfilling the tasks that the state was not willing or prepared to accomplish, while retaining their role as advocacy groups in the interest of immigrant populations.

Nevertheless, the presence of growing numbers of non-nationals in the Spanish territory does not seem to have had much influence on the legislator in pushing it to consider the convenience of adapting the regulation of naturalisation, or the mechanisms to obtain Spanish nationality, in order to facilitate the incorporation of these new communities into their receiving society. Civil society organisations seem also oblivious to the importance of this area of legislation for the incorporation of immigrant communities into their receiving society. They spend considerable energies in obtaining what we could consider ‘middle-range objectives’ for immigrant groups (like the right to vote in local elections, struggling against the condition of reciprocity embedded into the Spanish Constitution which makes it extremely difficult to expand that right to many immigrant groups whose governments do not or cannot extend similar rights to Spanish nationals in their territories), but do not seem to make much effort to minimise the effects of the less favorable treatment of certain migrant groups (notably those coming from Eastern Europe, Africa and Asia) in the acquisition of Spanish nationality. Focusing on this aspect of the legislation that regulates the boundaries of the national community would make sense since it implies the acquisition of the whole set of rights associated with the category of citizen of the nation-state.

Despite the growing presence of immigrants, and the worrisome indications that racism and xenophobia may be increasing within Spanish society, immigration and nationality issues do not have a very high profile in the political arena either. The lack of politicisation of this area of legislation may be in part explained by the low level of politicisation of immigration issues in general, with no well-coordinated extreme-right parties directly capitalising on the issue of immigration. Those groups appear largely delegitimised after forty years of conservative authoritarian rule, but the appearance of xenophobic entrepreneurs, specifically in areas with a higher concentration of immigrants, is probably only a matter of time. When (or if) these forces appear, the public profile of this area of policy is quite likely to gain visibility, and with it the policy environment in which policy-makers have managed to ‘muddle through’ during the last few years may be significantly transformed. Most of the immigrants likely to settle in Spain in the near future will come from areas such as North Africa or Latin America, regions with which Spain has had special historical links. Spanish nationality legislation, and the way in which it is granted, will suffer increasing pressures to address the issues that will arise from those migratory processes.

At present no political group is working on any proposal for the reform of nationality law. The authorities of the Ministry of Justice are in fact continuously observing the reforms enacted in other EU countries, as well as the technical aspects of their implementation. For instance, the example of Portugal and its latest reform has been closely studied (a general naturalisation requirement of six years, which in Spain could be established in five years). While such reform would fit within the proposal recently made by several socio-political initiatives, its biggest challenge would be the handling of the privileged treatment currently enjoyed by Latin American migrants.

The most credible hypothesis in this respect is that, even if the reduction of the general term to five years is a foreseeable idea for the future, the debate on nationality law is quite likely to retain its low profile in the near future, and no reform will be enacted in the coming years.

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