
The legal construction of the national and the foreign

Interview with Diego Acosta

Carlota Moura Veiga and Inês Vidigal

Instituto Universitário de Lisboa (ISCTE-IUL), Centro de Investigação e Estudos de Sociologia (CIES-IUL), Lisboa, Portugal

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Diego Acosta is a leading international expert on International, European and comparative Migration law. The core of his research is an interdisciplinary, practically significant and theoretical inquiry into International, Human Rights, European and comparative Migration law to offer a novel defence of a rights-based approach to migration regulation. His work discusses Migration law as a central aspect of globalisation and analyses various processes of inclusion and exclusion and their profound implications for the rule of law in Europe, South America and elsewhere. His latest monograph is entitled *The National versus the Foreigner in South America. 200 Years of Migration and Citizenship Law*.

Título A construção jurídica do nacional e do estrangeiro

O Dr. Diego Acosta é um dos principais especialistas internacionais em direito migratório internacional, europeu e comparado. O núcleo da sua investigação é um inquérito interdisciplinar, praticamente significativo e teoricamente sofisticado sobre direito migratório internacional, direitos humanos, e direito europeu e comparado, com o objetivo de oferecer uma nova abordagem baseada em direitos à regulamentação da migração. O seu trabalho discute o direito das migrações como um aspecto central da globalização, e analisa vários processos de inclusão e exclusão, e as suas profundas implicações para o Estado de direito na Europa, América do Sul e noutros locais. É o autor de mais de 50 publicações e a sua última monografia intitula-se *The National versus the Foreigner in South America. 200 Years of Migration and Citizenship Law*.

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Observatório da Emigração

Av. das Forças Armadas, ISCTE-IUL, 1649-026 Lisboa, Portugal

Tel. (CIES-IUL): + 351 210464018

E-mail: observatorioemigracao@iscte.pt

www.observatoriodaemigracao.pt

Emigration Observatory (ahead OEM) – Professor Diego Acosta is a Professor of European and Migration Law at the University of Bristol. He holds a PhD in European Law from Kings College in London, and his area of expertise is Migration Law. His latest book is entitled *The National versus the Foreigner in South America. 200 Years of Migration and Citizenship Law*. Thank you very much for accepting this invitation to talk to us about your career, and in particular, about your project on migration and citizenship in South America and the legal construction of the national and the foreign, in this continent, for 200 years. However, before deepening further on the issue, we would like to know a bit more of your professional background and how you gain interest in the subject of migrations. Could you tell us more about that?

Diego Acosta (ahead DA) – Well, thank you very much. I'm very pleased to be here in Lisbon and it's a greater honor and great pleasure to be here. And thanks for that question. Actually, you know, I think most of us who are interested on migration have some sort of personal background, that led to that particular interest, right? It is not the case for everyone, but it is certainly the case for many. In my case, I will say that there are two books, and two moments in my life, that led to my interest on migration, and these are two books that I recommend always to everyone to read. The first book is a book by a French Lebanese writer called Amin Maalouf, and the book is *In the name of Identity: Violence and the Need to Belong*. Basically, Amin Maalouf ask himself why people kill in the name of identity, right? So, he begins his discussion in the book looking at the former Yugoslavia, and he wonders how is it possible that people who have lived side by side for decades, all of the sudden, start killing each other simply because one is orthodox, the other one is Muslim and the other one is Catholic. And in that book, he answers himself by saying: well, you know people kill in the name of identity because people try to find one single identity that defines them, rather than trying to find as many as state identities as possible and understanding that each one of us is the result of a variety of identities, that combined, make us unique. I read the book in 2001, when I was doing my Erasmus in Brussels, so that was a book that influenced me and that led me to start thinking about identity, and mostly, at that time, about European identity. What it meant for me to be also, not only Spanish, but also European, and certainly Mediterranean, or the fact that I speak Spanish, links me obviously with countries in Latin America etc., right? And the second book that I also recommend and that led to my interest on migration, was a couple of years afterwards. I was studying for a year in Miami. Miami is a very interesting city because basically half of the population of Miami are foreign-born, so it's extremely, let's say, it's a city founded on the history of migration. But when you arrive to Miami, you might have the wrong impression that migrants always had it very easy in Miami, and especially Latinos, right? Because you see a mayor that is a Cuban descendant, and you see all the businesses where you have a lot of very important people from the Cuban community that did very well

economically afterwards, etc. But I read the book called *City on the Edge: The transformation of Miami*, by two sociologists, Alejandro Portes and Alex Stepick, both of them are extremely famous sociologists. And this book tells you the history of Miami: a very new city that was founded in 1896, and it tells you the history of the city of Miami through the history of the different immigrant groups that arrived in Miami. Before the Cubans, in the 1960s, other immigrant groups had arrived to Miami. It was then that I combine that interest with identity together with the new interest with immigration that led to my career.

OEm – So, it was before your PhD?

DA – Yes. So then, in 2000, and after that I went to Sweden for a year, and I was doing a master degree in European Law and a master thesis on European Migration Law. Sweden it's also a country that is very interesting for discussions on Refugee Law and Migration Law, and many other things surrounding discussions on Migration. And so, there I decided to do my master thesis on European Immigration Law, and then, two years afterwards when I decided to do a PhD, it was clear for me that I was going to do a PhD on European Immigration Law.

OEm – Your new project is about Migration and Citizenship in South America and the constructing the national, the citizen and the foreigner in South America. What led you to take an interest in this matter?

DA – So, in the case of South America, I had lived in South America before I started looking at the Immigration Law in South America. So I have lived for a year in Colombia and I have lived for more than half a year in Brazil. So I always had an interest on South America as a region. But, in 2009, when I was doing my PhD, I went to Chile, Brazil and Colombia to give a number of talks, and I was discussing a piece of European legislation that regulates how migrants in an irregular situation can be expelled from the European Union. This is called the “returns directive”. That particular piece of legislation has been tremendously criticized by all governments in Latin America and certainly by all governments in South America. They were basically saying that this was an aberration, that their Nationals in Europe were being treated unfairly in many respects. I think they were right in saying that the returns are very restrictive in certain aspects. That led to a question that I ask myself: if these countries are criticizing Europe, so much certainly it is the case that they will have much better legislations when it comes to migration, when it comes to irregular migration, right?

So I started looking at that, in 2010, and I realized that obviously the answer to the question was much more complex. There were some really interesting initiatives happening in South America which were based on a human rights-based approach, but, at the same time, there were extremely restrictive policies and laws in place. It is then that I started looking at it more

in depth. It was a serendipity: it was the fact that Latin Americans criticized the European piece of legislation, which I was working on, that led to my interest on South America.

OEm – Could you share some of the findings with us?

DA – Well, yeah, absolutely. What I tried to do in the book that I published a couple of years ago is to look at how South American states have legally created the *National* in opposition to the *Foreigner*. In the first 15 years of the 21st century, there was a very clear discourse in South America, not only by policymakers from South America, but also by its scholars from South America, saying that South Americans approach of America's approach to immigration law was innovative in the sense that they were doing something new. They were approaching the issue in a new manner. So they had these two claims, right? They are doing something that is innovative because they are approaching migration regulation with a new framework, but they were also saying, not only this is a new framework, but it's also an exceptional framework in the sense that they are doing it better than the European Union or the United States. And so, in order to see those two claims, the claim of innovation and the claim of exceptionalism, what I did in my book was to go back into history 200 years, to see whether what South American countries were doing now, is actually new, or it was simply something that have happened throughout 200 years. And there are many elements that have been there in South America since the very beginning. For example, since the very beginning, anyone born in South America became a national of that particular South American state. And so it was very interesting for me to find that there was a great path of dependence in the regulation of the legal figure of the citizen and the foreigner in South America throughout 200 years, but it was also very interesting to me to see that there was also a lot of diffusion. So countries were copying each other in South America 200 years ago, and they are also copying each other on migration law today. So that is very interesting. And, when it comes to the second claim, that's the claim of exceptionalism, I analyze how South America regulates immigration and, to a certain extent, citizenship law today, and I found that there are certain practices and certain emerging legal principles, certain rules, certain legal instruments, which are extremely innovative and interesting, but those are also, at the same time, present together with instruments which are restrictive and which are not going in that particular trend of exceptionalism in the sense of openness. So that dichotomy, which is present in any migration law, in an immigration legal regime in the world, is also present in South America.

OEm – Thank you. We know that your work does not focus much on the issue, but were there some facts on the Portuguese in Venezuela, or in South America, that have surprised you?

DA – So, the case of Venezuela is obviously the case that I'm focusing on my attention. And yes, for those who don't know, and since 2015, more than 4 million Venezuelans have left Venezuela and they have migrated mostly to two countries in South America: mainly to Colombia, which now has around 1.5 million Venezuelans, and second to Peru, with 860,000 Venezuelans approximately. Then we have Ecuador and Chile, with a little bit more than 300,000 Venezuelans in each, then Brazil, with 224 thousand Venezuelans, and then we have Argentina, with around 180,000 Venezuelans. So obviously Venezuela is the main focus for all of us who were interest on Migration in South America, because Venezuelans abroad now constitute the second largest number of individuals abroad in the last few years, following only Syrians. So, it's an extremely important development and it's obviously a very difficult situation. The case of Europeans in Venezuela, or descendants of Europeans in Venezuela, is quite interesting because Venezuela was the last country in South America to receive important groups of Europeans. Mostly Portuguese, Italians and Spaniards who emigrated to South America in the 1950s, 1960s and 1970s, and South America had received large numbers of Europeans before the 50s, 60s and 70s, mostly between 1880 and 1930, but they have move mainly to Brazil, Argentina and Uruguay. But Venezuela was a latecomer in that arrival of Europeans and the last groups of Europeans went to Venezuela between 1950s and 1970s. And what we find now is that there are many descendants of Portuguese, Italians or Spaniards, which in many cases will have Portuguese, Italian or Spanish citizenship. One interesting thing is that when they move to Europe, since they are EU citizens, or even if they are bringing family members who are not EU citizens, their family members are also entitled to be treated as EU Nationals. It is interesting because they don't become a legal issue because they already have a right to enter, reside and work in the European Union, not only in Portugal Italy or Spain, but in any other country of the European Union, because they are EU citizens. And so that is very interesting. In 2016 there were 180 thousand Portuguese nationals registered in the Portuguese consulates in Venezuela. So it's an important number and what I have learned in the last couple of days talking with many colleagues here at the University in Lisbon, is that there is an important number of those Venezuelans who are also Portuguese, who, in many dual citizenship, actually coming to Portugal, which was possibly something that they didn't have in mind five years ago.

OEm – You were saying that these returns from Portuguese, Spaniards, Italians and other nationalities, didn't have a legal impact. But do you think it could have an impact on other issues besides the legal one? Because of the number of people that are returning in such great numbers.

DA – Well, I would say, you know in the case of Portugal, Italy or Spain, when we compare the numbers of Europeans arriving into these three countries, to the number of Venezuelans who are arriving to Colombia or to Peru the number is modest, it has increased certainly in the last few years, but it's important too explain that Venezuelans were never an important immigration community around the world and certainly not in Spain or in Portugal or in Italy. So obviously there has been an increase, but what is interesting to me is that the fact that they have legal rights of residents because they are also EU Nationals which makes their arrival much easier. And in many respects, at least from the legal point of view, the problem is what to do with those who don't have a right to reside, and in the case of Spain, for example, Venezuelans who happened not to be EU Nationals themselves, or to be family members of EU Nationals, what Spain is doing is granting those Venezuela's humanitarian residence permits. So that is more of a challenge because you need to make a decision on what legal status you're going to run to those Venezuelans. But for those who come as EU citizens is obviously their adaptation, whether they find a job or not, whether they are discriminated or not, that's a different issue. But legally speaking, they have all the rights that any other EU citizen will have, and that is obviously an advantage and it means that the problem is less dramatic than if they wouldn't have a legal status.

OEm – Thank you. Your book, *Global Migration: Old Assumptions, New Dynamics* turned out to be a comparison on various aspects and demystification of migration. What led you to this idea?

DA – Well, so this is a collective volume, it was a collection of three books, with 28 chapters, that we edited in 2015, and our main idea was to show that there are many myths around migration that when discussed with empirical evidence, become myths. So what we did in those three volume collection was to take examples from contacts with scholars from all around the world. So we had scholars from many countries around the world, discussing at least 50 countries in total, in the book in various ways. And this scholars were coming from eight different disciplines and they were trying to burst myths around migration, and the idea behind it was that we are unfortunately living in a war where there are a lot of rumors, a lot of false information being spread on the issue of migration, and it's something that is very difficult to balance and to fight against, but it's certainly something that is extremely important because a lot of the information that the general public has on migration comes from information which is not accurate, which is not precise, which is, in many times, simply false.

So that was a little bit our idea.

OEm – Is there any aspect, issue, anything else that you would like to talk to us about?

DA – Yes. Well, I think just to conclude in a related theme to the idea of the myths. I think one aspect that we also take for granted today when we look at the media as part of the political discourse, is that everyone is establishing borders to avoid the arrival of migrants, right? Now, we think about Donald Trump, we think about Brexit, we think about the new proposals that the UK is putting forward. What I'm trying to do, or I have started doing in my new project, is to show that the opposite is actually true. So everybody around the world is actually getting rid of borders when it comes to get rid of migrants. Of course the example that we all know very well in Europe is the European Union. We are EU citizens and, therefore, we have the right to move freely and to reside anywhere in the European Union. So that means that for European citizens, borders, legal borders for mobility, for migration, do not exist. There are obviously challenges, but the general rule is that there are no borders, right? So that is also happening in other regions around the world and it's happening in South America. It is happening in the Caribbean, it is happening in Africa, and in other regions. And in my new project, I'm precisely interested in looking at how regional free movement has become a new normal in the regulation of migration. And that is extremely important because once you open borders for regional migrants, you are saying that, for example, if you are from Argentina, you have the right to reside in Brazil, or that if you are from Dominica in the Caribbean, you have the right to reside in Antigua and Barbuda, or that if you are from Kyrgyzstan, you have the right to reside and to work in Russia. What we are saying is that we are opening borders at a regional level and we are approximating the legal status of foreigners to that of nationals, and that I think, is an extremely important development that has not been sufficiently studied and that's affecting pretty much every region around the world. So that's a little bit my new project also combined with this of myths that we have around migration.

OEm – Thank you. Is there any date when is gonna be published?

DA – We're just starting. I am writing a couple of papers, one on the post-Soviet space now, and then I'm writing in a more general paper on how we should legally understand free movement of people at a regional level. What should be the definition of regional of free movement of people at regional level? What are the instruments that play a role? So I'm working on that. So hopefully I'll have two papers soon enough, maybe by next year. There will be a couple of publications coming out of this new project.

OEm – Thank you very much for coming here and for letting us do this interview and for the presentation.

DA – It was really my pleasure. And thanks so much for the invitation.

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Observatório da Emigração

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