Foreword

In the Spanish State, migration and public law on immigration have only been developed significantly in recent years. Although legal provisions have always lagged behind the phenomenon they seek to plan, we have repeatedly seen an accelerated development which has taken on a size and intensity that was hardly imaginable more than a decade ago. Proof of this evolution is to be found –among many other examples– in the fact that the so-called *Foreigners' Law* (the Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and on their social integration) has been amended four times since its enactment in 2009, and that both European policies and constitutional jurisprudence have been the direct cause of some of these reforms.

The paths of public law, which in themselves may be more or less firm, plot equally more or less narrow paths for immigration. On arrival, during the stay, on departure or on return. Legal solutions are particularly sensitive to the –variable– temperature of the social debate, but they must also be delicate enough to avoid veritable cul-de-sacs. This awareness is what allows us to move from figures to people and from the latter to groups, and onto a more dynamic and plural social body than ever. After the initial orientations of the foreigners' law, the last few years of this decade, hit by a far-reaching economic crisis and by high unemployment, have witnessed the completion of the roadmap. Some paths veer off in many directions, with numerous little forks and very few, or no, shortcuts. And borders continue to exist, although they are more internal, uncertain, tenuous and changing.

For all the foregoing reasons it would seem fitting to make a fresh effort in the dogmatic consolidation of this new public law on immigration and, in particular, of the constitutional and administrative treatment of the phenomenon. Of course it is not a question of proposing definitive conclusions. Neither is it our intention to offer a comprehensive approach to the question. The analysis is a monographic one, but it is not, and neither could it be, complete. We have followed the progressive creation of a community system for foreigners, we have dwelled on the social rights of immigrants and have extended our consideration to the migratory management model, between the control and channelling of flows, and to the dynamics between cultural diversity, coexistence and rights. As always, we take a critical look at constitutional jurisprudence and the doctrinal debate on migration and its legal treatment. And we propose, as counterpoints, a reflection on the legislation

on foreigners in the United States, as well as an economic approach to immigration data in Catalonia.

Gaps to be mentioned include the new paths for the political rights of newcomers and not so newcomers –an analysis that is not included in the monographic for reasons beyond the publisher's will–, the confirmation of the progress of claims made at autonomous community level, mainly through the statutory reforms and their progressive application and, of course, the example of many other systems and legislative bodies that were or could be an example for the law. Notwithstanding, we offer this monographic in the conviction that the reflections, data and the arguments of the authors constitute a valuable contribution to the challenges posed. The lights that come on show us the paths that have been taken or are being taken by this public law on immigration, but they also lead us to new routes, and new ways of traversing them. We wish you a pleasant stroll.

Présentation

Au sein de l'État espagnol, le fait migratoire et le droit public de l'immigration ne se sont développés de manière significative qu'au cours des dernières années. Malgré le retard certain de la régulation juridique par rapport au phénomène qu'il s'agissait de réglementer, dans l'un et l'autre cas, nous avons assisté à un développement accéléré qui a atteint des dimensions et une intensité difficilement imaginables avant la dernière décennie. D'ailleurs, un bon témoignage de cette évolution est – parmi tant d'autres exemples – le fait que la dénommée « loi sur les étrangers » (loi organique 4/2000 sur les droits et libertés des étrangers en Espagne et sur leur intégration sociale) ait fait l'objet de quatre modifications depuis l'année de son adoption jusqu'en 2009 et que les politiques européennes comme la jurisprudence constitutionnelle aient été la cause directe de certaines de ces réformes.

Les chemins du droit public, bien ou mal aplanis, esquissent les limites plus ou moins étroites des chemins de l'immigration, en ce qui concerne l'arrivée, le séjour, la sortie ou le retour. Les solutions légales, particulièrement sensibles à la température – variable – du débat social, doivent néanmoins être suffisamment subtiles si nous ne voulons pas nous retrouver dans des voies sans issue. C'est cette conscience qui nous permet de passer des chiffres aux personnes, et de celles-ci aux groupes et à un corps social plus dynamique et pluriel que jamais. Depuis les premières orientations du