

**Book Review of, ‘The National versus the Foreigner in South America: 200 Years of Migration and Citizenship Law’**

Victoria Finn<sup>1</sup>

Universidad Diego Portales

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**The National versus the Foreigner in South America: 200 Years of Migration and Citizenship Law**, by Diego Acosta, Cambridge UK, New York, Cambridge University Press, 2018, xvii+278pp., £85.00 (hardback), ISBN 9781108425568

Analyzing over 200 years of migration and citizenship laws, Dr. Acosta explains how ten South American states have constructed the categories of the ‘national’ and ‘foreigner’. Fear not! Acosta’s captive writing style holds readers’ attention from start to finish, leaving the legal sources in detailed footnotes. The book evidences constitutional and democratic lessons South America can offer other South-South migration regions as well as the European Union (EU) and United States (US). It appeals to scholars interested in migration, law, politics, history, human rights, racial studies, and nation-building processes.

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<sup>1</sup> To contact the author: [VickiJFinn@gmail.com](mailto:VickiJFinn@gmail.com)

The research question is, ‘Both policy makers and a large part of the regional academic community have portrayed South America’s approach towards migration and citizenship law as being simultaneously innovative and exceptional. Is this truly the case?’ (p.25). Acosta conducts a historical comparative analysis and uses content analysis, although the operationalization is unstated. The overall answer is that the South American model is distinct and, despite its imperfections, indeed offers alternative approaches to some migration and citizenship challenges.

Separated chronologically and thematically, the book contains two parts. First, Chapter 2–4 comprise the 19<sup>th</sup> and 20<sup>th</sup> centuries, analyzing open borders, rights, and un/desirable migrants—topics still heavily debated around the globe. They challenge to what extent contemporary migration management measures are innovative, given that many had existed centuries ago. Especially post-Cold War, foreigners may be posed as threats to domestic security, parallel to border securitization. This starkly contrasts open borders and *equal rights* between foreigners and nationals that 19<sup>th</sup> century South American constitutions guaranteed. Openness was to attract industry, inhabitants, and to whiten the mixed-race population—it was *not* a democratic or humanitarian approach—and did not last. Following US bans on convicts, prostitutes, then Chinese nationals in the late 1800s, exclusionary and deportation measures diffused: South American states began filtering based on morality, mental or physical health, and social class—shifting from openness to heavily distinguishing between nationals and foreigners. Migration law was a strategic state-building exercise since new nation-states perceived border control as a necessary condition of self-governing sovereignty.

Between the two sections a short description shifts the reader from the historic to contemporary, explaining the new inclusive Latin American Constitutionalism focused on international and human rights law. The second part, Chapter 5–7, focus on the 21<sup>st</sup> century’s

inclusive migration measures claiming to be exceptional in South America. The continent takes a human-rights based approach to migration in regional rhetoric and on paper. For instance, while extending local-level political rights is a growing trend in the EU and South America, the latter leads in universal national-level non-citizen suffrage. While the region was innovative in being the first to declare the human right to migrate, it is not yet a genuine fundamental right. Regarding open borders, South America was exceptional in the 19<sup>th</sup> century and states have started to come around again—albeit not full circle—to reducing the differences in rights between nationals versus some foreigners. For example, there is a permanent mechanism to access residency (eliminating irregular status) for regional migrants: the 2002 MERCOSUR Residence Agreement (Chapter 7). Key challenges to regional citizenship are incongruity, implementation, and adjudication due to multi-level decision-making and difficulties merging existent agreements and laws. Chapter 8 concludes, reflecting on the research question and future studies.

Acosta excellently conceptualizes the national versus the foreigner as legal terms. If the national is the positive pole and the foreigner is the negative pole (applying Goertz, *Social Science Concepts: A Users Guide*, Princeton University Press, 2006), the grey zone between contains Hispano-Americans. Also called Creoles, they had been Spaniards from the previous Spanish colonies in South and Central America, Mexico, and the Caribbean (see Chapter 3). This status meant a different membership: lying closer to nationals than to foreigners, they had privileged rights and quick naturalization routes. Also in the grey zone is the ‘naturalized foreigner’—a term unique to South America, and contradictory in itself (Chapters 2, 6). The term distinguishes between territorial birth of ‘naturals’ and migrants who have ‘naturalized’, the latter holding fewer rights. Curiously in the first constitutions, naturalized foreigners had easier access to citizenship (full political rights) than did African Spaniards; ‘African blood’ prevented individuals for

generations to politically participate as a citizen—however, Acosta finds exclusion was more about representative power than for racial reasons.

For *Ethnic and Racial Studies* readers, four points of interest remain. First was the presence of mixed races and implementing *ius soli* at independence. Legal statuses and rights varied for African Spaniards, Hispano-Americans (Creoles), Indians, indigenous, and mestizos. *Ius soli* smoothed some of this over in the second generation, except for slaves and women; thus South America is just as exemplary as the often referenced US *ius soli*. Second, as many countries aimed to diminish indigenous peoples, the 19<sup>th</sup> century's more open borders tried to attract select Europeans to whiten the population. Third were racial relations in new nation-states. The Hispano-American held special (and enduring) privileges: they directed the first post-colonial stages, held governmental positions, mistrusted local populations, and formed a wider community—it was a supranational membership project made by and made for Creole elites. Fourth, restrictive measures (primarily 1889–1929) were ‘subject to shifting social constructions’ (p.94), e.g., Paraguay did not consider Japanese nationals as Asians. Accepting the desirable migrant *du jour*, while restricting the undesirable, reflects ever-changing interpretations.

This is, and will continue to be, *the book* on the South American region's legal approach to migration and citizenship. Selecting two centuries of law in an (unjustifiably) understudied region, Acosta has contributed a meticulous legal analysis and rich multilingual bibliography to a plethora of scholars. By demonstrating the 20<sup>th</sup> century's gradual restrictive measures—the slowly stacked metaphorical bricks to build a legally complex migration wall—Acosta demystifies the belief that exclusion originated from regional military regimes. The ‘bricks’ also help to understand why South American states face barriers to openness and equality often discussed in the 21<sup>st</sup> century: it is complicated to disassemble the legal wall.