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# Nationality and Migration in Modern Mexico

David Fitzgerald

*Scholarship on nationalism and the state has examined how immigration and nationality policy create boundaries of inclusion and exclusion. While a handful of countries of immigration have been analysed extensively, explanations of nationality law have not accounted adequately for countries of emigration. This paper's historical analysis of Mexican nationality law and its congressional debate demonstrates that the ways the state has defined nationality at different periods cannot be attributed simply to demographic migration patterns or legacies of past understandings of ethnic or state-territorial nationhood, according to the expectations of received theory. The literature's focus on geopolitically stronger countries of immigration obscures the critical effects of inter-state politics on nationality law in subordinate states. Mexico's nationality laws reflect its experiences as a geopolitically weak country of immigration, despite a net out-migration of its population.*

*Keywords: Nationality; Citizenship; Mexico; Immigration; Emigration; Nationalism*

A fundamental activity of modern state-making is defining who is a national citizen (Torpey 2000). Several positions have emerged in the recent literature to explain the variable ways that nationality is defined in different contexts. One position emphasises the legacies of historical understandings of ethnic or territorial nationhood (Brubaker 1992; Jacobson 1996: 25–6; Koopmans and Statham 1999; Weiner 1992). Others reject the legacies of nationhood argument and point to modelling influences, demographic patterns of migration, and the stability of state borders (Hansen and Weil 2001; Joppke 1999; Weil 2001). While a handful of countries of *immigration* have been analysed extensively, the applicability of these arguments in countries of *emigration* is an open question. This paper refines existing

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theoretical perspectives by examining the historical development of nationality law in Mexico.

Briefly, I argue that although Mexico is overwhelmingly a country of net emigration, its nationality laws primarily reflect its experiences as a country of immigration with a weak international position. Political actors strategically chose among different exogenous models of nationality that best suited their domestic political interests and Mexico's interests in the system of states. The interaction of these modelling effects and historical and contemporary asymmetries in the relationships between Mexico and immigrants' countries of origin and emigrants' country of destination are the critical factors in explaining its nationality law. Nationality laws in Mexico are *not* explained by historical legacies of ethnic or territorial nationhood according to the predictions of received theory.

### Explaining Nationality Law

Mexico is among the countries that distinguish between citizenship and nationality. State *citizenship* is a legal identity oriented inwards to rights and obligations within the state, while *nationality* is a state-certified membership oriented outwards to other states (Donner 1994). Legal principles of descent and territory regulate nationality. *Jus sanguinis* assigns nationality based on parental or genealogical descent. The principle of territory is divided into nationality attribution based on birth in the territory (*jus soli*) and residence in the territory (*jus domicili*). Most states apply mixed principles of territory and descent (Bauböck 1994; Brubaker 1989).

What explains the configuration of nationality law in particular settings? There are four main perspectives in the literature: 1) *legacies of nationhood*, 2) *modelling*, 3) *demographic patterns*, and 4) *inter-state relations*. These explanations are not always mutually exclusive, and some authors combine factors to explain nationality law in particular settings, but they are distinct lines of argument often made in strong opposition to each other (cf. Brubaker 1992 and Weil 2001).

According to the *legacies of nationhood* perspective, states tend to adopt *jus sanguinis* where understandings of nationhood are ethnic or descent-based, while states tend to adopt *jus soli* where understandings of nationhood are framed by the political and territorial boundaries of the state (Bauböck 1994: 31; Koopmans and Statham 1999: 660–1; Weiner 1992). In the classic example, an ethnic understanding of German nationhood has sustained a *jus sanguinis* regime for most of modern German history, while a state-framed and territorial conception of French nationhood has sustained a primarily *jus soli* regime (Brubaker 1992; cf. Joppke 1999). Correspondence between nationality law and particular conceptions of nationhood is based on institutionalised historical idioms that shape the way political actors think and talk about nationality (Brubaker 1992) or historical legacies that form a reservoir

of images and discourses that political actors can appropriate strategically for their rhetorical efficacy (Favell 2001).

The *modelling* perspective rejects the legacies of nationhood argument. In a comparative study of nationality law in 25 states, Patrick Weil argues, 'Despite much academic writing to the contrary, there is no causal relationship between national identity and nationality laws' (2001: 34). Comparative evidence reveals an incipient global standard of a mixed *solis/sanguinis* regime. There are statist and culturalist accounts of this convergence. The right to define nationality is guarded jealously by sovereign states, but in a world system of states, nationality laws are oriented towards other states' claims (Donner 1994). Nationality law is regulated by multilateral agreements like the 1930 Hague convention as well as political-cultural models that have been adopted throughout the modern 'world polity' (Meyer 1987; Weil 2001).

The *demographic* perspective argues that countries sharing similar patterns of migration share similar nationality laws (Bauböck 1994: 41; Weil 2001: 19). Convergence to a global norm in which countries of immigration primarily follow *jus soli* and countries of emigration primarily follow *jus sanguinis* is the result of state policy-makers independently seeking similar solutions to similar demographic problems, rather than the deliberate emulation of exogenous models.<sup>1</sup> According to Bauböck, 'From the perspective of state interests, the rationale behind *jus soli* allocation inside the territory and *jus sanguinis* outside may be the attempt to maximise the overall number of citizens' (1994: 41).

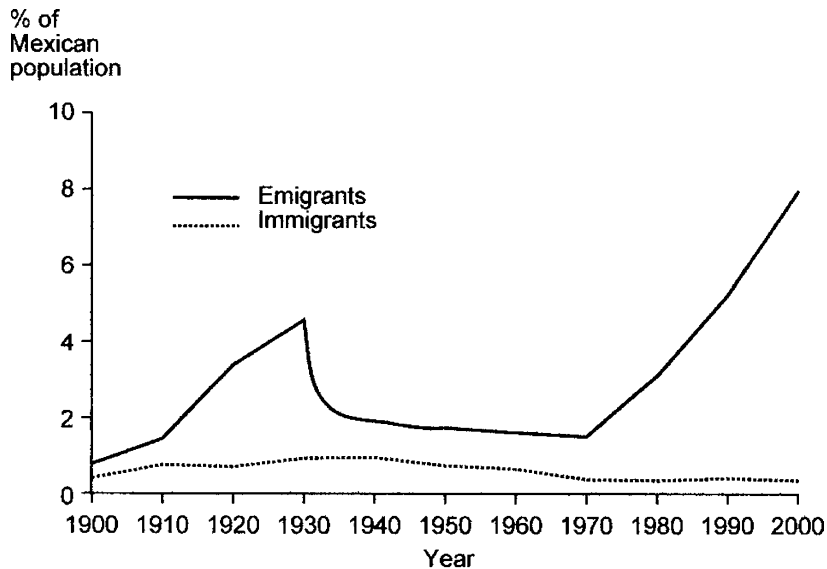
*Inter-state relationships* have an effect on nationality law that has been recognised primarily in the European context. Former colonising states like Great Britain at certain periods have created *jus sanguinis* provisions for the descendents of colonists who are potential 'returnees' (Favell 2001; Joppke 1999). Where borders have shifted, '*jus sanguinis* is applied in order to restore a continuity of national statehood which had been interrupted by foreign occupation or annexation' (Bauböck 1994: 47). This paper aims to build on insights into the effects of inter-state politics on nationality law by analysing a case where policy-makers' primary goal is not to redraw borders or call home a 'diaspora', but rather to use nationality law as a tool to moderate the political and economic asymmetry in relationships with migrants' countries of origin and destination.

### **Mexico: Country of Emigration and Immigration**

Most research on nationality and migration examines cases that are primarily countries of *immigration* (e.g. Aleinikoff and Klusmeyer 2000; Brubaker 1992; Favell 2001; Jacobson 1996; Joppke 1999; Lesser 1999; Solberg 1970).<sup>2</sup> A study of the Mexican case, with its more than century-long history of mass emigration and numerically small but politically significant immigration, reveals the impact of both migration forms on nationality law.

The foreign-born share of the Mexican population rose from 0.4 per cent in 1900 to almost 1 per cent in 1930, before falling to 0.45 per cent in 2000 (see Figure 1). Although the Mexican government expelled Spaniards following independence in 1821, a significant Spanish merchant class immigrated to Mexico in the late nineteenth century. The 1934–40 Cárdenas regime welcomed thousands of Republican exiles from the Spanish Civil War. During roughly the same period, certain types of ‘foreigners’ were a foil against which the official state ideology of *mestizaje* (celebrating the union of Spanish and indigenous populations) was defined. Chinese immigrants were expelled and immigration laws restricted the entry of Asians, Middle Easterners, Jews and Eastern Europeans (González Navarro 1994b; Knight 1990). Despite their small numbers, immigrants and later exiles from the 1970s ‘dirty wars’ in the Southern Cone have had a disproportionate impact on Mexican intellectual, cultural and professional life (Buchenau 2001).

Over the last century, Mexico has increasingly become ‘a country of emigration’ (see Figure 1). The 7.8 million people of Mexican birth living in the United States in 2000 represented 8 per cent of Mexico’s population. The United States is the destination of nearly 99 per cent of Mexican emigrants (IFE 1998). An additional 13.8 million persons born in the United States claim Mexican ancestry.<sup>3</sup> Despite



Sources: Calculated from decennial US and Mexican Census data taken from the Mexican Migration Project NATLHIST file 2002; Camposortega Cruz 1997; INEGI 2000; US Census 2001:12. ‘Emigrants’ are Mexican emigrants in the United States. These figures should be read with caution because the US census does not fully capture massive temporary and often undocumented population flows (Bean *et al.* 1998).

**Figure 1.** Mexican emigrants and immigrants as a percentage of the Mexican population.

Mexico's overwhelming net *emigration*, I will argue its experiences as a country of *immigration* better explain the development of Mexican nationality law.

## Methods

This analysis is based on Mexican laws regulating nationality and citizenship and the debates of those laws in the bicameral Congress's Chamber of Deputies. Changes in the constitutional texts of articles 30–38 appeared in the *Diario de la Federación* registry of federal law.<sup>4</sup> The Chamber of Deputies debates are available in electronic format.<sup>5</sup> The 1917–98 legislation and its debate are the primary objects of analysis, although I provide historical context by referencing nineteenth-century law.

After identifying the relevant legislation and 58 debate episodes, I copied the texts into computer files for coding using NVivo qualitative research software. Tracing the development of nationality law along multiple dimensions as summarised in Table 1 reveals patterns of historical change. Analysing the debates suggests how ideology articulates with policymaking and the ways exogenous modelling, migration patterns, inter-state politics, and domestic politics have influenced nationality law.

## Findings and Discussion

In this section, I sketch Mexico's historical trajectory towards a mixed *jus sanguinis/soli* regime. I demonstrate the fundamentally important effects of inter-state relationships on restricting *jus soli*, *jus sanguinis*, and dual nationality. Surprisingly, against the expectations of the demographic position in existing theory, Mexico's nationality laws primarily reflect its experience as a country of immigration. Explicit emulation of foreign law partly supports the modelling position, though this explanation is insufficient given, firstly, the availability of multiple internationally legitimate models and, secondly, Mexican transformations of existing models. The adoption of *jus sanguinis* and *jus soli* did not consistently correspond with the ethnic or territorial understandings of nationhood predicted by the legacies of nationhood position.

### *The Mixed Soli/Sanguinis Regime*

The mix of *jus soli* and *jus sanguinis* in Mexican law seesawed wildly in the nineteenth century. The 1814 rebel constitution of Apatzingán, which never went into effect, adopted *jus soli* to prevent Spain from claiming authority over 'Mexicans' born in the incipient state of Mexico (Trigueros Saravia 1940). The 1824 Constitution did not specifically address the bases for establishing citizenship or nationality, though it implicitly continued to follow *jus soli* in requirements for congressional eligibility that created special restrictions on those born outside Mexico. Nationality law in the 1836 quasi-constitutional 'Seven Laws' was based on *jus sanguinis* and restricted *jus*

**Table 1.** Selected changes in Mexican nationality law 1824–1998

Law	<i>Jus sanguinis</i>	<i>Jus soli</i>	Naturalisation	Loss of nationality	Dual nationality
1824 Constitution	No mention	No general mention, but implicit in restrictions on eligibility for congress of those not born in Mexico	No general requirements, but natives of pre-Independence Spanish America have shorter Mexican residency requirement in establishing congressional eligibility	No mention	No general provision, except prohibition that congressional representatives born outside Mexico hold nationality in another former Spanish American state
1836 'Seven Laws'	Through father. Birth, residency, or intent to reside in Mexico requirement	Residency and affirmation at majority requirements	Naturalisation and marriage to a Mexican woman required for (male) foreigners to own land	Loss of 'Mexican' status for 2-year absence without passport	
1857 Constitution	Through parents	No provision		Naturalisation abroad forfeits Mexican <i>citizenship</i>	
1886 Law of Alienage and Naturalisation	Through father, or through mother when father is unknown	Residency until majority requirement	Automatic nationality for contracted colonists; eligibility for non-contracted immigrants	Loss of 'Mexican' status for extended absence without due cause	
1917 Constitution	If born abroad, Mexican-by-birth if parents are Mexicans-by-birth	Mexican-by-birth regardless of parental nationality, subject to affirmation at majority and residence	Residence and morality requirements. Shorter residence requirement for 'Indolatino' (Latin American) nationals	Naturalisation abroad forfeits Mexican <i>nationality</i>	
1934 Law of Nationality and Naturalisation and constitutional amendments	If born abroad, Mexican-by-birth if father Mexican or if mother is Mexican and father is unknown	Mexican-by-birth regardless of parents' nationality		Loss of nationality for 'voluntary' naturalisation abroad or for naturalised Mexicans who reside 5 years in birth country	
1939 Amendments to Law of Nationality and Naturalisation			Shorter residence requirements for Spanish nationals living in Mexico	Eases nationality recovery for returned emigrants who naturalised abroad; no penalty for naturalisation abroad if job prerequisite	

**Table 1** (*Continued*)

Law	<i>Jus sanguinis</i>	<i>Jus soli</i>	Naturalisation	Loss of nationality	Dual nationality
1969 Constitutional Amendment	If born abroad, Mexican-by-birth if either parent is Mexican				
1974 Law of Nationality and Naturalisation amendment			Shorter residence requirement for descendents of Mexicans up to the third generation		
1993 Law of Nationality			Shorter residence requirements for Portuguese; knowledge of Spanish and 'integration into the national culture' requirement	No penalty for naturalisation abroad if it is a condition for maintaining a job	Declares nationality should be singular; requires choosing between nationalities at majority
1997 Constitutional amendment and 1998 Non-Forfeiture of Nationality Law	Limited to first generation born abroad		Shorter residence requirement for direct descendents of Mexicans-by-birth	Prohibits de-naturalisation of Mexicans-by-birth. Mexicans-by-naturalisation subject to de-naturalisation if naturalise abroad or live abroad for 5 years	Recognises dual nationality for Mexicans by birth, but not for Mexicans by naturalisation

Sources: *Constitución Federal de los Estados Unidos Mexicanos* 1824; *Las Siete Leyes Constitucionales* 1836; *Constitución Política de los Estados Unidos Mexicanos* 1857; *Ley sobre Extranjería y Naturalización* 1886; *Constitución Política de los Estados Unidos Mexicanos* 1917; *Diario de los Debates* 1916–97; *Diario Oficial de la Federación* 1917–98; Becerra Ramírez 2000; Burgoa 2000.



*solí* but became based exclusively on *jus sanguinis* in the 1857 Constitution, a complete reversal from 1814 (see Table 1).

Mexican legal scholar Ignacio Burgoa (2000: 106–7) argues that the shift to exclusive *jus sanguinis* in 1857 was a nationalistic repudiation of foreigners and their offspring who had supported the interventions of foreign states in Mexico in the early years of independence. The three states that have occupied Mexico (Spain, France and the United States) have also been important sources of foreign immigration (Camposortega Cruz 1997; Salazar Anaya 1996). The immigration of US colonists to Mexico's northern provinces ended in the disastrous 1836 and 1846–48 wars in which Mexico lost half its territory and approximately 100,000 Mexican residents. France invaded in 1838 to protect the economic interests of its nationals. France, Great Britain and Spain sent troops to Veracruz in 1862 to collect debts owed by Mexico. The United States intervened again in 1914 and 1916. This series of humiliations at the hands of foreigners have largely defined Mexican nationalism (Bazant 1991; González Navarro 1993; Knight 1990).

As a consequence of these interventions, Mexican law distinguishes among foreigners, naturalised Mexicans, native Mexicans of native parents, and native Mexicans of foreign-born parents.<sup>6</sup> 'Citizens' are defined by the constitution as Mexicans at least 18 years old who earn an honest living. Strictly speaking, no one is *born* a Mexican citizen. Each of these statuses entails distinct rights of eligibility for political office,<sup>7</sup> government employment, owning property, economic concessions, and military service.<sup>8</sup> For example, foreigners are prohibited from owning property along the border and coasts, are sharply restricted in their ability to exploit Mexico's natural resources, must renounce foreign diplomatic protection in property disputes, may not become involved in the political affairs of Mexico, and can be summarily expelled from the country at the will of the executive branch.<sup>9</sup> Naturalised Mexicans continue to be disadvantaged compared to native Mexicans by the former's inability to hold dual nationality, their susceptibility to denaturalisation, and ineligibility for some government posts and peacetime military service.<sup>10</sup> Naturalised Mexicans are 'probationary citizens' (Bauböck 2000: 308). The sociological literature on nationality law has been so captivated by the *solí/sanguinis* division that such equally revealing features of the law have been ignored. The reason for this hierarchy of citizenships lies in the attempts of Mexican elites to manage a precarious balance between promoting certain kinds of immigration and emigration while preventing international migrants from becoming a vehicle for the intervention of foreign states.

#### *Ambivalent Incorporation of Immigrants*

Nineteenth-century Creole elites encouraged the immigration of Europeans to import desirable scientific, 'racial' and cultural traits, but few colonists took advantage of the Mexican government's offers of economic assistance and automatic citizenship. Only 0.6 per cent of late-nineteenth-century transatlantic European

immigrants settled in Mexico (Buchenau 2001). Given the scarcity of immigrants, some legislators believed that adopting an open *jus soli* policy would make Mexico more attractive to prospective settlers.<sup>11</sup>

Legislators faced a conundrum. Attracting immigrants by welcoming them as full citizens also opened the possibility that unassimilated immigrants and their Mexican-born children would use their Mexican nationality to seek economic advantage or serve the interests of foreign states. The 1917 Constitution, forged in the crucible of the Mexican Revolution, attempted to moderate the influence of a handful of mostly European and US capitalists who isolated themselves in urban colonies or dominated the Mexican economy from abroad (Buchenau 2001; González Navarro 1994b). The spectre of foreign domination was invoked by Mexican political elites in a project of intensive state-led nationalism legitimating the post-revolutionary corporatist state (Aguilar Camín and Meyer 1993).

To mitigate the problem of foreigners taking advantage of Mexico's resources, Deputy Fernando Lizardi argued that admitting the children of immigrants to full membership through *jus soli* would encourage their assimilation.

And how will we increase our population, how will we increase the number of nationals, how will we make [the son of an immigrant] love our fatherland and how will we make him see it as his own, if at a certain moment we find that an individual born in Mexico and who has never left the country does not have the right to aspire to a modest elected position?<sup>12</sup>

Attacks on the attribution of nationality and full rights of citizenship via *jus soli* were launched from legislators invoking *jus sanguinis*. For example, in a failed 1917 effort to further restrict the rights of naturalised Mexicans, deputy Martínez Epigmenio argued, 'Practice has taught us that those of foreign blood always take care of their own blood, and not that of others'.<sup>13</sup> Deputies offered a similar rationale for the successful proposal to restrict service in the navy to native Mexicans. Five deputies initiated the provision with the following observation:

The foreigner, with rare exceptions, does not feel the lamentations of the fatherland with us, nor is he preoccupied at all for the well-being or exaltation of Mexico. In general, his only desire is to obtain a fortune that permits him to live comfortably, without setting aside for a single instant in his mind the thoughts and memories of his native country.<sup>14</sup>

The argument that birth and even long-term residence in Mexico were insufficient grounds for full membership was a recurring theme in nationality debates.

It's a lie that an individual loves the fatherland for the sole act of having been born in a territory, when he only nationalised in this place, more for convenience than for anything else. . . . I say he should not only nationalise, but also stay 10, 15, 20 years in Mexico. That will inspire love for our fatherland.<sup>15</sup>

Birth in Mexico did not inherently ensure the 'love of the fatherland' that made nationality a 'sociological' rather than simply legal status. Thus, *jus soli* in the 1917 Constitution was tempered by residency requirements for prospective nationals born in Mexico to foreign parents and restrictions on the rights of specific nationality statuses. Legislators' interest in attracting immigrants, but limiting their rights and the rights of their Mexican-born offspring until assimilation was assured, reflects Mexico's position as a weak state *vis-à-vis* immigrants' interventionist countries of origin. The *jus soli* model was thus not only *adopted* from the example of other countries, but also *adapted*, through a series of qualifications on *jus soli* tailored to fit Mexico's vulnerable place in the world.

### *Ambivalent Incorporation of Emigrants*

Much as the restriction of *jus soli* and the differential statuses of national citizenship directed towards immigrants reflects Mexico's weak geopolitical position, nationality law affecting *emigrants* suggests a similar pattern as a result of Mexico's conflictive relationship with the United States, emigrants' primary destination. The application of *jus sanguinis* has been tempered by fears that Mexicans will become 'foreignerised' (*extranjerizados*)<sup>16</sup> and use their access to the economic and political rights of Mexican citizenship to damage Mexico's 'national interests'. Practically all states have requirements to prevent purely instrumental naturalisation or the attribution of nationality to an infinite chain of descendents of emigrants (Weil 2001), but Mexico's situation is doubly precarious because of its weak position in a context of both emigration and immigration.

Mexican political elites in the 1920s and 1930s viewed emigration as a threat to nation-state building. Faced with the humiliating repatriations and deportations sponsored by the US government and Mexico's failure to attract mass European immigration, the Mexican government and most politicians encouraged emigrants to return (González Navarro 1994a). A 1939 amendment to the Law of Nationality and Naturalization allowed returning emigrants who had lost their Mexican nationality by naturalising abroad to recover their Mexican nationality by re-establishing residence in Mexico. The congressional commission's report defended the bill as a means to encourage repatriation.<sup>17</sup>

Following the mass repatriations of the early 1930s, the Mexican government for the first time drew a sharp distinction between US citizens of Mexican origin and Mexican nationals. It largely ignored the former and only dealt with emigrants insofar as it negotiated temporary migrant labour agreements with the United States from 1942 to 1964 (Sherman 1999). A 1937 proposal by the legislature of the border state of Tamaulipas to allow preferential naturalisation for second-, third- and fourth-generation US Spanish-speakers of Mexican origin was rejected unanimously by the Federal Congress on grounds revealing the ambivalent relationship between Mexicans and Mexican Americans.

[The congressional] Commission considers that the very ample provisions authorised by articles 21 to 29 of the Law of Nationality and Naturalization have been in large part the cause of the invasion of foreigners who compete with natives in small industry and commerce, with grave harm for natives, which this Assembly has fought on various other occasions, and therefore [the Commission] would not approve expanding the provisions of the law to allow the easy entry of another class of foreigners.

In addition, the *pochos*<sup>18</sup> and *Mexico-Texanos* who wish to naturalise as Mexicans may use the other means established by the 7 fractions in effect of article 21 of the [Law of Nationality and Naturalization]. . .<sup>19</sup>

While the 1939 legislation attempted to reincorporate Mexican-born emigrants, their American-born descendents were considered a potential threat. The 1937 rejection of preferential naturalisation for emigrants' Spanish-speaking descendents is especially striking given that since 1917, Latin Americans have enjoyed preferential naturalisation requirements. Latin Americans must have lived in Mexico two years rather than five, based on 'our fraternal aspirations that unite us with countries of the same *raza*'<sup>20</sup> and 'the profound cultural and neighborly relations with the nations of the region.'<sup>21</sup> Tens of thousands of Spanish nationals seeking refuge from their civil war were given the same preference in 1939.<sup>22</sup>

By any ethno-cultural understanding of nationhood, Spanish-speaking children of Mexicans in the United States would be at least as much a part of the same '*raza*' as Spaniards or Bolivians. However, Mexican Americans were treated like non-Latin foreigners because the former were considered potential agents of US intervention. Not until 1974 would second- and third-generation Mexicans abroad be given the same preferential naturalisation as Latin Americans.<sup>23</sup> The timing can be explained by President Echeverría's attempt to achieve greater international legitimacy by building a relationship with Chicano elites (Santamaría Gómez 1994).

Ambivalent political relationships between Mexico and the United States explain the government's stance towards emigrants more than any sustained notion of shared ethno-cultural ties with people of Mexican origin abroad. Further, against the expectations of the demographic position, the nuances of Mexican nationality law reflect Mexico's experience as a country of *immigration* rather than the country of *emigration* it primarily has been for the last century.

### *Modelling Effects*

Congressional debates were replete with positive references to foreign law. Yet the modelling explanation alone is insufficient given multiple internationally legitimate laws. Legislators strategically drew on competing models that best supported their political position. For example, the 1917 constitutional commission's report to the Constitutional Congress underscores the difference between US and Latin American nationality regimes based on the former's more favourable geopolitical position *vis-à-vis* European states. According to this argument, North Americans had sufficient military power to ignore European states' *jus sanguinis* claims on migrants

to the Americas. The weaker South American states were forced into a hybrid system.<sup>24</sup>

The modelling position is correct in that there has been a deliberate alignment of Mexican law with dominant international models. Mexico has continuously had some kind of mixed *jus soli/sanguinis* regime since 1886.<sup>25</sup> Yet the modelling explanation is insufficient, because there are competing models available for *jus soli*, *jus sanguinis*, or a mixed regime. Further, those models were transformed when they were adopted. For instance, the qualification that *jus sanguinis* did not apply to the children of naturalised Mexicans was not the result of deliberately emulating the law of other countries. Fears of foreign influences via emigrants and immigrants explain why specific models were adopted, others rejected, and the way those models were transformed in the Mexican context. I now turn to the debates about *jus soli* and *jus sanguinis* to determine if nationality law is a reflection of political elites' conceptions of nationhood as 'state/territorial' in the former or 'ethnic' in the latter.

#### *Jus Sanguinis and 'Shallow' Descent*

*Jus sanguinis* has been identified with an ethnic conception of nationhood (Bauböck 1994: 31; Weiner 1992). An analysis of all 43 references to *jus sanguinis* as well as related terms of descent such as blood (*sangre*), race (*raza*), and heritage (*herencia*) in the 58 debate episodes from 1916 to 1997 suggests members' conceptions of blood ties were generally shallow and rarely implied 'the nation' was a descent group. The typical meaning of descent was shallow in two ways. First, discussions of blood ties usually were framed explicitly in terms of *parental* or *familial* descent, rather than an expression of profound racial belonging, in keeping with the narrow legal definition of *jus sanguinis*.<sup>26</sup>

Second, deputies in even the earliest debates from 1916, when scientific racism was in its heyday, described the Mexican *raza*, nationality, and nation as mutable entities.<sup>27</sup> The dominant national ideology claimed a cultural and biological *mestizaje* resulting in a *new* Mexican *raza* (Knight 1990). Claims of a common, primordial descent group simply would not make sense within an overarching nationalist frame that defines Mexico's relatively recent construction from heterogeneous elements. No national populations are truly homogenous, but in settings like Japan, the claim to homogeneous descent is more cognitively believable and politically effective in regulating immigration law (see Cornelius 1994). As in other countries whose populations derive from both colonisers and indigenous populations, common descent claims have little traction in Mexico (Francis 1976).

A further limitation to a discourse of common primordial descent was the ethnic stratification of Mexican society. Ambiguities in federal citizenship law prior to the liberal 1857 Constitution 'displayed tensions between the elimination of criteria of caste and of slavery in order to create a broadly based nationality and the restriction of access to public office and to the public sphere to independent male property holders who could read and write' (Lomnitz 2001: 64). Literate property holders were

overwhelmingly of Creole descent. Federal citizenship and nationality law did not explicitly distinguish among Mexicans by ethnicity, but a *de facto* graded citizenship discriminating against the indigenous continued, and local laws sometimes relegated the indigenous to the status of *de jure* secondary citizens as well (Hu-DeHart 1984). Legacies of exclusions from full citizenship within Mexico established a pattern into which the graded forms of citizenship for immigrants and emigrants easily fit.

In sum, the second-class status of the indigenous undermined claims to a shared Mexican heritage. Even the unifying national myth of *mestizaje* that reached its heyday following the Revolution was based on a history of mixing *separate* ethnic origins. Consequently, the adoption of *jus sanguinis* in Mexico as a consistent and primary principle of nationality since 1836 cannot be traced to a legacy of an ethnic understanding of nationhood, as the legacies of nationhood position would predict. *Jus sanguinis* discussions emphasised descent as *parental* or *genealogical* transmission of legal status rather than ethnic descent. There is not a consistent relationship between legal nationality principles and ethnic or state-territorial framed understandings of nationhood.

### *Dual Nationality*

Debates about dual nationality in the 1990s are a strategic site to examine the effects on contemporary nationality law of inter-state relationships, exogenous models, and a demographic context of mass emigration. In this section, I argue that despite an apparent embrace of emigrants through a dual nationality law, a legacy of anti-interventionist nationalism *restricted* emigrant nationality by limiting *jus sanguinis* to the first generation born abroad and limiting the rights of dual nationals.

Like most states, Mexico historically has rejected dual nationality (Donner 1994; Gómez-Robledo Verduzco 1994; Vargas 1998). References to dual nationality in congressional debates have been relentlessly negative,<sup>28</sup> though the provision that 'nationality should be singular' was not adopted until 1993.<sup>29</sup> Since the adoption of a mixed *jus soli/sanguinis* regime in 1886, many children born to Mexican nationals in *jus soli* countries like the United States and children born in Mexico to foreigners from *jus sanguinis* countries were *de facto* dual nationals. 'Voluntary' foreign naturalisation was grounds for denationalisation until 1998,<sup>30</sup> but the interpretation of 'voluntary' narrowed in 1939 and 1993, so that emigrants who adopted a foreign nationality as an employment requirement were considered to have involuntarily naturalised. They became *de facto* dual nationals as well.<sup>31</sup>

The 1998 'non-forfeiture' (*no pérdida*) of nationality law protected native Mexicans from mandatory denationalisation, though they may still voluntarily expatriate. In keeping with the historic bias against immigrants, naturalising Mexicans were forced to choose Mexican nationality alone. Emigrants who had adopted a foreign nationality and the first generation born to Mexican nationals abroad were offered a five-year window to regain their Mexican nationality.<sup>32</sup> The

1997 constitutional reform limiting *jus sanguinis* to the first generation born abroad limited the infinite extension of dual nationality.<sup>33</sup>

Proponents of dual nationality invoked its acceptance by more than 50 countries. Countries of former mass emigration like Spain and Italy (Balfour 1996; Gabaccia 2000) and contemporary countries of emigration like Mexico, China, India, and Caribbean states (Fitzgerald 2000; Guarnizo 1998; Lessinger 1992; Nyíri 2001) have extended ties to emigrants and their descendents living abroad in an effort to gain their economic and political support. In many cases, recognising dual nationality is an important element of those statist projects (Freeman and Ögelman 1998; Hansen and Weil 2002; Itzigsohn 2000; Jones-Correa 2001). Mexican opponents of dual nationality invoked an older, more formalised norm against the practice from the 1895 Institute of International Law in Cambridge declaration and the 1933 Nationality Convention in Montevideo (Comisión Especial 1995). With competing exogenous models available, legislators appealed to whichever model supported their interests.

The principal argument in favour of dual nationality during the debates<sup>34</sup> and a colloquium with academics and government officials (Comisión Especial 1995) was that in an increasingly hostile political atmosphere in the United States, emigrants could best protect their rights by adopting US nationality and voting in US elections. Mexicans historically have had among the lowest naturalisation rates of any national-origin group in the United States, and Mexican legislators argued the rate would increase if emigrants could retain their Mexican nationality for its practical and ideological value.

Left unsaid in these discussions was that according to international law, dual nationals of one country cannot appeal to their second country of nationality for legal protection from the first (Donner 1994). The Mexican government exchanged the legal right to protect those who became dual nationals in the United States for an attempt to increase Mexican government influence in the United States. Members of the commission argued Mexicans were at a disadvantage compared to other national-origin groups in the United States whose native countries permitted dual nationality, thus stimulating greater rates of US naturalisation and stronger potential lobbies for their home countries (Comisión Especial 1995). President Zedillo privately told a group of US Latino leaders in Texas in 1995 that the goal of dual nationality was 'to develop a close relationship between his government and Mexican Americans, one in which they could be called upon to lobby US policy-makers on economic and political issues involving the United States and Mexico' (Corchado 1995). Nationality law was to be a tool of Mexican foreign policy.

In agreeing to form a commission to study dual nationality, representatives from all parties signed a document suggesting the need to recognise dual nationality as a means of facilitating emigrants' 'economic and family projects in their country of origin'.<sup>35</sup> Remittances have long been important to the Mexican economy, but their importance increased during the 1990s as 8 per cent of the Mexican population emigrated northwards (see Figure 1; Migration News 2003). The self-interest of the

Mexican state in encouraging remittances was invoked explicitly in Gómez Villanueva's presentation of the non-forfeiture law:

[T]he importance of the contribution of conational is such that it requires firm and solidary actions on the part of the Mexican state. It should be remembered that the third largest source of foreign currency in our country after petroleum is the monetary remittances of migrants to their Mexican families, in an annual sum of approximately six billion dollars.<sup>36</sup>

In addition to the economic argument, newly competitive Mexican politics in the late 1980s and the incorporation of emigrants into those politics through opposition campaigning among the Mexican population living in the United States were critical factors in the interest the Mexican state and ruling party showed towards emigrants after decades of neglect (Sherman 1999).

Although the 1997 constitutional reforms were passed 405 to 1 at a time of increasingly competitive politics, a number of arguments against dual nationality or the expansion of full rights of citizenship to dual nationals revealed fears of US economic intervention. Even as Deputy Sandoval Ramírez supported the amendment on behalf of the centre-left Party of the Democratic Revolution (PRD), he warned of 'the conflicts that derive from the existence of dual or multiple nationality' and the danger of 'the involuntary creation of a "Trojan horse"'.<sup>37</sup> A faction of the PRD feared *mexicano-norteamericanos* would take advantage of their greater wealth and buy control of the national patrimony, particularly the border and coastal strips from which foreigners were excluded from direct ownership, or that dual nationals would invoke the protection of foreign governments. The sole vote against the non-forfeiture reform came from Tenorio Adame of the PRD who made the following defence of restricting emigrant rights:

It is not possible that those who have fought for the agrarian reform, those who have fought for Article 27 of the Constitution!; those of us who have been committed to justice for peasants in the country, that now we give up our historical patrimony for all Mexicans so that *mexicanos-norteamericanos* would also have the opportunity to take in the possibility [of buying] those territories that were reserved exclusively for Mexicans.<sup>38</sup>

Mexican legal scholars Becerra Ramírez (2000: 328) and Trigueros Gaisman (1996) have made similar arguments for restricting the rights of dual nationals, who are entirely emigrants, given the prohibitions on dual nationality for naturalised Mexicans.<sup>39</sup> Yet PRD Deputy Adolfo Zinser argued that not since the American colonisation of Mexico's northern territories in the nineteenth century have foreign states attempted to use Mexican nationality law to harm Mexico, so Mexico should be less cautious about recognising dual nationality and nationality rights for immigrants or emigrants.<sup>40</sup> In the final bill, dual nationals were given the right to own property in coastal and border zones. Dual nationals do not have rights that historically have



been reserved for native Mexicans like eligibility for certain political offices and peacetime military service.<sup>41</sup>

Dual *nationality* does not mean dual *citizenship* in this case, as dual nationals are prohibited from the exercise of specific rights of Mexican citizenship. Emigrant activists have decried dual nationality as a cynical attempt to detract attention from their campaign for full political rights of citizenship, particularly the right to vote in Mexican elections from abroad (Santamaría Gómez 2001). In July 1996, the Congress amended the Constitution to allow Mexicans to vote for president outside their districts of residence, but voting from abroad will only become a reality if enabling legislation is passed to organise elections outside Mexico. While all major political parties are formally on record as supporting the measure, the Institutional Revolutionary Party blocked an enabling law in 1999, presumably based on the assumption that emigrants would vote against it. Proponents of the absentee vote from abroad argue that voting is a basic right of citizenship and that emigrants should have a voice in Mexican politics given their massive remittances. Detractors cite the expense of conducting elections abroad, the menace of fraud or US meddling in the process, and the potential for an absentee minority to decide the fate of the resident majority without having to face the consequences of their decisions (Fitzgerald 2004; Smith 2003).

Mexico has recognised dual nationality because of US-resident Mexicans' increased remittances, the unparalleled numbers of Mexicans abroad in absolute and relative terms, their potential source of support for the Mexican state as an ethnic lobby, and the contested incorporation of emigrants into Mexican partisan politics. Within this constellation of 'intermestic' and inter-state interests (see Manning 1977), political elites justified changing the law by pointing to the increasing number of countries accepting dual nationality. Degrees of citizenship that historically have attenuated the influence of foreigners in Mexican politics and the economy continue to prevent the full exercise of citizenship by naturalised Mexicans and dual-national emigrants.

## Conclusions

The diffusionist argument that nationality laws are converging according to a global model (Weil 2001) is supported by the Mexican case. Mexican law-makers have routinely invoked universally accepted international law as well as more specific European, Latin American and US models. However, the availability of competing nationality principles suggests that an exogenous modelling account by itself is not sufficiently explanatory. Actors invoke different models strategically and adapt them in new ways by attaching a range of qualifications and restrictions.

An analysis of Mexican nationality law and its congressional debate from 1916 to 1998 suggests that *jus sanguinis* and *jus soli* do not consistently correspond with the respective ethnic and state-territorial framings of nationhood predicted by the legacies of nationhood position (Bauböck 1994; Weiner 1992). Discussions of *jus*

*sanguinis* emphasise descent as parental or genealogical transmission of legal status. A national ideology of the recent melding of races and a history of second-class citizenship for the indigenous limits claims to a common primordial ethnic origin. The Mexican case suggests the posited relationships between *jus sanguinis* and an ethnic understanding of nationhood, and *jus soli* and a state-framed understanding of nationhood, are not universally applicable (cf. Bauböck 1994; Weiner 1992).

A different kind of historical legacy that *does* emerge as critical in explaining nationality law is the legacy of the asymmetrical relationship between the Mexican state on the one hand and immigrants' states of origin and the United States on the other. Mexican elites at various historical periods have attempted to attract immigrants' financial and human capital. *Jus soli* and *jus domicili* have been used to promote immigration and assimilation, but the fact that many immigrants come from countries with which Mexico has had tumultuous relationships has caused political elites to place secondary restrictions on immigrant citizenship. These restrictions have taken the form of graded statuses and the differential assignment of citizenship rights to those statuses.

Similarly, the vast power inequalities and historical traumas of the Mexico–US relationship have caused elites to restrict *jus sanguinis* and the citizenship rights of emigrants. Fears, and the strategic exploitation of fears, that emigrants will be a vehicle of US economic domination temper the Mexican state's otherwise inclusive project aimed at attracting remittances and encouraging a foreign lobby. Though emigrants have not demonstrably served as US agents, the legacy of colonisers and immigrants calling on the military, economic and diplomatic power of their native countries in the nineteenth century has had a lasting impact on nationality policy. Thus, even though Mexico is overwhelmingly a country of net *emigration*, its nationality laws continue to reflect its experiences as a geopolitically weak country of *immigration* during its earlier history. Attending to features of nationality law beyond the *jus soli/sanguinis* distinction in a geopolitically weak country illuminates these dynamics.

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### **Notes**

- [1] The distinction between the convergence of nationality laws across cases based on 'policy emulation' and uncoordinated 'parallel development' in response to similar conditions is borrowed from Hansen (1998).

- [2] A recent exception to the neglect of emigration countries is Hansen and Weil's (2001) collection that includes essays on European countries of former emigration that have become countries of immigration.
- [3] Calculated from US Census (2000) and US Census (2001: 12).
- [4] Online at <http://www.juridicas.unam.mx/infjur/leg/constmex/hisxart.htm>
- [5] Online at <http://cronica.diputados.gob.mx>
- [6] Articles 33, 30, 80, and 82, *Constitución Política de los Estados Unidos Mexicanos* 1917.
- [7] Under article 82 of the 1917 Constitution, Mexicans with a parent of foreign birth were ineligible for the presidency. At the initiation of the National Action Party (PAN), the law was amended in 1993 to enable Vicente Fox, whose mother was born in Spain, to become president in 2000 (Diario de los Debates 2 September 1993).
- [8] Article 32, *Constitución Política de los Estados Unidos Mexicanos* 1917.
- [9] Articles 27 and 33, *Constitución Política de los Estados Unidos Mexicanos* 1917.
- [10] Article 27, *Ley de Nacionalidad* 1998; Reform of constitutional articles 32 and 37, DdD 20 March 1997.
- [11] DdD 19 January 1917.
- [12] DdD 19 January 1917.
- [13] DdD 17 January 1917.
- [14] DdD 16 January 1917.
- [15] DdD 19 January 1917.
- [16] DdD 19 January 1917.
- [17] Article 27 reform, *Ley de Nacionalidad y Naturalización*, DdD 22 September 1939.
- [18] *Pochó* is a derogatory term referring to 'gringoised Mexicans'. Mexicans generally presumed the descendants of Mexicans in the United States had 'lost' their Mexican cultural qualities (Lomnitz 2001: 139).
- [19] DdD 16 November 1937.
- [20] DdD 16 January 1917.
- [21] DdD 18 May 1993.
- [22] DdD 12 December 1939.
- [23] Article 21 reform, *Ley de Nacionalidad y Naturalización*, DdD 12 November 1974.
- [24] DdD 19 January 1917. In fact, European countries' refusal to accept their nationals' expatriation when they became US citizens was a major irritant in US relations with European countries in the nineteenth century (Martin 2002).
- [25] *Ley sobre Extranjería y Naturalización* 1886.
- [26] E.g. DdD 19 January 1917.
- [27] DdD 14 December 1916; 18 May 1993.
- [28] E.g. DdD 19 January 1917; 19 December 1933; 14 November 1974.
- [29] Chapter II, Article 6, *Ley de Nacionalidad*, DdD 20 May 1993.
- [30] Article 37 reform, Diario Oficial de la Federación, 20 March 1997.
- [31] Article 53 reform, *Ley de Nacionalidad y Naturalización*, DdD 22 September 1939 and Chapter 4, Article 22, *Ley de Nacionalidad*, DdD 20 May 1993. See Table 1.
- [32] After only 67,000 Mexicans applied to regain their nationality during the five-year window, a constitutional reform expanding the deadline indefinitely was passed in 2003 (*Associated Press*, 23 October 2003).
- [33] Article 30, DdD 20 March 1997.
- [34] DdD 4 April 1995; 6 December 1996; 9 December 1996; 10 December 1996; 5 March 1997.
- [35] DdD 4 April 1995.
- [36] DdD 10 December 1996.
- [37] DdD 10 December 1996.
- [38] DdD 10 December 1996.
- [39] Article 16, *Ley de Nacionalidad* 1998; Article 37 constitutional reform, 20 March 1997.

[40] DdD 10 December 1996.

[41] Article 32 reforms, DdF 20 March 1997. Article 16, *Ley de Nacionalidad* 1998.

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