

THE SUFFRAGE OF FOREIGNERS IN THE MUNICIPAL ELECTIONS FROM 2011 TO 2019 IN SPAIN: BALANCE AND FUTURE PROSPECTS

EL SUFRAGIO DE LOS EXTRANJEROS EN LAS ELECCIONES MUNICIPALES EN ESPAÑA DE 2011 A 2019: BALANCE Y FUTURAS PERSPECTIVAS

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Abstract: *The current study takes stock of the accumulated experience in political participation at municipal elections of non-EU citizens in 2011, 2015 and 2019. It does so by framing the data and outcomes within the existing regulatory framework in Spain, a framework that very strongly conditions such participation. The text reviews the implications of the model of selective recognition of the right to vote (based on the voter's nationality), and analyzes certain legal conditions stemming from the requirements of reciprocity, residence or previous census registration. The authors consider that the cumulative impact of those conditions is responsible for the very low electoral turnout in non-EU citizens participation. Lastly, the authors present some ideas to overcome such effect and make the most of the present model, at least until its replacement in municipal elections by a truly universal suffrage model.*

Key words: *migration; foreigners; political participation; right to vote; suffrage; local elections.*

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Resumen: *El presente trabajo valora la experiencia acumulada respecto de la participación política a nivel municipal de los ciudadanos extracomunitarios, a partir de los datos disponibles de los comicios municipales de 2011, 2015 y 2019, en conjunción con el marco normativo existente y que condiciona fuertemente dicha participación. El texto revisa las implicaciones del modelo de reconocimiento de reciprocidad convencional del voto (por nacionalidades), y el impacto acumulativo que los requisitos de reciprocidad, residencia e inscripción censal previa generan. Los autores identifican algunos de los lastres de dicho modelo que están provocando una reducidísima participación electoral en dichos comicios y plantean algunas propuestas de superación de los mismos para extraer el máximo posible de dicho modelo mientras no se sustituya por un modelo de reconocimiento verdaderamente universal del sufragio.*

Palabras clave: *inmigración; extranjeros; participación política; sufragio activo y pasivo; elecciones municipales.*

INTRODUCTION

The municipal elections of May 2019 were the fifth municipal elections in which European foreigners were able to vote, and they were the third elections in which some non-EU citizens could also cast their vote. Although the May 2011 elections marked a historic milestone by opening the vote to citizens of third States, their result was quite modest considering the expectations created¹. Then, the 2015 elections yielded an equally meagre balance, with a very reduced participation of this group². Finally, the municipal elections of 2019 offered clearly disappointing results, despite the striking fact that nationals of 39 countries, 27 of the Union as well as 12 of third States could do so. The foreign participation in municipal elections has not stopped decreasing.

This article analyses the factors that condition the Spanish model of recognition of the right to vote for foreigners. To do this, we will

¹ For an analysis of the 2011 elections see Moya & Viñas (2012), where some of the problems of the present system were already advancing.

² For an assessment of the 2015 elections, read Bermúdez & Escrivá (2016, pp. 296-317).

make a brief reminder on the constitutional and legal provisions that frame this recognition³ and how this strongly reduces the number of foreigners with the right to vote, especially due to particular the requirement of registration prior to the elections. It will also speculate with eventual changes in the current bilateral agreements of reciprocal recognition of suffrage in order to assess potential impact that the extension of suffrage to certain nationalities may have.

1. A BRIEF REMINDER: EUROPEAN CONTEXT, CONSTITUTIONAL FRAMEWORK AND CURRENT STATE-OF-THE-ART

1.1. Framing the debate: aliens' suffrage, citizenship and integration

The debate about municipal suffrage is closely linked to the understanding and evolution of the concept of citizenship and its political implications. Beyond the historical consideration of certain aliens as enemies, more elaborated arguments against vote recognition are based on the idea that *aliens lack genuine knowledge of the host country or a true sense of belonging*. These arguments, which establish close ties between individuals and the State by means of nationality, appeal to a powerful concept of nation in which the population is compressed around a common factor which may be territory, ethnic origin or race of the community, a historical, religious and/or mythical past that is shared by the population or, in short, any other aspect constituting a common, fundamental trait, or at least one by which the people stand out. This ethnic and cultural basis for the concept of citizenship in nation-States is what Habermas has criticised as running counter to a constitutional democratic citizenship. (Habermas, 1993, 1998, 1999). Nonetheless, this argument cannot be ruled out entirely without delving into the details of the requisites demanded in order for local suffrage to be acknowledged, without attaching them to specific traits of immigration in each country. In Denmark, for example, this

³ For a synthetic review of the main constitutional and legal issues see Aja & Moya (2009, pp. 65-81) as well as the bibliography referenced there.

argument triggered a major parliamentary debate as to whether three years sufficed in order to enable aliens to gain an acquaintance of Danish society and to build a suitable command of the language, and if this entailed a decline in the worth of local politics. The Danish example also illustrates that although there is a certain level of fear that immigrants will not take on Danish democratic values, it also increases the pressure on candidates of immigrant background that come under major scrutiny in their positions and with regard to their attitudes, to a greater extent than the remaining candidates.

Some other arguments maintain that aliens should be excluded from participating in the political system on account of being *individuals who are subject to the sovereignty of another State* (Jellinek, 1978)⁴. This reasoning can be found in the more traditional constitutional jurisprudence and dogmatics of Germany where, for the lack of an express constitutional stipulation, sovereignty and German people have been merged by means of nationality (judgment of the German Federal Constitutional Court dated 30 October 1990 on laws governing participation of alien residents in the municipal elections of Schleswig-Holstein and Hamburg) (Beaud, 1992, pp. 410-424). Highly tied in with the discussion on the scope of what is considered a “sovereign people”, one line of doctrine places emphasis on the content of nationality. Accordingly, nationality is a legal bond of belonging that is established among individuals and States, a source of rights and duties on a mutual basis. This has enabled some authors to maintain that the rights and duties of aliens towards the State are not as heightened as those of nationals, in other words, that *the set and intensity of rights and duties binding nationals with the host State differ from those that bind aliens with their States of origin*⁵. As a result, naturalisation is a procedure to amend a personal statute whereby an alien officially registers his abandonment of his previous nationality to embrace a new one, with the respective rights and obligations this entails as well as

⁴ In Jellinek sovereignty is tantamount to independence and that it entails a denial, subordination or limitation of some description of one State with respect to an alien power, a subordination to which all aliens are subjected inasmuch as they are natives from another State.

⁵ These theories, and even the more liberal theories, promote unity of relations between the state and an individual (mono-nationality) reserving a range of essential rights for their nationals (social rights, political rights, protection, etc.). For a critique on this aspect, see (Martin, 1999).

full integration in legal and political terms. Beyond naturalization, widening the electoral body to include foreigners is a particularly complex and politically sensitive task for lawmakers, as it implies a reshaping of the very electoral system and to a certain extent, and major changes to it call for relative consensus among political powers, as is the case with electoral laws.

Lastly, other theories promote a *more inclusive democracy and a review of current constitutional and political hurdles*. Some authors (Waltzer, 1984) consider that any discussion using nationality as the sole criterion to be part of the electorate is outdated as it excludes aliens from being considered part of the body we refer to as the “sovereign people”. Though it may seem that constitutions tend to consider as citizens only their nationals, the criticism of a restrictive concept of citizenship is based on the assumption that democracies are built solely on the national identity of their citizens, when there is also a need to ensure the socialization of all in a common political culture. For some authors, the social inclusion —integration— of all members of society is a moral imperative for a democratic society. To achieve this it is clearly necessary to first define what is understood by social inclusion —integration— and to set out the specific conditions of it, which may vary from one society to the next. Even so, in general terms it can be defined as being subject to the laws of the State, the establishment of permanent residence in that country or being attached to the State insofar as the protection of one’s rights is concerned (Rubio-Marín, 1999)⁶. By steering the definition of a sovereign people away from nationality, this reasoning transfers the exercise of sovereignty to all citizens present (those who are resident, because some minimum requirements must be established) in the State’s territory regardless of nationality, and generally based on a different bond; namely, residence or social integration. Such debate took place in The Netherlands and Sweden and was raised along these lines and this has been the stance that some parliamentary groups of the left have tried to maintain in Spain to little avail⁷.

⁶ According to this author, based on the acknowledgment that prolonged residence (what would currently lead to a “residence permit” or the EC statute of “long-term residence”), liberal democracies are compelled to ensure full integration of these aliens (“inclusion record”) to avoid prolonging the presence of second class citizens in the country, meaning that to a certain degree it is necessary to consider aliens as being an integral part of the political community (“polity”).

⁷ For a more detailed account see (Moya and Viñas, 2012).

Another argument regarding aliens' suffrage is that it could encourage *integration*. Whereby the traditional reading sustaining that political integration is precisely the condition for granting suffrage this reading reverses this order of factors: acknowledgment of the right to suffrage can encourage greater political and, accordingly, social integration. This is a perspective that was weighted in the cases of The Netherlands, Sweden or Switzerland. In the Dutch case it was observed that communities with a high degree of organisation and firm interrelations tend to lead to a greater turnout in the elections. Based on the theory of the social capital, although far from establishing a direct link between greater turnout and more favourable social and economic conditions, Soininen has pointed out how greater turnout in Sweden had been observed among aliens who showed a more "civic attitude", an attitude that was substantially affected by social and economic living conditions. Interestingly, it pointed out also the limited influence of factors such as employment status, knowledge of Swedish or the duration of one's stay in Sweden, whereby the existence of a relationship with a partner or having completed a naturalisation process are prevalent factors in this regard (Soininen, 2011).

From a policy-oriented perspective, traditional models that still defend not allowing aliens to become involved in the political system until they are integrated, can be balanced with reasonable immigration systems and an open, flexible system for access to nationality, as the next rung in the ladder after permanent residence, thus favouring integration especially if the new nationality can be held whilst aliens are allowed to preserve their nationality of origin. Another equally valid approach is the gradual opening of mechanisms for political participation such as local suffrage as a driving force for integration and political involvement on the part of aliens with respect to local issues. In this respect, if towns are also politically solid entities, with significant powers with regard to community life and the lives of aliens, this may be all the more encouraging. Both of these approaches may turn out to be equally effective and encourage integration even if they follow different routes. The key to the issue is how the system for access to nationality is shaped on the one hand, and how the electoral system and the parties are regulated, on the other. Nevertheless, it is worth outlining how both approaches may end up converging. In Belgium, for example, a gradual liberalisation of nationality has ended up bringing with it the acknowledgment

of municipal suffrage; however, if we look at this convergence in detail, one can see that nationality was still somewhat rigid (having a rather restrictive *jus soli*) and that the way the local electoral system is organised also entails a number of restrictions (closed lists, exclusion from the right to stand for election, etc.).

1.2. Constitutional and normative framework and current status of the issue

As argued, the Spanish case belongs to the intermediate group of countries that neither open the vote to all foreigners nor deny it completely. The arts. 13.2 and 23 of the Constitution reserve the right to vote for Spaniards and exclude foreigners from it. Constitutional debates show that this was a relatively controversial and certainly debated issue, with tensions between the most open and the most restrictive positions. The compromise formula took in the Spanish Constitution of 1978 an intermediate position: art. 13.2 CE admits the suffrage of foreigners, but exclusively at the municipal level and under the condition of reciprocity. The condition of reciprocity made it possible to reach an agreement by generically excluding foreigners from the vote, but admitting a relative margin of action to the Government so that participation in municipal elections could be opened to certain nationalities.

This intermediate formula has allowed to transit from the complete exclusion of foreign suffrage in the early years of democracy, to bilaterally open it in the late eighties to four European countries (The Netherlands, Denmark, Sweden and Norway). This step was overshadowed by the subsequent adoption of the 1992 Maastricht Treaty, which extended to all citizens of the new European Union the right to vote in municipal elections of the residence place after only a very limited reform of art. 13.2 CE⁸. The

⁸ This provision was the subject of a very limited constitutional reform in 1992 processed by the simplified procedure of constitutional reform of art. 167 CE after the Opinion of the Constitutional Court 1/1991 on the Maastricht Treaty, to operate a small retouch (substitution of one or by one and in the last sentence). According to the Court, said modification did not conflict with the letter of the Constitution or with the general spirit of the text, although it admitted that a certain political consensus was always desirable for everything that involves modifying the Constitution, especially if it affected the electoral system.

only exception was that of Norwegian citizens who, as a result of Norway's failed accession to the European Communities, continued to benefit from this right on grounds of their bilateral agreement with Spain, and vice versa.

Later on, the transformation of Spain into an immigration receiving country, plus the accumulated experience with the suffrage of EU citizens and not least, the insistence of the Parliamentary Group of Izquierda Unida-Iniciativa per Catalunya, ended up bringing this issue into the political and parliamentary agenda. In 2006 the Congress of Deputies, with the agreement of the most significant parliamentary forces, adopted a Non-Legislative Proposition to urge the Government to implement a policy of extension of the right to vote within the strict constitutional framework. The agreement commissioned the Government to explore the possibilities of signing bilateral agreements with third countries to extend the right to vote within the constitutional limits of municipal elections, provided that reciprocity could be ensured. To these constitutional limits was added the modality of the right to vote that will be exercised, and which in Spain is limited to active suffrage (except for the Convention with New Zealand that generically recognizes the right to vote), and the previous period of five years residence in Spain (with the exception of the agreement with Norway and since recently with the United Kingdom, which set it at three years).

Before the May 2011 elections, the Spanish Government achieved the Congress ratification of the Agreements with Ecuador, Bolivia, Chile, Colombia, Peru and Paraguay as well as other countries with a much smaller number of resident population in Spain (Norway, Iceland, Cape Verde, Trinidad and Tobago, New Zealand). The further ratification by Congress of additional Agreements has not been possible and the truth is that the list of countries with which Spain could do so has been progressively reduced, some of them withdrawn after even advanced negotiations took place (Argentina, Burkina Faso, Venezuela, for different reasons each one), only succeeding in the case of the Agreement with South Korea.

With the accumulated experience of three municipal elections of 2011, 2015 and 2019, the current debate on foreign suffrage is relatively stuck. During the economic crisis of 2008-2014 the migration phenomenon was kept out from the public discussion, and subsequently some initiatives and campaigns by NGOs (Red Acoge in 2018, for example) and trade unions (UGT, 2018) did not

make their way into the political agenda. It is true also the political debate is kind in a bootstrap because the more open proposals directly advocate for the suppression of reciprocity⁹, which is a constitutionally imposed requirement so that at the end of the day any reform in this area is linked to a constitutional reform, which is nowadays a very complicated and sensible political issue. In the legal doctrinal field, beyond the initial contributions of the 1990s by (Presno, 2003; Massó, 1997; Rodríguez Drincourt, 1997), and particularly in the next decade (Santolaya & Díaz-Crego, 2008) the way for the extension of the bilateral agreements currently in force was paved. The works of Morales and Giugni (2011) as well as those of Moya and Viñas (2010) provided also a comparative perspective on the different models and trends. Recently, the works of Arce (2019), Bermúdez and Escrivá (2016) or Naranjo de la Cruz (2017) that have analysed in detail some of the limitations of the current model of recognition of suffrage through reciprocity should be highlighted. The works of Morales and Giugni (2011) as well as those of Moya and Viñas (2012) provide a comparative perspective on the different models and trends.

1.3. The requirements of reciprocity, residence and prior registration

The three key factors in our model for the recognition of foreign suffrage are: the constitutional requirement of reciprocity, plus the legal requirements of prior residence in Spain and registration in the electoral roll.

Starting with reciprocity, it should be noted that it implies an immediate reduction in the number of foreigners who can participate in municipal elections, because *not many countries can comply with this requirement if it is applied to rigidly*. Indeed, the interpretation of reciprocity cannot be so strict or absolute that it becomes impossible to apply. In fact, it has already been applied with some flexibility, the aim ultimately pursued by art. 13.2 CE is to essentially guarantee that Spanish residents in third States can enjoy a real and effective opportunity to participate in local elections in the

⁹ Non-legislative proposals presented in the Congress of Deputies in 2014 by IU-ICV-CHA-IP, in 2015 by the Mixed Group (BNG), or more recently in 2019 by Unidas Podemos

country where they reside. This material dimension of reciprocity is essential to solve complicated cases since it implies identifying those minimum conditions necessary for the real and effective exercise of suffrage, or in other words, that another State meets these minimum standards that representative democracy impose at local level. If those standards are met the Spanish Government can initiate negotiations with such State, and ultimately submit to Congress a bilateral agreement to get its authorization, as established in art. 94.1 CE. The agreements with Argentina and Uruguay, which Congress put aside despite governmental negotiations and even an initial agreement being drafted, provide two different examples of rather legal instead of political objections: the first was paralyzed because apparently its federal structure makes it difficult to reach an agreement on a matter that does not correspond to the Argentine Government, while the second was parked due to sound doubts about the possibility to honour the reciprocity requirement (foreign citizens in Uruguay are required fifteen years of previous residence prior to vote). Burkina Faso, another country with which the possibility of a Convention had been explored, seems to have imposed additional economic conditions, specifically to fulfil all tax obligations, incompatible with the democratic conception of voting in Spain. Alongside these, some other agreements have also fallen, such as with Venezuela which seems to have been ruled out, due to the deep dissent among parliamentary groups regarding the way Venezuelan government acted and the conditions under which local elections were being held in that country¹⁰.

A second legal requirement is conventional origin: the period of minimum previous residence. The logic behind this requirement is that prior to admitting any foreigner's vote, it is proper and necessary that they have time to know the reality of the country and specifically that of the municipality in which they are going to vote. The problem with this argument is that it is difficult to sustain when the suffrage of EU citizens is not subject to any length of residence requirement. And although the difference in treatment is legally justified in the profoundly different nature of the process of the EU political integration and the reinforced regime of rights that EU citizenship entails, nevertheless the credibility of the argument is eroded. In any case, requiring five years of prior residence (except

¹⁰ See in this regard in greater detail Arce (2019).

for Norwegian and British citizens, who will vote only after a 3-year residence period¹¹) is not at all unreasonable, quite in line with many other neighbour countries.

And finally, to foreigners having been recognized the right to vote, the law imposes a mandatory registration in the census of voters in each election. This is a procedure not required to Spanish citizens, since it is the Census Administration itself that does it automatically, based on the information from the municipal register; and EU citizens only register once, the first time they chose to participate. The regulation of the prior census registration of foreigners for municipal elections is provided for in art. 176.1.b LOREG and developed by *Royal Decree 202/1995, of February 10, which provides for the formation of the electoral roll of foreigners residing in Spain for municipal elections*¹². To prepare the list of recipients of such communication, the information will come from the Central Registry of Foreigners and from the municipal registers. The art. 2 of said Order provides that, prior to the holding of the elections, a preliminary communication is sent to the holders of such right notifying them of the possibility of registering, confirming the data submitted. In case of not receiving such communication, the foreigner who meets the requirements should go to the City Council to process the application for registration.

Various elements of the Order suggest its conception more as a mere administrative procedure than as a limitation to the exercise of a political right. In this sense, the short deadlines are strong disincentives for registration as they require registering for elections some six months in advance: for the May 2019 elections, the prior registration was carried out between December 1, 2018 and January 30, 2019, at a time when many political parties were not even on electoral campaign and the lists of candidates had not even been drawn up. The timing of prior registration procedures is not in line with the electoral cycle. Without candidates, lists and not even clarity about the political forces that could participate in the elections, requesting registration becomes an administrative procedure for

¹¹ Agreement between the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland on the participation in certain elections of nationals of each country residing in the territory of the other, made in Madrid on January 21, 2019. BOE no. 41, of February 16, 2019 (<https://boe.es/boe/di-as/2019/02/16/pdfs/BOE-A-2019-2143.pdf>).

¹² BOE no. 38 of February 14, 1995.

which there are no incentives or connection with political reality. To the opposite, if registrations timing could be tuned to the electoral cycle, the electoral debate would undoubtedly mobilize participation and ultimately foreigners' registration.

In the same way, the procedure and methodology for the preparation of the census of foreign residents leaves room for improvement. In the first place, it is necessary to manage a closed list of the third countries whose nationals enjoy the right to vote with some few months in advance, as in 2011, Bolivian citizens were incorporated at the last moment, and therefore their communications were sent later than the rest and with little room for reaction. Also, the silence or passivity of the foreigner is interpreted as a refusal to register, when in a country like Spain where abstention is not sanctioned, the opposite could be presumed without too much problems. And, in the absence of inclusion in the lists—and therefore individual communication—the system justifies its operativity on the argument that a personal claim against the registration (or the lack of) can be filed, but this possibility is quite unrealistic. And at this point, advertising becomes a key factor and where a greater margin for improvement exist. The numerous appeals contained in the State and regional integration Plans must be translated into specific campaigns to promote participation (as is done in Sweden or Finland), in a line of action initiated by some municipalities¹³, but that is far from being a general trend.

The following sections offer an analysis of the impact of each of the constitutional and legal requirements for the suffrage of non-EU citizens, a necessarily approximate calculation. The methodological assumptions are set out below.

2. STUDY METHODOLOGY

To carry out the analysis of the impact and evolution of foreign participation in local elections, quantitative research techniques have been used based on the description and statistical treatment of the data collected in two official public information sources, which have been systematized and analysed in a database: the Electoral Census Office and the Permanent Immigration Observatory.

¹³ See, for example, the Barcelona City Council campaign “La meva ciutat, el meu vot” (“My city, my vote”), (<https://ajuntament.barcelona.cat/censat/>), for example.

The Electoral Census Office, which is part of the National Institute of Statistics, is the body in charge of the formation of this registry, based on the information provided by municipalities, consulates and civil registry offices and exercises its powers under the direction and the supervision of the Central Electoral Board. Foreigners with the right to vote are registered in a specific database called the Electoral Census of Foreigners (CERE), which, as we have seen in the previous section is created on the basis of the registrations submitted in each of the elections. From this source of information, the following variables have been extracted: number of communications sent to foreigners with the right to vote and number of registrations in the electoral roll (2011, 2015 and 2019). All this information has been obtained disaggregated by nationality.

The Permanent Observatory of Immigration, created through Organic Law 4/2000, is the institution that brings together all the statistical information available on immigration, international protection and nationality. Its purpose is to serve as a system for the analysis and exchange of qualitative and quantitative information related to migratory movements at the service of the entities responsible for managing public policies in these matters. Information on foreign residents and total naturalizations have been obtained from this source.

In any case, for a careful reading of the text, it is recommended to take into account the following methodological considerations on each of the analysis variables.

- Foreign residents: Foreigners with a residence certificate or residence card in force on 06/30 of the year prior to each election (2018, 2014, 2010), which is the data with the previous reference date closest to the preparation of the electoral census.
- Potential voters: Foreigners who meet the established requirements to vote. As it has not been possible to obtain this information directly, a calculation has been made with the data available, which has been obtained from the sum of the foreign residents under the general regime with long-term permits and the total number of foreign residents who obtained the permission for being family members of community members 06/30 of the year prior to the celebration of each election. From the resulting figure of the total number of foreigners with five years of residence, the percentage of minors existing

among this group has been deducted, which varies according to nationality. In any case, it must be borne in mind that this calculation is merely approximate since the results obtained do not consider deaths or migrations. On the other hand, this calculation identifies foreigners with five years of continuous residence in Spain with foreigners with long-term residence, although conceptually they are different things.

- Communications sent: Communications sent by the Electoral Census Office informing about the pre-registration requirement before each election.
- Entries in the Electoral Census: Foreigners registered in the Electoral Census. (2019, 2015, 2011). It has to be taken as an approximate indicator of foreign participation, although this data will always be lower due to abstention.
- Number of naturalizations: Number of foreigners who obtained Spanish nationality.

Whenever possible, the information is presented disaggregated by nationality. However, some of the nationalities entitled to vote have such a small number of residents that the information cannot be obtained; and this is especially the case in Trinidad and Tobago, but also in Iceland and Norway.

3. THE DECREASING NON-EU VOTE IN MUNICIPAL ELECTIONS AND THE FACTORS THAT INFLUENCE IT

The municipal elections of 2011 represented the first occasion for the participation of non-EU foreigners, however, the figures obtained then were quite disappointing. The total number of foreigners (EU and non-EU) registered in the electoral roll for the 2019 local elections was purely anecdotal and accounted for just over 1% of the total¹⁴. This shows that municipal suffrage continues to be a matter of national voters. In the following paragraphs, we analyse what are the explanatory causes of this low percentage, focusing specifically on the case of non-EU participation.

¹⁴ Source: 2019 Electoral Census (National Institute of Statistics). <https://www.ine.es/ss/Satellite?L=0&c=Page&cid=1254735788988&p=1254735788988&pagename=CensoElectoral%2FINELayout>

3.1. Impact and evolution of the requirements for the right to vote

The Spanish model of recognition of the right to municipal suffrage through reciprocity agreements has made it possible to establish a special regime to nationals of countries with which Spain has special historical or cultural relations. If we analyse the data of foreign residents in Spain, we observe that 11 out of 15 have access to local suffrage (Romania, United Kingdom, Italy, Bulgaria, Germany, Portugal, France, Ecuador, Poland, Colombia and Bolivia), accounting for more than 50% of all foreign residents. This, at least at first sight, would point to the broad scope of foreign suffrage (both EU and non-EU). However, this system has left aside certain groups with a very notable presence in the territory, especially those from Morocco and China, that together, in 2018, accounted for practically more than 17% of all foreign residents; it also leaves aside residents from Ukraine, Pakistan, the Dominican Republic, Argentina, Algeria, Senegal or Brazil. This limitation, inherent in the reciprocity mechanism and in bilateral agreements, seems relatively difficult to overcome, becoming an almost structural limitation. Considering the structural limitations that the conventional reciprocity model entails, we are going to quantify and measure the evolution of the number of residents belonging to non-EU countries with the right to municipal suffrage who met the requirement of prior residence of five years.

As it has not been possible to access the data on the total number of foreign residents with five years of residence, an approximate calculation has been carried out with the available data, which we had already carried out for the 2011 elections (Moya and Viñas, 2012), and that has been reproduced for 2015 and 2019, respectively¹⁵. In addition, it is also calculated what percentage the potential voters represent with respect to the total of residents. In any case, these results should be interpreted with the utmost methodological caution, more as indicative of a general trend than as an exact calculation.

¹⁵ For more information, see the methodology section.

TABLE 2

EVOLUTION OF THE CALCULATION OF POTENTIAL VOTERS
AND THE PERCENTAGE OF TOTAL RESIDENTS ACCORDING
TO NATIONALITY

<i>Nationalities</i>	<i>2011 potential voters</i>	<i>Percentage of potential voters over total residents 2011</i>	<i>Potential voters 2015</i>	<i>Percentage of potential voters over total residents 2015</i>	<i>Potential voters 2019</i>	<i>Percentage of potential voters over total residents 2019</i>
Ecuador	228,127	57.2	128,948	67	120,070	75.7
Colombia	126,571	46.9	78,967	56.4	76,694	61.6
Peru	53,193	38.5	39,588	56.2	37,610	61.2
Bolivia	34,940	28	45,134	39.2	56,643	60.8
Chile	12,318	42.5	10,872	50.3	12,199	59.8
Paraguay	5,229	16.1	14,081	28.4	27,083	52.6
Cape Verde	1,657	58.1	1,615	64.7	1,876	72.7
New Zealand	111	25.6	176	37.5	219	37.7
Norway	9,598 **	82.5	4,718	32.2	4,735	28.6
Iceland	283 **	31.9	160	13.6	176	11.7
Korea	***	***	1,303	63.6	1,466	51.5
Total	462,146	46.8	325,560	53.4	338,771	63.5

* The number of citizens with Trinidad Tobago nationality is not available.

*** For Norwegians and Icelanders, the calculation method is different due to the lack of information on permanent residents.

*** As of 2011, the agreement with Korea had not been signed.

Source: own elaboration from the Permanent Observatory of Immigration.

Table 2, which shows the evolution of the total calculation of potential voters for the three municipal elections in which non-EU foreigners have had the right to vote, provides some preliminary conclusions. First, it appears that the reciprocity system has significant numerical limitations. With the data in hand, there is no trend towards an increase in the number of non-EU citizens with the right to vote, rather the opposite: while this figure in 2011 was close to 500,000, in 2015 and 2019, they are close to just over 300,000 potential voters. This reduction, compared to 2011, is explained

by the intrinsic characteristics of migratory flows and the growing figures of naturalization.

Second, for the 2019 elections, the total percentage of potential voters was the highest since 2011 and is ten points higher than that obtained for 2015. 63.5% of all foreign residents belonging to the nationalities with reciprocal recognition of suffrage could meet the double condition of being an adult, and accumulating five years of residence in Spain, which gives a total figure very close to that obtained in 2015, but lower than that of 2011. The communities with the highest number of potential voters are Ecuadorians and Colombians, which together account for more than half of the total potential voters. This fact is explained by the combination of two factors: first, the two are the non-EU nationalities with the largest number of residents in Spain with the right to vote; and second, both have quite remarkable percentages of long-term residents.

Third and last, the data presented is at the intersection of multiple factors inherent to the migratory reality: beyond the total number of foreigners of each nationality living in Spain, the moment in which the main migratory flows occurred, or the socio-labour profiles are also two conditioning factors. This translates into a different characterization of each national group and has an influence on the access to the vote. For example, it is highly relevant to meet all the conditions to vote, the specific legal regime applicable to each nationality, the different percentages of initial irregularity among those populations, the different length of irregularity, different rates in accessing nationality, or more or less dynamic access to the labour market. Those are all factors that shape the volume of the stock of potential non-EU voters.

The third condition required to Non-EU foreigners for participation in local elections is that of prior registration in the electoral census of foreigners (CERE), in each of the elections in which they want to participate. This fact, added to the advance with which the census takes place, greatly hinders and discourages possible participation. For the May 2019 elections, the electoral roll office sent 280,316 communications to foreigners with nationalities from countries with reciprocity agreements (Table 2). 93.5% of the communications corresponded to foreigners who met all the conditions of the Agreement and to whom a password was sent so that they could register in the census through the Internet. The remaining 6.3% had to carry out the registration by post, providing

a valid document that justifies the residence authorization in Spain or a residence certificate issued by the General Commissioner for Immigration. Census regulations also allow personal registration at the town hall as a valid method of registration.

By groups, more than half of the communications were addressed to Ecuadorians and Colombians. Other nationalities with a notable weight, at a distance from the previous ones, are Bolivia and Peru, which represent 17.6% and 10.5% respectively. Further afield are Paraguay, Chile and Norway.

TABLE 3
COMMUNICATIONS SENT BY COUNTRY OF NATIONALITY
AND YEAR

<i>Nationalities</i>	<i>Communications sent (2011)</i>	<i>Communications sent (2015)</i>	<i>Communications sent (2019)</i>
Ecuador	168,639	125,022	84,771
Colombia	95,192	88,685	67,973
Bolivia	38,244	47,474	49,277
Peru	27,502	42,772	29,491
Paraguay	4,305	15,172	26,726
Chile	10,078	11,499	10,532
Norway	6,027	8,792	8,112
Cape Verde	0	1,493	1,512
Korea*	0	1,158	1,231
Iceland	152	370	443
New Zealand	148	194	226
Trinidad and Tobago		16	22
Total	350,287	342,647	280,316

Source: own elaboration based on data from the National Institute of Statistics. CERE.

* In 2011 there was no reciprocity agreement with Korea and the agreement with Cape Verde was signed with such short notice that there was no time to send communications.

Despite the fact that, according to the calculations made previously, the number of potential voters increases slightly compared to the previous elections (Table 3), the total communications sent show a

decrease of 60,000 communications sent as compared to the 2015 elections, thus confirming the limited scope of this instrument as a mechanism for incorporation into the suffrage for non-EU foreigners. The data obtained highlight a mismatch between the calculation of the number of potential voters (about 339,000) and the number of communications sent (just over 280,000), with a difference that stands at approximately 58,000 voters. This difference should not surprise us if we consider, the calculation has been carried out in an approximate way. Anyway, we can estimate that the number of potential voters is between 280,000 and 339,000.

3.2. The dwindling electoral roll of foreign residents, an irreversible trend?

The reduced number of potential voters and the communications sent show that reciprocity agreements have been configured more as a residual mechanism that affects a few, than as a real instrument for expanding the right to vote.

The total number of non-EU foreigners registered in the census in 2019 stood at 16,668 people and represented 0.06% of the total people with the right to vote in Spain¹⁶. On the other hand, it should be remembered that the real participation was probably a little lower than suggested here due to the abstention effect, since it is to be expected that not all the people who registered at the end voted. In any case, we do not have any instrument that measures the participation of non-EU foreigners for any of the local elections in which they have participated.

The Table 4 compares the total number of foreigners registered in the CERE in 2011, 2015 and 2019 according to their nationality and reproduces the general downward trend: all nationalities suffer a reduction on their registered voters except Paraguayans, Koreans and New Zealanders. This decrease, in percentage terms, is equivalent to a reduction of 25% compared to those registered in 2015, which expands to 70% if we compare it with those registered

¹⁶ According to data published by the INE, the electoral roll for the 2019 municipal elections totaled 35,098,248 voters. For further information <https://www.ine.es/ss/Satellite?L=0&c=Page&cid=1254735788988&p=1254735788988&pagename=CensoElectoral%2FINELayout>

in 2011. By nationality, we observe that it is the first time that Colombians registered in the electoral census exceed Ecuadorians, who are the ones who registered the largest number of potential voters and communications. On its turn, the increase of Koreans and New Zealanders voters needs to be taken with a bit of salt, because in absolute numbers they do not reach two dozen voters. As for Paraguayans, it is the only nationality that has increased its registrations with respect to the previous local elections in the two elections, a fact that could explained by the fact that their migratory trajectory took place later than that of other nationalities. If we apply to Paraguayans the evolution trend of other Latin American countries, a considerable reduction in the number of Paraguayans registered in the CERE for the 2023 elections could be expected.

TABLE 4
NUMBER OF VOTERS REGISTERED IN THE CERE BY YEAR

<i>Nationality</i>	<i>2011</i>	<i>2015</i>	<i>2019</i>	<i>Difference 2015-2011</i>	<i>Difference 2019-2015</i>
Ecuador	25,668	6,485	3,477	-74.7%	-46.4%
Colombia	12,632	5,763	4,060	-54.4%	-29.6%
Bolivia	5,042	3,952	3,087	-21.6%	-21.9%
Peru	5,897	3,110	2,145	-47.3%	-31.0%
Paraguay	645	1,300	2,012	101.6%	54.8%
Chile	1,249	999	945	-20.0%	-5.4%
Norway	829	854	647	3.0%	-24.2%
Korea*		125	138		10.4%
Cape Verde	22	112	92	409.1%	-17.9%
Iceland	28	35	32	25.0%	-8.6%
New Zealand	33	28	32	-15.2%	14.3%
Trinidad and Tobago**		2	1		-50.0%
Total	52,045	22,765	16,668	-56.3%	-26.8%

* In 2011 there was no reciprocity agreement with Korea.

** The voters of Trinidad and Tobago are not available for 2011.

As we have mentioned previously, there is no data on the electoral participation of foreigners in local elections. To approach this phenomenon, the percentage of registration in the CERE (Table 4) over the total potential voters (Table 2) has been calculated for the three local elections. As Table 5 shows, the data is disappointing and pictures the failure of the model as it is currently designed. After three electoral calls, far from an increase in the participation percentage, the data follows a clear downward trend. While in 2011 it is estimated that about 11% of those who could enrol in the CERE, in 2015 this figure stood at 7% and in 2019 it did not reach 5%.

If we analyse the percentage of enrolment according to nationality, we observe that the communities with the highest registration percentage are Icelandic, Norwegian and New Zealand, with between 13.5 and 17.8% registered. At the other extreme, there are Ecuadorians and Cape Verdeans with percentages below 5 and in all cases, there is a reduction in enrolment compared to the 2011 data.

TABLE 5
PERCENTAGE OF REGISTRATION IN THE CERE ON
POTENTIAL VOTERS

<i>Nationality</i>	<i>% registration in CERE 2011</i>	<i>% enrollment in CERE 2015</i>	<i>% registration in CERE 2019</i>
Iceland	9.9	21.9	17.8
New Zealand	29.7	15.9	14.6
Norway	8.6	18.1	13.5
Korea*		9.6	9.4
Chile	10.1	9.2	7.7
Paraguay	12.3	9.2	7.4
Peru	11.1	7.9	5.7
Bolivia	14.4	8.8	5.4
Colombia	10.0	7.3	5.3
Cape Verde	1.3	6.9	4.9
Ecuador	11.3	5.0	2.9
Total	11.0	7.0	4.9

* In 2011 there was no reciprocity agreement with Korea.
Data for Trinidad and Tobago is not available for the calculation.

The number of potential voters is a figure that fluctuates a lot, due not only to the number of naturalizations, but also to the migratory experience of each group and to the oscillations of a fragile economy where many factors can have a direct and indirect impact on the labour market and, more intensively, in foreign labour in that market. However, the same does not happen with the percentage of registered voters in the electoral census, where the factors that determine it are of a totally different nature. In fact, it is apparently hard to explain why census enrolment was higher in 2011 than it is today. We think that an excessive registration bureaucratization combined with a lack of registration campaigns through the appropriate mechanisms and channels could help to mitigate that trend, although the real reasons for a so broad abstention might be much deeper and difficult to grasp¹⁷.

In this sense, and from a purely normative standpoint, one of the factors that most adversely affect the present model of selective suffrage, is the growth of naturalization proceedings: between the years 2011-2018, there were more than 875,000 naturalizations in Spain. An analysis of the nationality of origin shows that Moroccans, Ecuadorians, Colombians, Bolivians, and Peruvians are the ones that have naturalized more frequently in this period and, together, they exceed more than 500,000 concessions, representing more than three fifths of the total.

If we put these data in relation to the subject at hand, four of the five nationalities with the highest number of naturalizations have been recognized the right to municipal suffrage, being precisely those that have experienced the most significant reduction in the number of registrations in the electoral roll since 2011. On the other hand, the nationalities with a higher number of residents and potential voters (Bolivia, Colombia, Ecuador, Peru) are precisely those that enjoy the most advantageous conditions to access nationality: two years residence without having to give up your own. This fact, therefore, explains that most of those registered in the 2015 census today are entitled to apply for the Spanish nationality and many have done so. Furthermore, some those who in the last elections still did not comply with the requirement of five years of continuous residence,

¹⁷ On the complex problem of aliens low turnout, a question that clearly exceeds this article, see key works on this issue like those written by Calderón (2003), Ciornei (2015), Morales and Giugni (2011) and Carrasco (2010).

for the next local elections scheduled for 2023, will possibly be, by then, Spanish.

The data on naturalizations, and in general the short-track procedure to nationality for Latin American citizens, constitutes very good news in terms of the integration of foreigners into Spanish society, but weakens the conventional reciprocity system of suffrage because it suffers from the constant drainage in the number of voters; a drainage barely compensated by the incorporation of new stocks of those populations. Furthermore, in this decade immigration has diversified with nationalities not included in these reciprocity agreements. The combined effect of both phenomena is showing the limits of the conventional reciprocity suffrage model and explains the progressive decline in registrations in the census and the risk that this model will fall into insignificance for the next municipal elections.

4. IN SUMMARY: WILL THERE BE ROOM FOR IMPROVEMENT FOR THE CURRENT MODEL OF CONVENTIONAL RECIPROCITY BY EXPANDING VOTING RIGHTS TO OTHER NATIONALITIES?

It would be tempting to think the situation previously described could be reversed if we could extend the right to vote to other nationalities. It could give some meaning to the current model, at least as a transitional model while we wait for a reform that universalizes the access to municipal suffrage. As we will argue below, this is not an implausible scenario but it would hardly rebuke the present situation.

To illustrate this argument, we have taken three countries —with significant foreign populations in Spain. Overcoming the difficulties that have prevented signing an agreement with these countries does not seem impossible although might certainly require a strong political will. This is so because the interpretation of the reciprocity criterion would require either a certain degree of flexibility (Uruguay) or because the possibility of a much more complex negotiation process would be required to explore reciprocity (Argentina)¹⁸, or

¹⁸ See the reflections contained in section 2 of this work on the attempts to sign an agreement with Uruguay and Argentina. For a more detailed analysis, Arce (2019).

because it has not even been tested due to a combination of legal and political factors (Morocco)¹⁹.

To approach in quantitative terms the potential impact of the incorporation of these nationalities to the electoral roll, we have applied the methodology described in section 3. We think that the results could look very close to those projected in Table 6, the data showing a much larger scenario of potential voters, with 500,000 more Moroccan voters, and 50,000 Argentines and/or Uruguayans. However, as experience shows, the number of potential voters is far from being equal to actual voters.

To adjust the calculation to the potential real voters who should manage their registration, we have considered three scenarios based on the experience obtained in 2019: the first would be based on the assumption of a very low participation turnout, specifically, we have taken as the average participation the low turnout that Ecuadorian group registered in those elections (2.9%); the second scenario has been calculated applying the average percentage of enrolment in the CERE for all nationalities, which stands at 4.9%; finally, the most optimistic outlook has been calculated by applying the maximum participation turnout, that of a single group provided by the Icelanders, which amounted to 17.8%. In any case, while it is true that the three hypotheses are mere estimates, it must be bore in mind that the incentive for participation could be higher for Moroccans, as they encounter more stringent conditions and even difficulties for naturalization, the right to municipal vote could be

¹⁹ The Moroccan constitutional reform of June 2011 (positive referendum of July 2011) opened the possibility of admitting the municipal suffrage of foreigners, which together with the introduction of elections for the election of municipal councils, could theoretically allow the Signature of a Treaty with Morocco to admit Moroccan suffrage in Spanish local elections (art. 130 Moroccan Constitution). A bilateral agreement of this type would require verifying the political evolution in Morocco and the practice of such elections, an extremely sensitive matter politically. But having cleared the main constitutional obstacles, the mere possibility of extending the suffrage in the Spanish municipal elections to more than half a million Moroccan residents must be properly assessed. As of December 31, 2019, Moroccan residents totalled 806,290 people in Spain, of which more than 736,000 were long-term or community-based residents with permanent residence, that is, more than 90%. Of which approximately 30% were under 18 years of age, which would result in several potential voters that would surely not fall below 520,000 people, a figure that is relevant even more when its geographical distribution is not uniform in Spain.

perceived as practical compromise, be it of temporary or permanent character.

Be that as it may, in any of the scenarios, the increase in the census would be based fundamentally on the contribution of Moroccans, who are the first nationality with the highest number of people registered in Spain, and the second in number of residents, only behind the Romanians. In any case, the potential increase in registration would be placed in a cradle between 15,000 and 97,000 voters, such outcome is not negligible at all as registration in the CERE in 2019 amounted to just over 16,000 people. Therefore, in the most pessimistic scenario, the number of registrants could be doubled and in the most optimistic scenario it would be multiplied by six.

TABLE 6
ESTIMATE OF POTENTIAL VOTERS AND REGISTRATIONS
IN CERE 2019

<i>Nationality</i>	<i>Potential voters</i>	<i>2.9% estimate of registration in the electoral roll</i>	<i>Estimate of 4.9% registration in the electoral roll</i>	<i>Estimated 17.8% of registration in the electoral roll</i>
Argentina	36,988	1,073	1,812	6,584
Uruguay	14,264	414	699	2,539
Morocco	494,278	14,334	24,220	87,981
Total	545,530	15,820	26,731	97,104

In global figures, with the current participation requirements, in the best of cases, the foreign contribution would probably continue to be almost anecdotal in an electoral census made up of a total of 36 million citizens. Of course, this is just a projection based on previous tendencies, we cannot discard that if allowed to participate Moroccans would break the ceiling of the rest of nationalities and mobilise politically to cast their vote, but to start to be significant that would mean participation turnouts of more than 50%-55% (reaching around 300.000 voters). Even so, given the distribution of the population throughout the Spanish geography, the electoral impact of the Moroccan vote could be reasonably expected to be absorbed

by the political system. In practical terms, the impact of Moroccan participation might be significant —assuming their turnout would be higher than the average turnout of foreign citizens— only in certain villages or small cities, or in certain medium-size districts where population with Moroccan background concentrates, but would be much more diluted in the main capitals. Regarding Ceuta y Melilla, probably some specific provisions could be adopted if a bilateral convention would be adopted in order to moderate their voting impact²⁰.

If we broaden the focus, few countries are expected to be added to increase the previous list. The processes of political transformation in some countries of the Euro-Mediterranean area after the so-called ‘Arab Spring’ (Tunisia, Egypt, Libya, Syria, etc.²¹) are far from being promising in this sense —perhaps with the exception of Tunisia, but we have few nationals from this country abiding in Spain. And the possibilities offered by the accession of new States to the European Union that at present are labelled as “candidate countries” (Albania, the Republic of North Macedonia, Montenegro, Serbia or even Turkey) are still far from effectively joining the EU; also, the limited stock of citizens currently living in Spain from those countries significantly reduces their potential impact in the next 2023 election. On the contrary, everything seems to indicate that our model has reached its limits, and that although it could be forced with much more flexible interpretations of reciprocity and a remarkable skill in bilateral negotiations, it would hardly scratch

²⁰ Regarding Ceuta and Melilla, a specific legal provision in the agreement or in the legislation such as the one existing at the level of the European Union regarding the limits of the participation of community citizens in the elections in the cities of Luxembourg or Brussels could moderate the impact of such an agreement on the delicate political balances in both Autonomous Cities, although this question would require a careful study that exceeds the present work.

²¹ The Constitution of Tunisia of 2011 is not final in this regard, neither to admit nor to rule out such possibility (art. 133 Constitution of Tunisia of 2011), however, its normative deployment through Organic Law n ° 16/2014 of 26 of May 2014, regarding elections and referendums, reserves the status of elector in its art. 5 to Tunisian nationals, a precept to which Organic Law 29/2018 of May 9, 2018 of the Code of Local Administrations refers. At the present time, such a possibility is not even imaginable with countries like Libya, Syria or Egypt, and it is still too early to assess the effects that the resignation of Abdelaziz Bouteflika and the continuation of popular pressure in the streets may have. for the opening of an authentic process of political transition in Algeria.

some 100,000 additional voters in a favourable scenario for the participation of these groups.

In the current model, the requirement of prior registration, is one of the most important obstacles to participation. Proof of this is that even in the most optimistic scenario, participation would not mean more than 100,000 votes distributed throughout the territory. In any case, it should be remembered that the requirement of prior registration could be modified without major regulatory changes. This requirement is also far from being justified in the case of non-EU citizens, especially if one considers that for EU citizens, art. 7.3 of Council Directive 94/80/EC of December 19, 1994²² admits its registration *ex officio* in the census if suffrage is not mandatory in that country. This requirement, as Arce (2019) denounces, is not based on the Constitution nor the Conventions or the LOREG, but on regulatory norms of a minor rank. This completely distorts the voting system by introducing a requirement that reduces the automaticity of the electoral process. As Naranjo (2017) has pointed out, this makes the need for prior registration “*disproportionate and makes it difficult to exercise ‘beyond what is reasonable’*”, the right to vote providing legal arguments that would therefore allow such a requirement to be detrimental to the right of active suffrage of recognized foreigners in their respective conventions, and even discriminatory with respect to the suffrage of Spaniards by imposing different and insufficiently justified and proportionate requirements. With our study we think we have contributed with some data to corroborate this criticism.

In conclusion, beyond the symbolism that the extension of the suffrage to new nationalities and most notably to Moroccans could imply, the truth is that this would require an enormous effort and stretching the limits of the present model. What’s more, it would only provide a temporary relief for the current model of conventional reciprocity suffrage. The only way to significantly increase the number of potential voters among foreign residents is exclusively through the revision of the prior census registration system, or to either permanently suppress it, or reformulate it in such a way

²² Directive 94/80/CE of the Council of December 19, 1994, which establishes the modalities of exercise of the right to active and passive suffrage in municipal elections by citizens of the Union residing in a State member of those who are not nationals (DOCE L-368 of December 31, 1994).

that it does not constitute a disincentive to the participation. It is either that or the reform of the entire model and its replacement by a municipal suffrage model for all foreign residents, regardless of their nationality.

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